

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

JUN 16 1976

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MURRAY L. HARRIS, CLERK
BY DEPUTY *M. J. Barton*

GENERAL ORDER AS TO HANDLING OF SOCIAL SECURITY
CASES IN JUDGE JUSTICE'S COURT

Heretofore this court has instructed the Clerk to close any civil action filed pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. §405(g), for benefits under Title ii, XVI and XVII of the Act, as well as civil actions arising under Part B, Title IV, of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 902, 921-924, 931-934, 951, after a remand to the Secretary of Health, Education and Welfare for further administrative proceedings. Following remand, the Clerk was instructed to use the procedures outlined in a memorandum from the United States Attorney to the District Clerk, dated November 1975.

It now appears to the court that the procedures contained in the memorandum are not consistent with the Act, because a plaintiff, once having timely filed a civil action for judicial review within the sixty-day period specified by Section 205(g), is not subject to the sixty-day requirement a second time. After completion of remand proceedings, Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), requires the Secretary to file with the court "any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based", and "such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision." (Emphasis supplied.) It thus appears that such a civil action is of a continuing nature, until the court enters a final judgment in the case. It is, therefore,

A TRUE COPY I CERTIFY
MURRAY L. HARRIS, CLERK
U. S. DISTRICT COURT
EASTERN DISTRICT, TEXAS

ORDERED that immediately upon a remand to the Secretary, as aforesaid, the Clerk shall close the file as to such civil action, and the following procedures will thereafter govern:

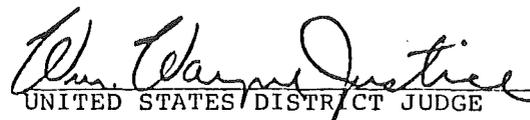
(1) Immediately after receipt by the United States Attorney of notification from the Secretary that the Appeals Council has made a final decision denying in whole or in part the claim for benefits, the United States Attorney shall mail a letter, by certified mail, containing the procedures to be followed by the Clerk's office to the plaintiff's attorney of record, if any, otherwise to the plaintiff individually. The letter shall contain substantially the information shown in Exhibit A, which is attached to this order and made a part hereof.

(2) Upon receipt from the United States Attorney of the supplemental transcript, the Clerk shall file the transcript, without reopening the case.

(3) If the Clerk shall receive additional pleadings from plaintiff within twenty days following receipt of the supplemental transcript by plaintiff's attorney or by plaintiff individually, as the case may be, the Clerk shall re-open the civil action; otherwise, no pleadings on the part of plaintiff or defendant shall be filed by the Clerk, except by leave of the court.

(4) Following reopening of a civil action, the Clerk shall use routine procedures for handling civil actions filed pursuant to the foregoing statutes.

SIGNED and ENTERED this 15th day of June, 1976.


UNITED STATES DISTRICT JUDGE

United States Department of Justice

UNITED STATES ATTORNEY

EASTERN DISTRICT OF TEXAS

221 WEST FERGUSON ST.

TYLER, TEXAS 75701

IN REPLYING PLEASE REFER
TO THIS FILE NUMBER

P. O. Box 1049
TYLER, TEXAS 75701

Re:

Dear

The above referenced action was remanded by the Court on _____. The proceedings on remand have now been completed and the Appeals Council rendered its decision on _____, holding:

- () plaintiff is not entitled to a period of disability or to disability insurance benefits.
- () that plaintiff is entitled to partial benefits.
- () that plaintiff is entitled to a period of disability and disability insurance benefits.

The Clerk's file in this matter was closed upon remand of the case. As soon as the supplemental transcript is received by this office we will file it with the Clerk of the Court and forward a copy to you. The Clerk, pursuant to a general order of the Court, will file the transcript without reopening the case.

In the event you no longer desire to pursue the matter, please notify the Clerk by letter, with a copy to our office, of this intention within 20 days after your receipt of the supplemental transcript.

"EXHIBIT A"

In the event you do desire to pursue the matter, the proper procedure is to file with the Clerk your Supplemental Motion for Summary Judgment or, as the case may be, a Motion for Summary Judgment, within 20 days after your receipt of the supplemental transcript. Upon receipt of your Motion, the Clerk, pursuant to the aforesaid order, will reopen the case.

You are advised that if we have not heard from you within 20 days after receipt by you of the supplemental transcript, the Court will assume that you do not wish to pursue this matter further, and this will finally terminate the civil action.

Sincerely,

ROBY HADDEN
UNITED STATES ATTORNEY

Houston Abel
Assistant U. S. Attorney