FILED

APR 06 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL HERNANDEZ, Plaintiff - Appellant, v. MICHAEL J. ASTRUE, Commissioner of Social Security, Defendant - Appellee.	No. 07-56530 D.C. No. CV-06-00232-WQH MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Daniel Hernandez appeals pro se from the district court's summary judgment in favor of the Commissioner of Social Security ("Commissioner") in his

---

* 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).

tk/Research

action seeking disability insurance benefits under Title II of the Social Security Act. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Banta v. Sullivan*, 925 F.2d 343, 344 (9th Cir. 1991). We affirm.

The district court properly granted summary judgment because Hernandez's appeal of the Commissioner's decision was untimely. *See* 42 U.S.C. § 405(g) (explaining that review of a final decision of the Commissioner must be commenced within sixty days after the mailing of the notice of the decision, or within such further time as the Commissioner may allow).

The district court properly concluded that equitable tolling does not apply because there are no extraordinary or egregious circumstances in this case. *See Irwin v. Dep't of Veteran Affairs*, 498 U.S. 89, 96 (1990) (explaining that the principles of equitable tolling "do not extend to what is at best a garden variety claim of excusable neglect.").

Hernandez's remaining contentions are unpersuasive.

AFFIRMED.