

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

JOSEPH SZARKOWSKI	:	CIVIL ACTION
	:	
v.	:	NO. 04-3455
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

**MEMORANDUM AND ORDER**

AND NOW, this 14th day of March, 2005, upon consideration of the cross-motions for summary judgment filed by the parties (Doc. Nos. 6 and 9), the court makes the following findings and conclusions:

1. On October 17, 2002, Joseph Szarkowski (“Plaintiff”) filed for disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-433 (the “Act”). (Tr. 30-32). On September 22, 2003, after a hearing before an administrative law judge (“ALJ”), the ALJ determined in his decision that Plaintiff had been disabled since November 5, 1997. (Tr. 11 ¶ 3, 12 ¶¶ 2 & 4, 13 Finding 8). On October 11, 2003, the Office of Central Operations for the Social Security Administration (“OCO”) notified Plaintiff that he was entitled to monthly disability benefits beginning October 2001. (Doc No. 6, Ex. B). In explaining the October 2001 start date, the notice from the OCO informed Plaintiff that although he “became disabled on November 5, 1997,” “[b]y law, [the Administration] can pay benefits no earlier than 12 months before the month of filing. Since you filed for benefits on October 17, 2002, monthly payment will begin October 2001.” (Id.).

2. Plaintiff appealed the notice of award on November 21, 2003, claiming that he should have received retroactive benefits from November 5, 1997, the date on which the ALJ determined that he was disabled. (Tr. 6). The Appeals Council denied Plaintiff’s request for review on May 25, 2004, and again explained that “an application for disability benefits filed after the first month of potential entitlement to benefits permits payment only for the 12 months immediately before the month in which the application was filed (20 CFR 404.621). Your October 17, 2002 application therefore properly resulted in retroactive payments beginning October 2001.” (Tr. 3-4). Pursuant to 42 U.S.C. § 405(g), Plaintiff filed his complaint on July 21, 2004.

3. The Court has plenary review of legal issues, but reviews the ALJ’s factual findings to determine whether they are supported by substantial evidence. Schaudeck v. Comm’r of Soc. Sec., 181 F.3d 429, 431 (3d Cir. 1999) (citing 42 U.S.C. § 405(g)). In his motion for summary judgment, Plaintiff again claims that he is entitled to retroactive benefits as of November 5, 1997, and that: (1) the notice from the OCO gave “no reasoning as to why” he

“would only get retroactive benefits to October, 2001” and that the letter from the Appeals Council “was equally ambiguous as to the reasoning behind this decision”; and (2) “[t]here is no precedent for limiting [Plaintiff’s] claim to one year before this filing.” (Doc. No. 6 ¶¶ 10 & 11, p. 3).

4. Plaintiff’s claims are utterly untenable. Plaintiff was informed two times that under the Act and its regulations, a Title II applicant cannot receive more than twelve months of retroactive benefits prior to the date of his or her application. (Tr. 3-4, Doc No. 6, Ex. B), 20 C.F.R. § 404.621, see also 42 U.S.C. § 423(c)(2); 20 C.F.R. § 404.315(a)(4). Moreover, Plaintiff was supplied with the applicable regulation by the Appeals Council. (Tr. 3-4). Simply because the ALJ determined that Plaintiff was disabled as of November 5, 1997, does not mean Plaintiff is entitled to benefits as of that date.

Upon careful and independent consideration, the record reveals that the Commissioner applied the correct legal standards and that the record as a whole contains substantial evidence to support the ALJ’s findings of fact and conclusions of law. Therefore, it is hereby **ORDERED** that:

5. The motion for summary judgment filed by Joseph Szarkowski is **DENIED**;

6. The motion for summary judgment filed by the Commissioner is **GRANTED** and **JUDGMENT IS ENTERED IN FAVOR OF THE COMMISSIONER AND AGAINST JOSEPH SZARKOWSKI**; and

7. The Clerk of Court is hereby directed to mark this case as **CLOSED**.

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LOWELL A. REED, JR., S.J.