

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RICHARD M. LETZELTER,	)	CASE NO. 1:17CV1160
	)	
Plaintiff,	)	JUDGE JAMES S. GWIN
	)	
v.	)	Magistrate Judge George J. Limbert
	)	
NANCY A. BERRYHILL <sup>1</sup> ,	)	
ACTING COMMISSIONER OF SOCIAL	)	<u>REPORT AND RECOMMENDATION</u>
SECURITY ADMINISTRATION,	)	<u>OF MAGISTRATE JUDGE</u>
	)	
Defendant.	)	

Plaintiff Richard M. Letzelter (“Plaintiff”), acting *pro se*, requests judicial review of an adverse Social Security decision pursuant to 42 U.S.C. § 405(g). ECF Dkt. #1. This matter was referred to the undersigned to prepare a Report and Recommendation. When Plaintiff failed to file his brief by the deadline of September 13, 2017, the undersigned issued an Order to Show Cause as to why dismissal should not be recommended for Plaintiff’s failure to prosecute his case. ECF Dkt. #11. Plaintiff has disregarded the Order to Show cause and taken no action, ignoring the specific warning that failure to show cause could result in the dismissal of his claim.

In applying Fed. R. Civ. P. 41(b), the undersigned considered whether: (1) the party’s failure is due to willingness, bad faith, or fault; (2) the adversary was prejudiced by the dismissed party’s conduct; (3) the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) less drastic sanctions were imposed or considered prior to dismissal. *See Knoll v. American Tel. & Tel. Co.*, 176 F.3d 359, 363 (6<sup>th</sup> Cir. 1999). Although no factor is dispositive, a case is properly dismissed where there is a clear record of “delay of contumacious conduct.” *Id.*

Consideration of the relevant factors supports a finding that Plaintiff has abandoned this case and his failure to prosecute is willful. Plaintiff has not filed any documents or otherwise

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<sup>1</sup>On January 23, 2017, Nancy A. Berryhill became the acting Commissioner of Social Security, replacing Carolyn W. Colvin.

participated in this litigation since the case was filed on June 5, 2017, and his disregard for the Order to Show Cause, issued on December 11, 2017, is consistent with this pattern of behavior. Having considered the lesser or alternative sanctions such as additional show cause orders or staying the case, the undersigned finds that the imposition of such alternatives would be futile. Dismissal of Plaintiff's claim is the only way to alleviate the continued prejudice to Defendant of defending itself against an absent plaintiff. Accordingly, the undersigned RECOMMENDS that the Court dismiss Plaintiff's case in its entirety.

Date: January 11, 2018

/s/George J. Limbert  
GEORGE J. LIMBERT  
UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of service of this notice. Fed. R. Civ. P. 72; L.R. 72.3. Failure to file objections within the specified time WAIVES the right to appeal the Magistrate Judge's recommendation. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6<sup>th</sup> Cir. 1981).