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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

EUGENE HOLLEY,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of the Social Security
Administration,

Defendant.

CASE NO. 2:17-cv-0771 RAJ-JRC

ORDER TO SHOW CAUSE

This matter has been referred to United States Magistrate Judge J. Richard
Creatura pursuant to 28 U.S.C. § 636(b)(1) and Local Magistrate Judge Rule MJR
4(a)(4), and as authorized by *Mathews, Secretary of H.E.W. v. Weber*, 423 U.S. 261,
271-72 (1976).

This case is before the Court on plaintiff's failure to comply with the Court's
Scheduling Order and failure to prosecute this case.

1 The Court's initial Scheduling Order (Dkt. 12) was issued on October 17, 2017.
2 This Order directed plaintiff to file an opening brief on or before November 14, 2017.
3 *See id.* Plaintiff has failed to file an Opening Brief.

4 The initial Scheduling Order provides in pertinent part:

5 **(1) Plaintiff's Opening Brief**

6 (a) Beginning on page one, plaintiff shall list the errors alleged (for
7 example, "Issue No. 1 – The ALJ failed to properly evaluate plaintiff's
8 subjective complaints of pain."), followed by a clear statement of the
9 relief requested. A general statement of an issue, such as "the ALJ's
10 decision to deny benefits is not supported by substantial evidence," is
unacceptable. Assignments of error that are not listed in this section of the
opening brief will not be considered or ruled upon.

11 (b) Plaintiff shall provide a brief summary of the relevant
12 procedural history of the case. Plaintiff shall not include a lengthy
13 recitation of background facts or medical evidence in this section.
Discussion of the relevant facts must be presented in the argument section
in the context of the specific errors alleged.

14 (c) Subsequent sections of the opening brief must fully explain
15 each issue raised in the assignments of error and must include citations to
16 the specific pages of the administrative record and the relevant legal
authority that support each argument and request for relief.

17 Dkt. 12, p. 2.

18 Plaintiff appealed the denial of his Social Security applications by filing this
19 lawsuit and thus has the responsibility to explain to the Court (1) specifically what the
20 ALJ did wrong, (2) what evidence supports this position, and (3) why the ALJ's error
21 was harmful, *i.e.*, why it affected the outcome of the case. This responsibility is met by
22 filing an opening brief. The opening brief is important because it informs every one of
23 the specific claims plaintiff wishes the Court to address, and gives the Acting
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1 Commissioner an opportunity to respond. Without an opening brief, the Court would
2 have to guess at what claims plaintiff intends to present. Additionally, the Court cannot
3 act as the lawyer for either side, that is, the Court cannot make arguments on behalf of a
4 party and cannot decide the case based on issues that the parties have not raised.

5 Only after both plaintiff and the Acting Commissioner file their briefs, will the
6 Court be in a position to review the arguments made by both sides and issue a decision.
7 In this case, plaintiff's failure to file an opening brief not only deprives the Court of
8 knowing what claims he wishes the Court to review, it also violates the Court's
9 Scheduling Order. If plaintiff does not demonstrate that he failed to file his brief with
10 just cause, the Court could dismiss the case. Local Civil Rule 11(c); *see, also* Fed. R.
11 Civ. P. 41(b). Given the circumstances in this case, however, the Court would prefer to
12 decide the case on the merits and does not deem the drastic measure of dismissal
13 appropriate at this time.

14 The Court therefore ORDERS:

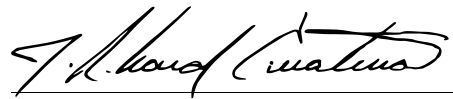
15 (1) Counsel for plaintiff Eugene Holley, must submit to the Court by
16 **December 29, 2017** a brief explaining what the ALJ did wrong, with citations to the
17 Administrative Record; what evidence supports plaintiff's position; and why the ALJ's
18 error was harmful, and also must follow the requirements noted in the Scheduling Order
19 (*see* Dkt. 12).

20 (2) If plaintiff does not file or cannot file a brief, he must explain why the case
21 should not be dismissed for failing to follow the Court's scheduling order. He must
22 submit this explanation to the Court no later than **December 29, 2017**.
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1 (3) If plaintiff timely files a brief and/or explains why he failed to follow the
2 scheduling order, the Acting Commissioner shall file a response by **January 26, 2018**.

3 (4) If plaintiff does not file an opening brief and does not explain adequately
4 why he failed to follow the scheduling order, the Court will file a Report and
5 Recommendation, recommending that the case be dismissed.

6 Dated this 5th day of December, 2017.

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9 J. Richard Creatura
10 United States Magistrate Judge
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