

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-30373
(Summary Calendar)

GERALD DAVIS,

Plaintiff-Appellant,

versus

KENNETH S. APFEL,
COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
(99-CV-420)

- - - - -
October 3, 2000

Before HIGGINBOTHAM, WIENER, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Gerald Davis appeals from the district court's order remanding the case to the Commissioner for failure to develop the record regarding Davis's mental retardation fully and fairly. Davis argues that the district court abused its discretion in failing to reverse the Commissioner's decision and order an award of benefits. Davis also argues that the administrative law judge (ALJ) was biased, requesting that the case be remanded to a different ALJ if the district court's remand order is affirmed.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Contrary to the Commissioner's argument, Davis may appeal the district court's remand order because Davis sought reversal as well as remand. See Forney v. Apfel, 524 U.S. 266, 269 (1998). We have reviewed the record and hold that the district court did not abuse its discretion in ordering the remand pursuant to the fourth sentence of 42 U.S.C. § 405(g). Under the standard of abuse of discretion that we apply when reviewing the district court's refusal to order that, on remand, this case be heard by a different ALJ, we refuse to disturb that ruling. Davis has failed to demonstrate the required high degree of antagonism toward his representative on the part of the ALJ to make impossible the ALJ's rendering of a fair judgment. Accordingly, the judgment of the district court is in all respects

AFFIRMED.