

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-30470  
Summary Calendar  
USDC No. 97-CV-1090

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PEGGY JO SMITH,

Plaintiff - Appellant,

versus

KENNETH S. APFEL, COMMISSIONER OF SOCIAL SECURITY,

Defendant - Appellee.

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Appeal from the United States District Court  
for the Western District of Louisiana

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February 29, 2000

Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:\*

Commissioner Kenneth S. Apfel (“the Commissioner”) denied Peggy Jo Smith’s application for disability insurance benefits and supplemental security income. She appealed to the district court, which referred the matter to a magistrate judge for a report and recommendation (“R&R”). The R&R recommended affirming the Commissioner, and when Smith failed to object to the R&R, the district court adopted the R&R’s reasoning and affirmed. Smith appealed and the Commissioner moved to dismiss, arguing that she forfeited her right to appeal. We agree that this case falls within our rule that a party who does not object to an R&R loses her right to appeal. *See Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1417 (5<sup>th</sup> Cir. 1996). The R&R clearly gave Smith notice of the time period within which she had to file objections and she failed to respond.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5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

Nor are we persuaded by Smith's argument that we should forgive her forfeiture because of attorney illness and because she filed a Rule 60(b) motion with the district court over one month after she retained new counsel. We have not previously recognized this exception to the forfeiture rule and Smith provides no reason why we should recognize it here, particularly given her failure to document her attorney's illness or to show that her Rule 60(b) motion was procedurally proper.

Because Smith forfeited her appellate rights by not objecting to the R&R, we review only for plain error. *See id.* Finding none, we DISMISS.