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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BARBARA BIGGS,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>SOCIAL SECURITY COMMISSION,</p> <p>Defendant - Appellee.</p>

No. 07-16847

D.C. No. CV-06-00361-
OWW/LJO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted July 17, 2009**

Before: HUG, SKOPIL and BEEZER, Circuit Judges.

Barbara Biggs appeals pro se from the district court’s judgment affirming the Commissioner of Social Security’s decision to award retirement benefits subject to the Windfall Elimination Provision, 42 U.S.C. § 415(a)(7). We will not disturb the Commissioner of Social Security’s decision unless it is not supported

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

by substantial evidence or is based on legal error. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). The district court exercised jurisdiction under 42 U.S.C. § 405(g). We have jurisdiction under 28 U.S.C. § 1291. We affirm.

The facts of this case are known to the parties and we do not repeat them here.

Substantial evidence supports the Commissioner of Social Security's decision to reduce Biggs' retirement benefits pursuant to the Windfall Elimination Provision. Contrary to Biggs' assertions, the Windfall Elimination Provision is constitutional. *Das v. Dep't of Health & Human Servs.*, 17 F.3d 1250, 1255 (9th Cir. 1994).

AFFIRMED.