

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JAMES M. HARDESTY,)	
)	
Plaintiff,)	
)	CAUSE NO. 1:07-CV-1396-LJM-DML
)	
v.)	
)	
MICHAEL ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	

MEMORANDUM IN SUPPORT OF THE COMMISSIONER’S
MOTION FOR RELIEF FROM JUDGMENT UNDER RULE 60 (b)

In October 2007, Plaintiff James M. Hardesty commenced this action pursuant to 42 U.S.C. § 405(g), seeking review of a final decision of the Defendant, Commissioner of Social Security. The Commissioner, through an Administrative Law Judge (ALJ), found that Mr. Hardesty was not disabled and therefore was not entitled to Social Security disability insurance benefits. After full briefing by the parties, this Court entered final judgment in favor of the Commissioner on March 31, 2009.

On May 29, 2009, Mr. Hardesty filed a timely notice of appeal to the United States Court of Appeals for the Seventh Circuit. Upon further consideration of this matter, including additional evidence Mr. Hardesty submitted after this Court issued judgment, the Commissioner has determined that the matter should be remanded for further administrative proceedings.

Seventh Circuit Rule 57 states as follows:

A party who during the pendency of an appeal has filed a motion under Fed. R. Civ. P. 60(a) or 60(b) . . . should request the district court to indicate whether it is inclined to grant the motion. If the district court so indicates, this court will remand the case for the purpose of modifying the judgment. . . .

In accordance with Seventh Circuit Rule 57, and pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, the Commissioner now requests that this Court indicate whether it is inclined to grant his motion pursuant to Rule 60(b). *See Brown v. United States*, 976 F.2d 1104, 1110 (7th Cir. 1992). The pending appeal does not deprive this Court of jurisdiction to consider this motion. *Id.* (“[i]n such circumstances we have directed district courts to review such motions promptly, and either deny them or, if the court is inclined to grant relief, to so indicate so that we may order a speedy remand.”).

Rule 60(b)(6) of the Federal Rules of Civil Procedure allows a court to relieve a party from a final order or judgment for “any . . . reason justifying relief” Fed. R. Civ. P. 60(b)(6). Because the Commissioner now agrees with Mr. Hardesty that a remand for further administrative proceedings is warranted pursuant to 42 U.S.C. § 405(g), relief from the Court’s March 31, 2009, judgment is justified under Rule 60(b)(6).

Accordingly, the Commissioner respectfully asks whether the Court would be inclined to grant this motion if the Seventh Circuit were to remand this matter for purposes of modifying the judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of November, 2009, I electronically filed the foregoing **MEMORANDUM IN IN SUPPORT OF THE COMMISSIONER'S MOTION FOR RELIEF FROM JUDGMENT UNDER RULE 60(b)** with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

C. David Little
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and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

NONE

/s/ Thomas E. Kieper

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