

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

May 8, 2023

Christopher M. Wolpert
Clerk of Court

MICHAEL EUGENE PARKER, SR.,

Plaintiff - Appellant,

v.

COMMISSIONER, SSA,

Defendant - Appellee.

No. 22-3171
(D.C. No. 2:22-CV-02133-HLT)
(D. Kan.)

ORDER AND JUDGMENT*

Before **HARTZ, KELLY, and BACHARACH**, Circuit Judges.

After two unsuccessful applications for supplemental security income, Mr. Michael E. Parker, Sr. filed a third application in 2017. The administrative law judge granted the 2017 application for part of the pertinent time-period. But Mr. Parker was dissatisfied. He had requested benefits going back to 2008, which is when he had filed his first

* Oral argument would not help us decide the appeal, so we have decided the appeal based on the record and the parties' briefs. *See* Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G).

This order and judgment does not constitute binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

application for benefits. The administrative law judge rejected this request and found that Mr. Parker hadn't become disabled until 2020.

Mr. Parker could have sought review in the Appeals Council. 20 C.F.R. § 416.1400(a)(4). He instead went directly to federal court. The district court dismissed his first action, concluding that jurisdiction didn't exist because Mr. Parker hadn't exhausted administrative remedies. We affirmed that decision. *Parker v. Comm'r, SSA*, 845 F. App'x 786, 789 (10th Cir. 2021). Mr. Parker filed another action, which was again dismissed for lack of jurisdiction.

In reviewing that jurisdictional dismissal, we conduct de novo review. *Green v. Napolitano*, 627 F.3d 1341, 1344 (10th Cir. 2010). We conduct that review based on the statutory provisions governing jurisdiction. Those provisions authorize judicial review only for the Commissioner's "final decision." *Parker*, 845 F. App'x at 788 (quoting 42 U.S.C. § 405(g)). A decision is considered *final* only if the claimant has requested review by the Appeals Council. 20 C.F.R. § 416.1400(a)(4). When a claimant fails to timely request review by the Appeals Council, the district court lacks jurisdiction. *Sims v. Apfel*, 530 U.S. 103, 107 (2000); 20 C.F.R. § 416.1400(b).

The administrative law judge provided Mr. Parker with notice of the need to go to the Appeals Council before bringing an action in federal court. Despite that notice, Mr. Parker bypassed the Appeals Council and

went directly to federal district court. Because Mr. Parker hadn't exhausted administrative remedies, the court lacked jurisdiction. *Sims*, 530 U.S. at 107; 20 C.F.R. § 416.1400(b). So we affirm the dismissal.

Mr. Parker not only appealed the dismissal but also moved for summary judgment and moved to supplement the petition. We deny both motions.

A summary-judgment motion must be filed in district court, not the Court of Appeals. *See Fed. R. Civ. P. 1, 56*. So we lack authority to rule on the motion for summary judgment. His motion is thus denied.

Mr. Parker also seeks supplementation to add two documents. But it's unclear whether he wants to supplement the briefing, the district court pleadings, or the appellate record. He doesn't need to supplement the record on appeal because the two documents are already in our record, and we can't order supplementation of the record in district court.

It's conceivable that Mr. Parker is seeking to supplement the appellate briefing with a reply brief. Here, though, Mr. Parker hasn't shown why discussion of the two documents would bear on jurisdiction. One of the documents suggests that Mr. Parker had appealed to the Appeals Council in a prior case. But that case is over, and we're addressing only the disposition of the application filed in 2017. Mr. Parker's exhaustion of administrative remedies for an earlier application wouldn't bear on the

district court's jurisdiction over the 2017 application. So we deny Mr. Parker's motion to supplement.

* * *

We affirm the dismissal and deny both pending motions.

Entered for the Court

Robert E. Bacharach
Circuit Judge