

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JAMES M. HARDESTY,)	
)	
Plaintiff,)	
)	CAUSE NO.1:07-CV-1396-LJM-DML
)	
v.)	
)	
MICHAEL ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	

OPINION AND ORDER

This matter is before the Court on the Commissioner’s Motion for Relief from Judgment Under Rule 60(b). The record reflects that this matter is currently pending before the United States Court of Appeals for the Seventh Circuit. Accordingly, this Court cannot immediately grant the relief requested. Rather, as the Commissioner recognizes, Seventh Circuit Rule 57 applies:

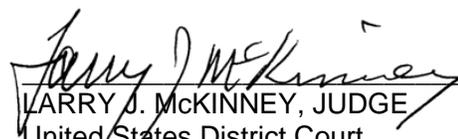
A party who during the pendency of an appeal has filed a motion under Fed. R. Civ. P. 60(a) or 60(b) . . . should request the district court to indicate whether it is inclined to grant the motion. If the district court so indicates, this court will remand the case for the purpose of modifying the judgment

In accordance with Seventh Circuit Rule 57, the Commissioner has requested that this Court indicate whether it is inclined to grant his motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. The basis for such action stems from the fact that the Commissioner now agrees with Mr. Hardesty that remand for further administrative proceedings is warranted pursuant to 42 U.S.C. § 405(g), thereby justifying relief from the Court’s March 31, 2009, Judgment in accordance with Fed. R. Civ. P. 60(b)(6). *See Brown v. United States*, 976 F.2d

1104, 1110 (7th Cir. 1992) (“[i]n such circumstances we have directed district courts to review such motions promptly, and either deny them or, if the court is inclined to grant relief, to so indicate so that we may order a speedy remand.”).

Having thus reviewed the record, the Court agrees that further administrative proceedings are warranted, and the Court is inclined to grant the relief sought by the Commissioner if the case is remanded by the United States Court of Appeals for the Seventh Circuit for purposes of modifying the judgment.

Entered this 11/13/2009


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

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