

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

DIANE NELSON,

Plaintiff,

ORDER

v.

06-C-0249-C

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

Before the court is plaintiff Diane Nelson's motion for reconsideration of this court's judgment entered November 27, 2006, affirming the commissioner's determination that plaintiff is not disabled. Although plaintiff has been represented by counsel until judgment was entered, plaintiff and her lawyer have confirmed that she has filed the motion for reconsideration on her own and that counsel is no longer representing plaintiff in this case.

Rules 59(e) and 60 of the Federal Rules of Civil Procedure grant the court the authority to alter or amend a final judgment. However, the court's power to do so is limited. In general, a court will reopen a final judgment only if the party seeking reconsideration shows that the court committed an obvious mistake of law or fact or if the party discovers new evidence relevant to its claim that it could not have discovered before.

In this case, plaintiff appears to seek reconsideration on the ground that she has evidence relating to her condition that has never been considered by either the adjudicators

at the social security administration or this court. That evidence consists of MRI summary reports from May 2006 and the actual scans themselves that show that she has scoliosis in the thoracic spine and a herniated disc with spinal cord displacement in the cervical spine. These records did not exist at the time the administrative law judge or Appeals Council reviewed plaintiff's application for benefits and therefore they are not part of the administrative record. The court first learned of the records when plaintiff filed her motion for reconsideration on November 27, 2006.

The records plaintiff has submitted do not provide a basis for this court to set aside the judgment. These records existed before this court reviewed plaintiff's case. Plaintiff had to have been aware of them because she was present at the medical examinations documented in the records. If plaintiff wanted this court to consider this evidence, she had to present it to the court when she filed her first brief. It is now too late for her to do so.

In disability appeals, the court is limited to considering the evidence that was before the administrative law judge. The court may send the case back to the commissioner with instructions to consider additional evidence, but only under limited circumstances. Plaintiff's attorney is very experienced in handling social security appeals and understands these rules very well. He decided not to submit the additional records, presumably because he did not think they fell within the narrow class of evidence that this court may consider. Although plaintiff appears to disagree with her lawyer's opinion, she is bound by her lawyer's

acts. Link v. Wabash R.R., 370 U.S. 626, 633-34 (1962); Tolliver v. Northrop Corp., 786 F.2d 316, 319 (7th Cir. 1986). Plaintiff's lawyer was acting as plaintiff's agent. This means that the court treats his decisions in this case as if plaintiff had made them herself. Because plaintiff could have submitted the records before judgment was entered but failed to do so, no basis exists to reopen the judgment.

I note that under the commissioner's regulations, the commissioner has the authority to reopen a determination if it finds good cause to do so. 20 C.F.R. § 404.988(b). The rules indicate that good cause may be found if the claimant submits new evidence that could change the outcome of her claim. 20 C.F.R. § 404.989(a)(1). Plaintiff may want to consult with a lawyer to determine whether the additional evidence she submitted to the court might provide a basis for reopening her case at the administrative level.

ORDER

IT IS ORDERED that the motion of Diane Nelson to reconsider this court's decision affirming the commissioner's determination is DENIED.

The clerk is instructed to return the MRI scans to plaintiff.

Entered this 15th day of December, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge