

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GARY L. SCHMELZER,	:	NO. 1:10-CV-00803
	:	
Plaintiff,	:	
	:	
vs.	:	OPINION AND ORDER
	:	
PATRICK R. DONAHOE,	:	
Postmaster General, United	:	
States Postal Service,	:	
	:	
Defendant.	:	

This matter is before the Court on the Magistrate Judge’s December 27, 2012 Report and Recommendation (doc. 29), and Plaintiff’s Objection (doc. 31).

Plaintiff’s Complaint alleges he was discriminated against when he was denied a postal job that was instead given to a white non-applicant (doc. 1). Defendant filed a motion to dismiss (doc. 25) based on the theories that 1) Plaintiff failed to timely effect service, 2) that Plaintiff failed to exhaust his administrative remedies, and 3) the Complaint fails to state a claim for relief for employment discrimination (doc. 23).

The Magistrate Judge offered a thorough review of this case and concluded that because the record shows Plaintiff is Caucasian, his allegations that he was passed over for a job in favor of a Caucasian fails to state a plausible claim for relief (doc. 29). Because she concluded Plaintiff failed to state a claim for relief, she further found it unnecessary to address whether he

exhausted his administrative remedies (Id.). Finally, the Magistrate Judge found Defendant forfeited its defense of insufficiency of service of process due to raising such argument tardily and after engaging in the defense of this case (Id.).

Plaintiff filed an Objection (doc. 31) stating he has a key witness who will testify on his behalf. Plaintiff further specifies the amount of damages he seeks (Id.).

Having reviewed this matter, the Court finds the Magistrate Judge's Report and Recommendation well-reasoned and correct. Plaintiff's Objection in no way addresses the conclusion that he fails to state a claim for discrimination in employment. As such the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation in all respects (doc. 29), GRANTS Defendant's Motion to Dismiss the Complaint (doc. 23), which it construes as a Motion for Judgment on the Pleadings pursuant to Fed. R. Civ. P. 12(c), and TERMINATES this case from the Court's docket.

SO ORDERED.

Date: March 8, 2013

s/S. Arthur Spiegel
S. Arthur Spiegel
United States District Senior Judge