

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TROY WAYNE JOHNSON,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:14-cv-01503
)	Judge Sharp / Knowles
CAROLYN W. COLVIN,)	
Acting Commissioner of Social Security,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

This matter is before the Court upon Defendant’s Motion to Dismiss for failure to timely file the Complaint. Docket No. 13. In support of its Motion, Defendant has contemporaneously filed a supporting Memorandum of Law (Docket No. 14) and the Declaration with Exhibits of Patrick J. Herbst (Docket Nos. 15 - 15-2).

Plaintiff, who is represented by counsel, has not responded to the instant Motion.

Defendant filed the instant Motion on June 16, 2015, arguing that Plaintiff’s Complaint should be dismissed as untimely because it was filed beyond the time permitted by 42 U.S.C. § 405(g) and 20 C.F.R. § 422.210. Docket Nos. 13, 14.

Defendant is correct that Plaintiff’s Complaint was filed beyond the time permitted by 42 U.S.C. § 405(g) and 20 C.F.R. § 422.210. There is no indication in the record that Plaintiff sought an extension of time from the Appeals Council in which to file his Complaint, nor has Plaintiff proffered good cause for tolling the permissible filing deadline. As has been noted, Plaintiff has not responded to Defendant’s Motion to Dismiss.


Local Rule 7.01(b) states, in pertinent part:

Each party opposing a motion shall serve and file a response, memorandum, affidavits, and other responsive material not later than fourteen (14) days after service of the motion, except, that in cases of a motion for summary judgment, that time shall be twenty-one (21) days after the service of the motion, unless otherwise ordered by the Court. Failure to file a timely response shall indicate that there is no opposition to the motion.

Defendant filed the pending Motion on June 16, 2015. Docket No. 13. Because Plaintiff has failed to respond to Defendant's Motion, Defendant's Motion should be granted as unopposed.

Accordingly, the undersigned recommends that Defendant's Motion to Dismiss (Docket No. 13), be GRANTED.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days after service of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have fourteen (14) days after service of any objections filed to this Report in which to file any response to said objections. Failure to file specific objections within fourteen (14) days of service of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *See Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L. Ed. 2d 435 (1985), *reh'g denied*, 474 U.S. 1111 (1986); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.



E. CLIFTON KNOWLES
United States Magistrate Judge