

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ROY E. TAWZER,
Plaintiff,

vs.

No. 20-4039-JTM

ANDREW SAUL,
Commissioner of Social Security
Defendant.

MEMORANDUM AND ORDER

This appeal of the defendant's decision denying social security benefits is before the court on competing motions which address the scope of Local Rule 83.7.1. Shortly after the defendant's answer and the filing of the administrative record (Dkt. 9), the plaintiff Roy Tawzer moved (Dkt. 10) to remand the action pursuant to 42 U.S.C. § 405(g), sentence 6. The defendant then filed a motion to strike (Dkt. 11), arguing that Rule 83.7.1 contemplates only a single filing.

The Rule provides:

The party seeking review must serve and file a brief conforming to the requirements of D. Kan. Rule 7.6 within 45 days after the date on which the record is filed. The responding party must serve and file a brief within 30 days after service of the brief of the party seeking review. The party seeking review may serve and file a reply brief within 14 days after service of the brief of the respondent. The court may extend or shorten the time for filing and serving briefs. The case is submitted when all briefs have been filed. The court will render a decision upon the briefs and the record, without oral argument, unless the court otherwise directs.

The court hereby grants the motion to strike and denies the motion to remand. The Rule contemplates a single briefing process which would be undermined by allowing a claimant separate and sequential requests for relief. Notably, the plaintiff does not controvert the defendant's contention ((Dkt. 11, ¶ 5) that plaintiff intends, "if unsuccessful" on the motion to remand, to "file an additional motion or brief with different arguments for review of the Commissioner's decision."

Such an approach is not consistent with the letter of the Rule, nor with the judicial economy which the Rule is designed to promote. It is also not consistent with the prior rulings of the court. *See, e.g., Schmidt v. Berryhill*, No. CV 17-4105-JWL, 2018 WL 4006056, at *3 (D. Kan. Aug. 22, 2018).

The court hereby strikes the motion to remand. Pursuant to Rule 83.7.1, plaintiff shall file a brief with all arguments which he intends to pursue in this action no later than 45 days from the date of this order.

IT IS SO ORDERED this day of April, 2021, that defendant's Motion to Strike (Dkt. 11) is granted as provided herein; plaintiff's Motion to Remand (Dkt. 10) is stricken.

J. Thomas Marten
J. Thomas Marten, Judge