NOT FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-14366

Non-Argument Calendar

JOHN E. COLE, JR.,

Plaintiff-Appellant,

versus

COMMISSIONER, SOCIAL SECURITY ADMINISTRATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 1:24-cv-00629-AMM

Before JORDAN, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

John Cole, Jr., proceeding pro se, appeals the district court's order granting the Commissioner of the Social Security Administration summary judgment on his complaint alleging an underpayment of his disability insurance benefits ("DIB") from a purportedly erroneous decision by the Commissioner in 1989. Mr. Cole argues that the magistrate judge abused his discretion by requiring him to show cause under 28 U.S.C. § 1915(a) and by exercising jurisdiction over his case. He also asserts that the district court abused its discretion by granting the Commissioner's motion for summary judgment because his complaint was timely or because he should have been granted equitable tolling. Finally, he maintains that the district court abused its discretion by denying his claims for mandamus relief because he had not abandoned them.

I

We review a district court's grant of summary judgment de novo, viewing the evidence and drawing reasonable inferences in the favor of the non-moving party. *See Walker v. Life Ins. Co. of N. Am.*, 59 F.4th 1176, 1185 (11th Cir. 2023). "We review *de novo* the district court's dismissal of [a] complaint for failure to satisfy the statute of limitations, accepting as true the allegations contained in the complaint." *Jackson v. Astrue*, 506 F.3d 1349 1352 (11th Cir. 2007). We review whether equitable tolling applies de novo. *See id*. "We are, however, bound by the trial court's findings of fact unless they are clearly erroneous." *Cabello v. Fernandez-Larios*, 402 F.3d 1148, 1153 (11th Cir. 2005).

We hold pro se pleadings to a less strict standard than counseled pleadings and liberally construes them. *See Jacob v. Mentor Worldwide, LLC*, 40 F.4th 1329, 1334 (11th Cir. 2022). But both counseled and pro se litigants must conform to procedural rules. *See Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007). An issue is abandoned on appeal if a pro se litigant does not brief it. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). Only the claims made in the operative complaint are properly before the district court; "the mention of [additional allegations] in discovery and the filing of motions" does not "substitute for the factual allegations of a complaint under Federal Rule of Civil Procedure 8(a)." *Coon v. Georgia Pac. Corp.*, 829 F.2d 1563, 1568 (11th Cir. 1987).

II

A claimant may seek judicial review of the Commissioner's final decision regarding disability benefits. *See Shows v. Dep't of Health & Hum. Servs.*, 740 F.2d 891, 891 (11th Cir. 1984). But the claimant must file a complaint in the appropriate district court within 65 days of the date noted in the Appeals Council's letter denying review of the administrative law judge's decision—60 days to file, from the statute, and 5 days for receipt of the decision, from regulation. *See id.* (citing 42 U.S.C. § 405(g) and 20 C.F.R. § 422.210). The Social Security Act does not define "final decision," instead leaving it to the Commissioner to give meaning to that term through regulations. *See Sims v. Apfel*, 530 U.S. 103, 106 (2000); *see also* 42 U.S.C. § 405(a). Under the regulations, a final decision for § 405(g) purposes occurs after a claimant has completed all steps of the administrative review process, including seeking an initial determination, a reconsideration determination, a hearing decision by an administrative law judge, and discretionary review by the

Appeals Council. *See* 20 C.F.R. § 404.900(a)(1)–(5); *see also Weinberger v. Salfi*, 422 U.S. 749, 765 (1975) (explaining that the regulations "specify that the finality required for judicial review is achieved only after the further steps of a hearing before an administrative law judge and, possibly, consideration by the Appeals Council").

The denial of a request to reopen a prior final and binding determination is not subject to the administrative review process because such a request is not a "final decision . . . made after a hearing" under § 405(g). *See* 20 C.F.R. § 404.903(l); *Cash v. Barnhart*, 327 F.3d 1252, 1256 (11th Cir. 2003). As a result, federal courts generally lack subject-matter jurisdiction to review a denial of a request to reopen except where: (1) the claimant raises a colorable constitutional claim, or (2) the Commissioner de facto reopens and reconsiders the merits of the prior administrative determination or decision. *See Loudermilk v. Barnhart*, 290 F.3d 1265, 1268 (11th Cir. 2002).

The 60-day period for filing a complaint in the district court seeking review of the Commissioner's decision does not affect the court's jurisdiction because it is a statute of limitations and may be waived by the parties when not raised. *See Mathews v. Eldridge*, 424 U.S. 319, 328 n.9 (1976). Upon a showing of good cause, a claimant may also receive an extension of time to file a complaint in a district court from the Appeals Council. *See* 20 C.F.R. § 404.982.

"[T]he doctrine of equitable tolling is available to a claimant whose § 405(g) challenge in the district court was untimely." *Jackson*, 506 F.3d at 1353. "[T]raditional equitable tolling principles" apply and "require that the claimant demonstrate *extraordinary circumstances*, such as fraud, misinformation, or deliberate concealment." *Id.* at 1355. "Equitable tolling is appropriate in situations where the defendant misleads the plaintiff, allowing the statutory period to lapse; or when the plaintiff has no reasonable way of discovering the wrong perpetrated against h[im]." *Id.* at 1354 (alteration adopted) (quoting *Cabello*, 402 F.3d at 1155). Thus, "courts usually require some affirmative misconduct, such as deliberate concealment." *Id.* at 1356 (quoting *Cabello*, 402 F.3d at 1155). We have emphasized that "[e]quitable tolling 'is an extraordinary remedy that should be extended only sparingly" and when extraordinary circumstances were "beyond his control and unavoidable even with diligence." *Wright v. Waste Pro USA, Inc.*, 69 F.4th 1332, 1340 (11th Cir. 2023) (alteration adopted) (first quoting *Justice v. United States*, 6 F.3d 1474, 1479 (11th Cir. 1993); and then quoting *Sandvik v. United States*, 177 F.3d 1269, 1271 (11th Cir. 1999)). An appellant's "ignorance of the law does not, on its own, satisfy the constricted 'extraordinary circumstances' test." *Jackson*, 506 F.3d at 1356 (quoting *Wakefield v. R.R. Ret. Bd.*, 131 F.3d 967, 970 (11th Cir. 1997)).

Sentence six of § 405(g) permits a district court to remand a case to the Commissioner for consideration of newly discovered evidence. *See* 42 U.S.C. § 405(g). To obtain a § 405(g) sentence six remand, a claimant must establish that (1) the evidence is new and noncumulative; (2) the evidence is material, such that a reasonable possibility exists that it would change the administrative result; and (3) there was good cause for the failure to submit the evidence at the administrative level. *See Hunter v. Soc. Sec. Admin., Comm'r*, 808 F.3d 818, 821 (11th Cir. 2015).

A district court may assign to a magistrate judge any duties that are consistent with the Constitution and federal laws. *See* 28 U.S.C. § 636(b)(3). Further, with the consent of the parties, a magistrate judge may conduct all proceedings and enter an order in a civil matter. *See* § 636(c)(1). Local Rules 72.1 and 72.2 of the U.S. District Court for the Northen District of Alabama authorize magistrate judges to exercise powers in line with § 636, as well as the Constitution and federal laws, set out in the district court's general and standing orders. *See* N.D. Ala. Local R. 72.1, 72.2. The Northern District of Alabama's general order regarding the referral of civil cases to magistrate judges provides that magistrate judges "shall prepare a [R&R]" when the parties do not unanimously consent to dispositive jurisdiction of the magistrate judge, and that the case would be assigned to a district court judge following the R&R objection period. *See* Gen. Ord. for Referral of Civ. Matters to the U.S. Magistrate Judges of the N.D. of Ala. at 2.

A district court may allow a plaintiff to bring suit without paying the filing fees, i.e., to proceed in forma pauperis. *See* 28 U.S.C. § 1915(a). Under § 1915, any in forma pauperis action or appeal shall be dismissed at any time if the district court determines that it is frivolous or malicious, fails to state a claim, or seeks monetary relief from a defendant immune from such relief. *See* § 1915(e)(2)(B)(i)–(iii).

III

The district court did not err in granting the Commissioner's motion for summary judgment. First, Mr. Cole's complaint was untimely, as he filed it more than 65 days after the decision was mailed to him. Second, Mr. Cole did not establish any extraordinary circumstances warranting equitable tolling, and did not point to any logical point from which his complaint would still be untimely even with equitable tolling. Third, the magistrate judge did not abuse his discretion by issuing orders resolving non-dispositive motions and issuing a report and recommendation on the dispositive motion to the district court. Fourth, the magistrate judge did not err by requesting that Mr. Cole show cause as to why his complaint should not be dismissed under § 1915(a) because he sought to proceed in forma pauperis under the statute. Finally, Mr. Cole's mandamus claim was not properly before the district court because he abandoned it.

IV

The district court's decision is affirmed.

AFFIRMED.