

JUN 17 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STEVEN LEE CAPITANI,

Plaintiff - Appellant,

v.

**MICHAEL J. ASTRUE, Commissioner
of Social Security Administration,**

Defendant - Appellee.

No. 09-57015

D.C. No. 3:07-cv-00266-JAH-AJB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
John A. Houston, District Judge, Presiding

Submitted June 9, 2011**
Pasadena, California

Before: **KOZINSKI**, Chief Judge, **IKUTA**, Circuit Judge and **PIERSOL**,
District Judge.***

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

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

*** The Honorable Lawrence L. Piersol, Senior United States District Judge for the District of South Dakota, sitting by designation.

The district court did not abuse its discretion in denying Capitani’s attorney’s late-filed application for attorney’s fees under the Equal Access to Justice Act because her reasons for missing the deadline amounted to “a garden variety claim of excusable neglect.” Irwin v. Dep’t of Veterans Affairs, 498 U.S. 89, 96 (1990); see Le v. Astrue, 529 F.3d 1200, 1201 (9th Cir. 2008); see also Modrowski v. Mote, 322 F.3d 965, 968–69 (7th Cir. 2003).

AFFIRMED.