


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED

SEP 24 2009


CLERK

BRETT A. SKOVLUND,

Plaintiff,

-vs-

MICHAEL J. ASTRUE,
Commissioner of Social Security
Administration,

Defendant.

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CIV. 08-4078

OPINION AND ORDER

This Court referred the case to United States Magistrate Judge John E. Simko for the purpose of issuing a Report and Recommendation. The Magistrate Judge has recommended that the Commissioner’s denial of benefits be reversed and remanded to the Social Security Administration for an appropriate calculation of benefits due.

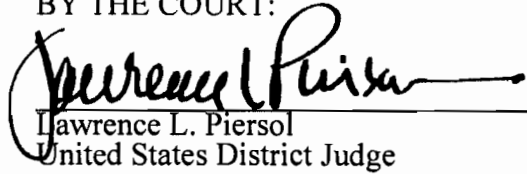
A remand pursuant to sentence four of 42 U.S.C. § 405(g) remand is proper when the district court makes a substantive ruling regarding the correctness of the Commissioner’s decision and remands the case in accordance with such ruling. Buckner v. Apfel, 213 F.3d 1006, 1010 (8th Cir. 2000). Remand with instructions to award benefits is appropriate “only if the record overwhelmingly supports such a finding.” Buckner at 1011. The Court has carefully reviewed the Magistrate Judge’s Report and Recommendation and the record of the administrative proceedings. After having reviewed the record, the Court agrees with the Magistrate Judge’s Report and Recommendation. Accordingly, it is hereby

ORDERED that:

1. The Magistrate Judge's Report and Recommendation (Doc. 14) is ADOPTED by the Court.
2. The Commissioner's decision is REVERSED under sentence four of 42 U.S.C. § 405(g) and the case is REMANDED to the Commissioner to award benefits to Mr. Skovlund in the amount required under applicable statutes and regulations.

Dated this 24th day of September, 2009.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, Clerk

By Summer Whelan Deputy