

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-1776

Sally Spaulding, formerly known as
Sally Tobelmann,

Appellant,

v.

Department of Health and Human
Services,

Defendant,

Social Security Administration,

Appellee.

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Appeal from the United States
District Court for the
Eastern District of Missouri.

[UNPUBLISHED]

Submitted: August 4, 2005

Filed: August 9, 2005

Before COLLOTON, HANSEN, and BENTON, Circuit Judges.

PER CURIAM.

Sally Spaulding appeals the district court's¹ adverse grant of summary judgment, and its adverse grant of a Federal Rule of Civil Procedure 12(b)(6) motion,

¹The Honorable Charles A. Shaw, United States District Judge for the Eastern District of Missouri.

in her action brought under the Rehabilitation Act of 1973 (Rehab Act). Having conducted de novo review, see Peebles v. Potter, 354 F.3d 761, 765 (8th Cir. 2004) (summary judgment standard of review); Ferris, Baker Watts, Inc. v. Ernst & Young, LLP, 395 F.3d 851, 853 (8th Cir. 2005) (Rule 12(b)(6) dismissal standard of review), we agree with the district court that Spaulding's retaliation claims were not administratively exhausted, see Wallin v. Minn. Dep't of Corr., 153 F.3d 681, 688 (8th Cir. 1998), cert. denied, 526 U.S. 1004 (1999); and that the Social Security Administration met its duty under the Rehab Act by restructuring Spaulding's job, see Peebles, 354 F.3d at 767. Spaulding cannot seek reversal by asserting ineffective assistance of counsel. See Glick v. Henderson, 855 F.2d 536, 541 (8th Cir. 1988) (defendant has no constitutional or statutory right to effective assistance of counsel in civil case).

Accordingly, we affirm. See 8th Cir. R. 47B.
