

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION

BILLIE SPENCER,	)	CIVIL ACTION NO. 3:99CV00067
	)	
Plaintiff,	)	
	)	
v.	)	<u>ORDER</u>
	)	
KENNETH S. APFEL,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	JUDGE JAMES H. MICHAEL, JR.

Having fully considered the plaintiff's November 15, 2000 Motion for Relief from Final Order, and for the reasons stated in the accompanying Memorandum Opinion, it is accordingly this day

ADJUDGED ORDERED AND DECREED

that the plaintiff's Motion for Relief from Final Order shall be, and hereby is DENIED.

The Clerk of the Court hereby is directed to send a certified copy of this Order and the accompanying Memorandum Opinion to Magistrate Judge Crigler and all counsel of record.

ENTERED: \_\_\_\_\_  
Senior United States District Judge  
\_\_\_\_\_  
Date

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BILLIE SPENCER,	)	CIVIL ACTION NO. 3:99CV00067
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Plaintiff,	)	
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v.	)	<u>MEMORANDUM OPINION</u>
	)	
KENNETH S. APFEL,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	JUDGE JAMES H. MICHAEL, JR.

Before the court is the plaintiff's Motion for Relief from Final Order. On November 6, 2000, the court entered a final order in the above-captioned civil action, adopting the March 16, 2000 Report and Recommendation of the presiding United States Magistrate Judge, and striking the plaintiff's April 10, 2000 objections thereto for being untimely. The plaintiff directs the court's attention to the March 23, 2000 Order from the Magistrate Judge correcting a clerical error in the original Report and Recommendation, and moves the court for relief from the final order due to the court's "oversight" of the "time-extending effect" of the Magistrate's March 23, 2000 Order.

Upon rendering the November 6 final order in this case, the court was aware of the Magistrate's Order correcting the clerical error in the Report and Recommendation. However, contrary to the assertions of the plaintiff, the March 23 order of the Magistrate had no "time extending effect" on the March 16 Report and Recommendation. The Magistrate

Judge was free to correct his clerical error at any time. *See* Fed. R. Civ. P 60(a). The mere fact that he chose to do so does not affect the substance of the March 16, 2000 Report and Recommendation, nor does it affect the time during which the parties had to respond thereto. To hold otherwise would signal to litigants that any clerical modification could restart all time calculations that were triggered by the original order. Such a result would throw off the balance between the time limitations imposed by the rules, and the permissive rule for correction of clerical errors.

The court finds it significant that the Federal Rules of Civil Procedure treat substantive amendments and clerical amendments differently, placing time restrictions on the former but not the latter. *Compare* Fed. R. Civ. P. 59 *with* Fed. R. Civ. P 60(a). Other areas of the law also extend deadlines or impose no deadlines at all for the correction of a clerical error. *See, e.g.,* Fed. R. Crim. P. 36 (court may correct clerical errors at any time); *Kasey v. Sullivan*, 3 F.3d 75, 79 (4th Cir. 1993) (although the Secretary can reopen a social security claim within four years of the date of the notice of the initial determination upon a showing of "good cause," 20 C.F.R. § 404.988(b) (1992), the Secretary can reopen at any time to correct a clerical error, § 404.988(c)(8)); *Swanson v. Faulkner*, 55 F.3d 956, 963 (4th Cir. 1995) (where a thirty day statute of limitations applies for requesting a particular tax refund, a claimant is permitted to request a refund due to a clerical error for three years, notwithstanding the otherwise applicable thirty day limit). The distinction between clerical corrections and substantive amendments makes clear to the court that orders rectifying clerical mistakes are to have no effect other than the functional correction of a clerical error. Accordingly, the Magistrate Judge's March 23 order merely fixed a clerical mistake, and had

no time-extending effect on the March 16 Report and Recommendation, to which the plaintiff's objections were untimely. As the Fourth Circuit has held, "One party should not arbitrarily receive a second opportunity to make its arguments due to a clerical error." *In re Lowe*, 102 F.3d 731, 735 (4th Cir. 1996).

For the foregoing reasons, the plaintiff's November 15, 2000 Motion for Relief from Final Order shall be denied. An appropriate order shall this day enter.

ENTERED: \_\_\_\_\_  
Senior United States District Judge

\_\_\_\_\_  
Date