

**UNITED STATES COURT OF APPEALS**

**NOV 15 2001**

**FOR THE TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

SUSAN E. EARLY,

Plaintiff-Appellant,

v.

TOMMY G. THOMPSON, \* Secretary,  
Health and Human Services; ANN M.  
VENEMAN, \*\* Secretary, U.S.  
Department of Agriculture; LARRY  
G. MASSANARI, \*\*\* Acting  
Commissioner of Social Security  
Administration; JERRY DAVIDSON,  
Director of the Grady County  
Oklahoma Department of Human  
Services,

Defendants-Appellees.

No. 01-6035  
(D.C. No. 99-CV-1801-R)  
(W.D. Okla.)

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**ORDER AND JUDGMENT \*\*\*\***

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\* Pursuant to Fed. R. App. P. 43(c)(2), Tommy G. Thompson is substituted for Donna E. Shalala, Secretary of Health and Human Services, as an appellee in this action.

\*\* Pursuant to Rule 43(c)(2), Ann M. Veneman is substituted for Dan Glickman, Secretary of the U.S. Department of Agriculture, as an appellee in this action.

\*\*\* On March 29, 2001, Larry G. Massanari became the Acting Commissioner of Social Security. In accordance with Rule 43(c)(2), Mr. Massanari is substituted for Kenneth S. Apfel as the appellee in this action.

\*\*\*\* This order and judgment is not binding precedent, except under the  
(continued...)

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Before **EBEL** , **KELLY** , and **LUCERO** , Circuit Judges.

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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.

Plaintiff-appellant Susan E. Early appeals from the district court's order (1) dismissing her complaint against the defendants pursuant to Fed. R. Civ. P. 12(b)(6) and 28 U.S.C. § 1915(e); (2) denying her motion to set her case for jury trial; and (3) denying her motion for leave to amend her complaint to add an additional defendant. Having carefully reviewed the record and the briefs filed in this court in light of the applicable law, we have determined that the district court's order should be affirmed.

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\*\*\* (...continued)

doctrines of law of the case, *res judicata*, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

The judgment of the United States District Court for the Western District of Oklahoma is therefore AFFIRMED for substantially the same reasons set forth in the district court's order of December 22, 2000. Plaintiff's motion to proceed in forma pauperis is GRANTED. Her petition for writ of mandamus is DENIED. All other pending motions are DENIED.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge