

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

JOHN G. MUMMERT,

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Plaintiff,

)

v.

)

Case No. CIV-11-75-SPS

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MICHAEL J. ASTRUE,

)

Commissioner of the Social

)

Security Administration,

)

)

Defendant.

)


OPINION AND ORDER

The claimant John G. Mummert sought judicial review of the decision by the Commissioner of the Social Security Administration (“Commissioner”) denying benefits pursuant to 42 U.S.C. § 405(g). The claimant argued that the Administrative Law Judge (“ALJ”) erred by: (i) improperly finding that the claimant’s impairment did not meet the criteria of a listed impairment; and (ii) failing to acknowledge the Veteran’s Administration (“VA”) finding that the claimant was 70% disabled, and because new evidence from the VA indicates that the claimant was found to receive compensation at 100% after November 17, 2003.

After the claimant filed his appellate brief, the Commissioner filed a response brief, agreeing that remand is appropriate because the ALJ failed to acknowledge the claimant’s VA disability rating. The parties then filed an Agreed Motion to Remand for Further Administrative Proceedings [Docket No. 22]. The parties’ agreed motion is therefore GRANTED.

Accordingly, the Court finds that the decision of the Commissioner is unsupported by substantial evidence and is therefore REVERSED pursuant to the fourth sentence of 42 U.S.C. § 405(g). The case is hereby REMANDED to the ALJ for rehearing and a new administrative decision that acknowledges the claimant's VA disability rating. The claimant is the prevailing party in this action and the Court will therefore render a separate judgment in her favor pursuant to Fed. R. Civ. P. 58(b)(2)(B).

DATED this 27th day of October, 2011.



Steven P. Shreder
United States Magistrate Judge
Eastern District of Oklahoma