

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-10476  
Summary Calendar

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TRAVIS RIPLEY,

Plaintiff-Appellant,

versus

JOHN J. CALLAHAN,  
COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:93-CV-495-A  
- - - - -

March 28, 1997

Before JONES, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:\*

Travis Ripley appeals the district court's denial of his motion for attorney's fees under the Equal Access to Justice Act. Ripley's attorney did not timely present the new evidence which this court found relevant to the determination whether Ripley is disabled; instead, counsel filed the evidence, without explanation or argument, in an exhibit to his objections to the magistrate judge's report and recommendation. Consequently, the

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

district court did not abuse its discretion by finding that the Commissioner's failure to request a remand for consideration of the new evidence was substantially justified. Bazaldua v. INS, 776 F.2d 1266, 1269 (1985). We also find no abuse of discretion in the district court's rejection of Ripley's arguments that an award of attorney fees is required because of the Administrative Law Judge's failure to develop the record or consider Ripley's testimony concerning the limitations he experienced due to his back problems.

AFFIRMED.