

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

FLORA JEAN HEREFORD,

Plaintiff,

ORDER

v.

02-C-600-C

JO ANNE B. BARNHART, Commissioner
of Social Security,

Defendant.

In an order entered December 11, 2002, this court dismissed plaintiff Flora Jean Hereford's petition for leave to proceed in forma pauperis in a civil action against her former employer, Putnam Co., Inc., and the Commissioner of Social Security, for lack of subject matter jurisdiction. The court found that plaintiff's negligence claim against her employer had to be dismissed because diversity was not present. As for plaintiff's claim against the Commissioner, the court found nothing in plaintiff's complaint to show that she had applied for or been denied social security benefits.

Plaintiff now asks for reconsideration. She has submitted a September 30, 2002, letter from the Appeals Council denying her request to reopen its decision denying review of an administrative law judge's decision. In the letter, the Appeals Council informed plaintiff that she had 30 days from the date of receipt of the letter (presumed to be October 5, 2002) in which to file a civil action in federal district court. Because the letter supports an inference that plaintiff received an unfavorable decision from an administrative law judge

and exhausted her administrative remedies with respect to a social security claim, it provides a sufficient basis on which to allow plaintiff to proceed with a claim against the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g). Plaintiff filed her complaint on November 4, 2002, so it appears that it was timely. Accordingly, I will vacate the judgment dismissing plaintiff's petition for leave to proceed in forma pauperis and reinstate her complaint insofar as it states a claim against the Commissioner of Social Security pursuant to § 405(g). Plaintiff's claim against Putnam Co., Inc. shall not be reinstated for the reasons stated in the order of December 11, 2002.

From the affidavit of indigency plaintiff has submitted, I find that she is unable to prepay the fees and costs of commencing this action or to give security therefor. The petition for leave to proceed in forma pauperis will be granted.

ORDER

IT IS ORDERED that the judgment entered December 11, 2002, dismissing plaintiff's petition for leave to proceed in forma pauperis for lack of subject matter jurisdiction is VACATED. Plaintiff's complaint is reinstated but only with respect to her claims against the Commissioner of Social Security. The clerk of court is directed to docket the document and attachment filed by plaintiff on December 16, 2002, as an addendum to her complaint. The petition to proceed in forma pauperis is GRANTED.

Entered this 17th day of December, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge