

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

DAVID A. RODRIGUEZ,

Plaintiff,

v.

Case No: 6:18-cv-1375-Orl-GJK

**COMMISSIONER OF SOCIAL
SECURITY,**

Defendant.

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REPORT AND RECOMMENDATION

David A. Rodriguez (the “Claimant”), appeals from a final decision of the Commissioner of Social Security (the “Commissioner”), denying his application for Supplemental Security Income benefits. Doc. Nos. 1, 27. Claimant alleges a disability onset date of September 1, 2013. R. 189-90. Claimant argues that the Administrative Law Judge’s (“ALJ”) decision should be reversed because the ALJ did not have authority to decide the case as he was not properly appointed pursuant to the Appointments Clause. It is recommended that the ALJ’s final decision be **AFFIRMED**.

I. ANALYSIS

Claimant argues that the ALJ did not have authority to issue a decision in this case because he was not properly appointed under the Appointments Clause.¹ Doc. No. 27 at 3-5. The

¹ The Appointments Clause of the U.S. Constitution lays out the permissible methods of appointing “Officers of the United States.” Art. II, § 2, cl. 2. Administrative Law Judges, such as those who serve the Commissioner and conduct review hearings, are subject to the Appointments Clause and are distinct from regular government

Commissioner argues that Claimant did not timely raise this argument at some point prior to appealing to this Court and that this issue cannot be raised for the first time on appeal. Doc. No. 27 at 5-14, 18-19. In response, Claimant argues that he was not required to raise this claim prior to presenting it to this Court. Doc. No. 27 at 14-18.

This issue was addressed and resolved in an order granting in part Commissioner's Second Amended Motion for Partial Dismissal, or in the Alternative, for Partial Summary Judgment. Doc. Nos. 16, 24, 28. In its Order, issued after *de novo* review of a Report and Recommendation issued by the undersigned, the Court concluded that Claimant was required to raise his Appointments Clause challenge *at some point* during his administrative proceedings to preserve judicial review of the issue and he has admittedly failed to do so. Doc. No. 28 at 1-2. The motion for partial summary judgment on the issue of the timeliness of Claimant's Appointments Clause challenge was granted and summary judgment was entered in favor of the Commissioner on that issue. As Claimant raises no other arguments to support reversal of the ALJ's decision other than his Appointment Clause challenge, it is recommended that the decision of the Commissioner be affirmed.

II. CONCLUSION.

For the reasons stated above, it is **RECOMMENDED** that:

1. The final decision of the Commissioner be **AFFIRMED**; and
2. The Clerk be directed to enter judgment for Commissioner and close the case.

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and

employees. *See Lucia v. S.E.C.*, 138 S. Ct. 2044, 2055 (2018). As an Officer of the United States, an ALJ for the Commissioner must be properly appointed under the Appointments Clause and only a properly appointed officer can render decisions in Social Security cases. *See id.*

Recommendation's factual findings and legal conclusions. Failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. 11th Cir. R. 3-1.

DONE AND ORDERED in Orlando, Florida, on May 3, 2019.



GREGORY J. KELLY
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

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The Honorable Edward E. Evans
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