

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

EDDIE LEWIS RILEY,)	Civil Action No. 4:17-02028-MGL-TER
)	
Plaintiff,)	
)	
vs.)	REPORT AND RECOMMENDATION
)	
NANCY A. BERRYHILL,)	
ACTING COMMISSIONER OF SOCIAL)	
SECURITY ADMINISTRATION,)	
)	
Defendant.)	
_____)	

Plaintiff, who is represented by counsel, brought this action pursuant to 42 U.S.C. § 405(g) to obtain judicial review of a final decision of the Commissioner of Social Security (“the Commissioner”), denying Plaintiff’s claims for disability insurance benefits. This matter is before the Court for a Report and Recommendation pursuant to Local Rule 73.02(B)(2)(a), D.S.C., and Title 28, United States Code, Section 636(b)(1)(B). For the reasons set forth below, it is recommended that the case be dismissed for Plaintiff’s failure to prosecute.

On August 2, 2017, Plaintiff filed this action for judicial review of the unfavorable decision of the Administrative Law Judge (“ALJ”). (Doc. #1). The Commissioner filed an Answer to the Complaint on December 4, 2017. (Doc. #8). The local rules of the District provide that Plaintiff’s brief is to be filed within thirty (30) days of the Defendant’s answer. Local Rule 83.VII.04, D. S.C. Accordingly, Plaintiff’s brief was due on January 3, 2018. Plaintiff filed a motion for an extension of time to file his brief noting Defendant was

contacted and had no objection to the extension. (Doc. #11). Plaintiff's motion for an extension was granted, and Plaintiff was given until February 1, 2018, to file his brief. On January 31, 2018, Plaintiff filed a second motion for extension of time requesting an extension until February 15, 2018, to file his brief noting that he had contacted counsel for Defendant but had not received a response regarding the motion at the time of the filing. Therefore, the undersigned waited for the response time to expire on February 14, 2018, before granting the second motion for extension on February 15, 2018, in the event of an objection. To date, February 26, 2018, Plaintiff has not filed his brief and has presented no argument why the decision by the Commissioner is not supported by substantial evidence. Therefore, it appears that the Plaintiff does not wish to continue to prosecute this action.

Under Rule 41 of the Federal Rules of Civil Procedure, “[i]f the plaintiff fails to prosecute or to comply with [the Federal Rules of Civil Procedure] or a court order,” the court may enter an order of involuntary dismissal. Fed. R. Civ. P. 41(b). In assessing whether dismissal is appropriate under Rule 41(b), a court evaluates (1) the degree of the plaintiff's personal responsibility for the failures; (2) the prejudice caused to the defendant; (3) whether the plaintiff has a history of deliberately proceeding in a dilatory fashion; and (4) the availability of a less drastic sanction. Chandler Leasing Corp. v. Lopez, 669 F.2d 919, 920 (4th Cir. 1982) (per curiam).

Plaintiff has failed to prosecute this action and to comply with an order of this Court. After careful review and consideration of the factors outlined in Chandler Leasing, the Court determines that dismissal is an appropriate sanction in this case. Accordingly, it is

RECOMMENDED that this action be **DISMISSED** pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute and for failure to comply with a Court Order.

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

February 26, 2018
Florence, South Carolina