

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT J. DOYLE, SR., : CIVIL ACTION  
Plaintiff, :  
 :  
v. :  
 :  
JO ANNE B. BARNHART, :  
COMMISSIONER OF SOCIAL :  
SECURITY, :  
Defendant. : No. 03-0264

MEMORANDUM AND ORDER

J. M. KELLY, J.

MAY , 2004

Presently before the Court is a Motion to Dismiss filed by Defendant Jo Anne B. Barnhart, Commissioner of Social Security ("Defendant" or the "Commissioner") seeking dismissal of the Complaint filed by pro se Plaintiff Robert J. Doyle, Sr. ("Plaintiff" or "Doyle") for lack of subject-matter jurisdiction. Plaintiff's Complaint seeks judicial review of issues surrounding his application for Retirement Insurance Benefits ("RIB") under Title II of the Social Security Act (the "Act"), 42 U.S.C. §§ 401-434. Defendant contends that since Plaintiff failed to exhaust his administrative appeal remedies with respect to his application for RIB, he has not received a "final decision" of the Commissioner as required for judicial review under 42 U.S.C. § 405(g), and that this Court should therefore dismiss Plaintiff's Complaint for lack of subject-matter jurisdiction.

In response, Plaintiff filed a styled Motion for Summary Judgment, which we construe as a response to Defendant's Motion to Dismiss, indicating that he did receive a final decision,

albeit not until several months had passed since the filing of this suit for judicial review. Defendant replied with a Brief in Opposition to Plaintiff's Motion for Summary Judgment that was followed by Plaintiff's filing of a second Motion for Summary Judgment, which we construe as a sur-reply to Defendant's Motion to Dismiss. For the following reasons, Defendant's Motion to Dismiss is **DENIED**.

### I. BACKGROUND

On November 3, 1995, Plaintiff filed an application for RIB with the Social Security Administration. Defendant determined that Plaintiff was entitled to RIB beginning in January 1996. In a letter dated March 3, 2000, Plaintiff was informed that his monthly benefit amount was being reduced, and that he was overpaid \$1604.00.<sup>1</sup> On reconsideration, Defendant upheld this determination and Plaintiff requested a hearing by an administrative law judge ("ALJ").

On September 26, 2002, the ALJ issued a decision finding that although Plaintiff's RIB should be computed under an alternate formula due to the fact that he also received a pension based on earnings not covered under the Social Security system, the conditions for reopening could not be satisfied and,

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<sup>1</sup> This reduction was based on the "windfall elimination" provision under Title II of the Act, 20 C.F.R. § 404.213.

therefore, Defendant was precluded from reducing Plaintiff's benefit amount and charging Plaintiff with an overpayment.<sup>2</sup> Accordingly, the ALJ concluded that Defendant's March 3, 2000 notice reducing Plaintiff's monthly benefit amount and requiring repayment of the \$1604.00 overpayment would be rescinded.

On November 25, 2002, Plaintiff filed a request for review of the ALJ's decision with the Appeals Council. Less than two months later, on January 21, 2003, Plaintiff filed this civil action seeking review of the ALJ's final decision.

Defendant now moves for dismissal of Plaintiff's Complaint for Plaintiff's failure to exhaust his administrative remedies, specifically, that Plaintiff failed to obtain a final decision from the Appeals Council. In support of her Motion to Dismiss, Defendant filed the Declaration of Earnest Baskerville, Chief, Court Case Preparation and Review Branch 2, Office of Hearings and Appeals, Social Security Administration, setting forth the manner in which claims are processed under Title II of the Act. In response, Plaintiff filed a styled Motion for Summary Judgment, which we construe as a response to Defendant's Motion to Dismiss, contending that he indeed received a "final decision"

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<sup>2</sup> An initial determination may be reopened within twelve months for any reason and within four years if good cause exists. See 20 C.F.R. § 404.988(a)-(b). However, after four years, an initial determination may only be reopened under very limited conditions. See 20 C.F.R. § 404.988(c).

from the Appeals Council dated September 24, 2003.<sup>3</sup> Defendant replied with a Brief in Opposition to Plaintiff's Motion for Summary Judgment, essentially rearguing the defenses contained in her Motion to Dismiss. Plaintiff then filed another styled Motion for Summary Judgment, which we construe as a sur-reply to Defendant's Motion to Dismiss. To this second styled Motion for Summary Judgment, Plaintiff again attaches several exhibits, including what appears to be excerpts of a Decision of the Appeals Council on Plaintiff's RIB entitlement matter.

## **II. STANDARD OF REVIEW**

Since Defendant's Motion seeks dismissal for Plaintiff's failure to exhaust his administrative remedies, Federal Rule of Civil Procedure 12(b)(1) is invoked, which allows dismissal for "lack of jurisdiction over the subject matter." See Fed. R. Civ. P. 12(b)(1). Because Defendant's Motion was not merely a facial challenge to this Court's jurisdiction over the matter, but one attacking the "existence of subject matter jurisdiction in fact," we may consider affidavits and other material outside the

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<sup>3</sup> Attached to Plaintiff's first styled Motion for Summary Judgment are several piecemeal exhibits, including what appear to be internet downloads of the text and legislative history of the Social Security Amendments of 1983, and correspondence to Plaintiff from the Social Security Administration and the House of Representatives Committee on Ways and Means. Conspicuously absent from this set of exhibits is a copy of the Appeals Council letter dated September 24, 2003 that Plaintiff claims to have received.

pleadings. See Gotha v. United States, 115 F.3d 176, 178-79 (3d Cir. 1997); Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977). Unlike a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), we do not view the facts in the light most favorable to the non-movant. Mortensen, 549 F.2d at 891. Instead, "the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." Id.

### III. DISCUSSION

Jurisdiction over Social Security benefits cases is authorized by 42 U.S.C. § 405(g), which provides, in relevant part:

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow.

42 U.S.C. § 405(g) (emphasis added). Ordinarily, judicial review is barred absent a "final decision" of the Commissioner of Social Security. Mathews v. Eldridge, 424 U.S. 319, 328 (1976). A final decision is "central to the requisite grant of subject matter jurisdiction." Id.<sup>4</sup>

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<sup>4</sup> An exception to the "final decision" rule applies when a claimant is presenting a constitutional claim or a claim that

Under the Social Security regulations, the administrative review process consists of the following steps, to be completed in the following order:

(1) Initial determination. This is a determination we make about your entitlement or your continuing entitlement to benefits or about any other matter, as discussed in § 404.902, that gives you a right to further review.

(2) Reconsideration. If you are dissatisfied with an initial determination, you may ask us to reconsider it.

(3) Hearing before an administrative law judge. If you are dissatisfied with the reconsideration determination, you may request a hearing before an administrative law judge.

(4) Appeals Council review. If you are dissatisfied with the decision of the administrative law judge, you may request that the Appeals Council review the decision.

(5) Federal court review. When you have completed the steps of the administrative review process listed in paragraphs (a)(1) through (a)(4) of this section, we will have made our final decision. If you are dissatisfied with our final decision, you may request judicial review by filing an action in a Federal district court.

20 C.F.R. § 404.900(a) (emphasis added). Thus, the regulations provide that a claimant must complete a four-step administrative review process to obtain a judicially reviewable final decision. Id.; see also, Califano, 430 U.S. at 102 ("The Act and

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is wholly collateral to the claim for benefits. See Califano v. Sander, 430 U.S. 99, 108-09 (1977). Since Plaintiff does not state a constitutional or wholly collateral claim, but a claim relating directly to his benefits, this exception does not apply to him.

regulations create an orderly administrative mechanism, with district court review of the final decision of the [Commissioner] . . . .").

Defendant contends that Plaintiff's Complaint seeking judicial review should be dismissed for lack of subject-matter jurisdiction because Plaintiff failed to obtain a final decision from the Appeals Council as required by the regulations for federal court review. Specifically, Defendant argues that Plaintiff failed to receive a decision from the Appeals Council either denying Plaintiff's request for review or granting Plaintiff's request for review and issuing a final decision. On November 25, 2002, Plaintiff filed his request for Appeals Council review and, before receiving a decision from the Appeals Council, on January 21, 2003, filed a Complaint in this Court seeking judicial review of the ALJ's decision. While we would have agreed with Defendant, that, at that point, Plaintiff's Complaint was prematurely filed and should have been dismissed for lack of subject-matter jurisdiction over his unexhausted claim, see Fitzgerald v. Apfel, 148 F.3d 232 (3d Cir. 1998), Plaintiff has come forward with evidence of receipt of a final decision from the Appeals Council to render this matter now ripe for adjudication. See Mortensen, 549 F.2d at 891 ("Plaintiff has the burden of proof that jurisdiction does in fact exist.").

Plaintiff states in both styled Motions for Summary Judgment

that he received a decision letter from the Appeals Council dated September 24, 2003 in the time since he filed his Complaint seeking judicial review. While he fails to attach a complete copy of the decision to any of his responses to Defendant's Motion, Plaintiff attaches to his second styled Motion for Summary Judgment what appears to be an enlarged printout of a Decision of the Appeals Council in the case of "Robert J. Doyle, Sr." on his claim for "Old-Age Insurance Benefits." (See Pl.'s Second Mot. for Summ. J., Ex. 2.) The attached portions of the purported Appeals Council decision include the sections captioned "Issue" and "Decision."<sup>5</sup>

Defendant's only acknowledgment of the existence of the Appeals Council decision may be found in a footnote reference in which she states: "To date, there is no evidence in the transcript to suggest that the Appeals Council has acted on Mr. Doyle's request for review." (Def.'s Br. in Opposition to Pl.'s Mot. for Summ. J. at 4 n.3.) Defendant then argues that, even assuming the Appeals Council issues a determination imminently, Plaintiff's current Complaint must still fail as it was filed prior to the exhaustion of his administrative remedies.

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<sup>5</sup> The "Decision" section states: "It is the decision of the Appeals Council that the claimant's primary insurance amount and old-age insurance benefits are subject to reduction due to the windfall elimination provision. The decision of the Administrative Law Judge is so modified." (Pl.' Second Mot. for Summ. J., Ex. 2.)

Defendant, however, fails to address the scenario where, as here, Plaintiff has indeed received a final decision after the filing of a Complaint for judicial review.

As Defendant's Motion comes to us as a factual attack on the existence of subject-matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1), we are free to review matters outside the Complaint to resolve issues bearing on this Court's jurisdiction to hear this case. Since Plaintiff has come forward with evidence that jurisdiction in this Court is proper, albeit recently developed, in consideration of the particular facts of this case, Defendant's Motion to Dismiss for lack of subject-matter jurisdiction is **DENIED**.<sup>6</sup>

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<sup>6</sup> Generally, a Complaint for federal court review of a final decision of the Commissioner must be filed within sixty days after the mailing of a notice of the Commissioner's final decision. See 42 U.S.C. § 405(g). Assuming that the Decision of the Appeals Council is in fact dated September 24, 2003 as Plaintiff states, Plaintiff would have sixty days from that date within which to seek federal court review. We recognize that the period to seek timely review of that final decision has long since passed, were Plaintiff required to refile his Complaint for federal court review simply to meet the technical requirement that an action be initiated after receiving notice of the Appeals Council's action without regard for his intervening receipt of a final decision.

While we make no statement as to whether Plaintiff's actions were excusable, it bears noting that Plaintiff may have attempted to comply with the regulations, although in misapprehension of them, since he initiated suit for federal court review on January 21, 2003, within sixty days of seeking Appeals Council review on November 25, 2002.

#### IV. CONCLUSION

For the foregoing reasons, it appearing that this matter has become ripe for judicial review upon Plaintiff's receipt of what appears to be a Decision of the Appeals Council for the Social Security Administration on Plaintiff's RIB entitlement matter, Defendant's Motion to Dismiss for lack of subject-matter jurisdiction is **DENIED**.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT J. DOYLE, SR.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
JO ANNE B. BARNHART,	:	
COMMISSIONER OF SOCIAL	:	
SECURITY,	:	
Defendant.	:	No. 03-0264

**O R D E R**

**AND NOW**, this                    day of May, 2004, in consideration of the Motion to Dismiss (Doc. No. 11) and Declaration of Earnest Baskerville (Doc. No. 12) filed by Defendant Commissioner of Social Security ("Defendant"), the response styled as a Motion for Summary Judgment (Doc. No. 13) filed by pro se Plaintiff Robert J. Doyle, Sr. ("Plaintiff"), Defendant's reply styled as a Brief in Opposition to the Motion for Summary Judgment (Doc. No. 15) and filed with the same Declaration of Earnest Baskerville (Doc. No. 16), and Plaintiff's second Motion for Summary Judgment (Doc. No. 17), it is **ORDERED** that Defendant's Motion to Dismiss is **DENIED**.

It is **FURTHER ORDERED** that Defendant **SHALL** supply this Court with a copy of the Decision of the Appeals Council relating to Plaintiff's request for Social Security benefits, purportedly dated September 24, 2003, within twenty (20) days of the date of this Order.

BY THE COURT:

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JAMES MCGIRR KELLY, J.