

UNITED STATES COURT OF APPEALS

October 23, 2012

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

ROY E. HALL,

Plaintiff-Appellant,

v.

MICHAEL J. ASTRUE, Commissioner
of Social Security Administration,

Defendant-Appellee.

No. 12-6074
(D.C. No. 5:11-CV-00810-C)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **LUCERO**, **TYMKOVICH**, and **HOLMES**, Circuit Judges.

Roy E. Hall, proceeding pro se, appeals from the district court's dismissal of his action as untimely.¹ He argues (1) the district court made contradictory statements that he failed to exhaust administrative remedies and that his action was untimely; (2) he filed this action on time; and (3) the Commissioner incorrectly

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ We liberally construe Mr. Hall's pro se filings. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

calculated the amount of child's disability insurance benefits he is due. Exercising jurisdiction under 28 U.S.C. § 1291 and 42 U.S.C. § 405(g), we affirm.

After Mr. Hall filed an application for child's disability insurance benefits, the application proceeded through a course of agency proceedings. On April 30, 2010, the Appeals Council affirmed the Administrative Law Judge's (ALJ) favorable decision finding Mr. Hall disabled since August 19, 1978. That final decision included notice that if Mr. Hall disagreed with the decision he was required to file a civil action in district court within sixty days after receiving the decision. Mr. Hall, however, did not do so.

On September 6, 2010, the Social Security Administration sent Mr. Hall a notice of change of benefits, informing him that the agency was changing the month he was entitled to receive benefits and withholding benefits for a certain period of time to determine whether he had received supplemental security income benefits during that time period. The notice informed him that if he disagreed with the notice of change he must request a hearing before an ALJ within sixty days after he received the notice.

Mr. Hall never requested a hearing before an ALJ. Rather, on July 18, 2011, he filed this action in district court. The Commissioner moved to dismiss for lack of jurisdiction. The magistrate judge recommended that the motion be granted and the complaint be dismissed because any challenge to the April 30, 2010 final decision was untimely under § 405(g) and the September 6, 2010 notice was not a final agency

decision under 20 C.F.R. § 404.900(a). Reviewing de novo, the district court adopted the magistrate judge's recommendation and dismissed the case with prejudice.

Upon consideration of the parties' appellate briefs, the record on appeal, and relevant law, we conclude the district court did not err in adopting the magistrate judge's report and recommendation and dismissing the action. We affirm for substantially the reasons articulated by the magistrate judge in his report and recommendation filed January 6, 2012, and adopted by the district court on March 16, 2012. *See R.* at 47-53, 57-58.

The judgment of the district court is AFFIRMED. Mr. Hall's Motion for Response is DENIED as moot.

Entered for the Court

Jerome A. Holmes
Circuit Judge