IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

William Hobek, Plaintiff, v. The Boeing Company, Respondent.	)	Case No 2:16-cv-3840-RMG **ORDER AND OPINION**

This matter is before the Court on the Report and Recommendation ("R. & R.") of the Magistrate Judge (Dkt. No. 24) recommending that the Court grant Defendant's partial motion to dismiss (Dkt. No. 6). For the reasons set forth below, this Court adopts the R. & R. as the order of the Court. Defendant's partial motion to dismiss (Dkt. No. 6) is granted.

I. Background

In his Complaint, Plaintiff alleges causes of action based on age discrimination under the Age Discrimination Employment Act ("ADEA") and wrongful termination in violation of public policy. (Dkt. No. 1-1.) The Magistrate has provided a thorough summary of the alleged facts in the R. & R. (Dkt. No. 24 at 1-2), so the Court need not repeat them here. Essentially, Plaintiff alleges that he was disciplined and terminated due to his age and in retaliation for his complaints about quality and safety.

II. Legal Standard - Magistrate's Report and Recommendation

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the R. & R. to which specific objection is

made. Fed. R. Civ. P. 72(b)(2). Additionally, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). If the plaintiff fails to file any specific objections, this Court "need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted).

III. Discussion

In the R. & R., the Magistrate recommended that this Court grant Boeing's motion to dismiss Plaintiff's claim for wrongful termination in violation of public policy because (1) Plaintiff had an existing statutory remedy to pursue his claims under the Wendell H. Ford Air and Investment Reform Act for the 21st Century ("AIR21"), 49 U.S.C. § 42121; and (2) Plaintiff has not alleged facts which show a violation of a clear mandate of public policy. The Magistrate explained that while an at-will employee may have a cause of action in tort for a wrongful termination that violates a clear mandate of public policy, the public policy exception does not apply in cases where Plaintiff could avail himself of an existing statutory remedy. (Dkt. No. 24 at 4.)

Although Plaintiff has argued that his complaints related to both safety *and quality* so were not adequately covered by the AIR21 statutory remedy, the Magistrate found that, in the aircraft context, safety and quality are one and the same. In response to Plaintiff's argument that the AIR21 statutory remedy is only available to individuals who had made a report within the AIR21 framework., the Magistrate explained that Plaintiff's failure to exercise his rights under AIR21 does not create a cause of action in federal court. (Dkt. No. 24 at 7.) Finally, the Magistrate explained that Plaintiff did not identify any specific law that he was required to break

as a condition of employment or how his termination was illegal, so he has not alleged facts that support invocation of the public policy exception to at-will employment. (Dkt. NO. 24 at 8-9

The document filed by Plaintiff's counsel as Objections to the Magistrate's R. & R. (Dkt. No. 29) is in fact an almost verbatim copy of Plaintiff's Response to Defendant's Motion to Dismiss (Dkt. No. 13.) Pages 1-8 of the Objections are copied directly from Plaintiff's response to the motion to dismiss (Dkt. No. 13) with the sole addition of the legal standard for a district Court's review of the Magistrate's R. & R. Pages 9 and 10 of the Objections are a verbatim copy of factual allegations from Plaintiff's complaint. (Dkt. No. 1-1 at 12-13.) Only the final two paragraphs of Plaintiff's twelve pages of Objections have not been copied and pasted from prior pleadings. (Dkt. No. 29 at 10-11.) In those paragraphs, Plaintiffs argues that "The Defendant interfered with the Plaintiff's position as a quality inspector and refused to allow the Plaintiff to do his job as a Quality inspector. The Plaintiff reported those refusals of the Defendant. The Plaintiff was terminated in retaliation for his refusal to pass planes that did not meet guidelines as established by the Federal Government and Boeing." (Dkt. No. 29 at 10-11.) This argument is a paraphrased version of the argument advanced by Plaintiff's counsel in Plaintiff's Response to Defendant's Motion to Dismiss. (Dkt. No. 13 at 14-15.)

The United States District Court for the Western District of Virginia once had the opportunity to review Objections to a Magistrate's Report and Recommendation that were copied directly from prior pleadings and determined that this practice does not constitute specific written objections so is not entitled to *de novo* review:

> A general objection such as that offered by Plaintiff fails to satisfy the requirements of Rule 72(b) and 28 U.S.C. § 636(b)(1)(C). *See United States v. Midgette,* 478 F.3d 616, 621–22 (4th Cir.2007) ("Section 636(b)(1) does not countenance a form of generalized objection to cover all issues addressed by the magistrate judge; it contemplates that a party's objection to a magistrate judge's report be specific and particularized...."); *Page v. Lee,* 337 F.3d 411, 416 n. 3 (4th Cir.2003) ("[P]etitioner's failure to object to the magistrate judge's recommendation with the specificity required by the Rule is, standing alone, a sufficient basis upon which to affirm the judgment of the district court...."). Accordingly, "[a] general objection to the entirety of the magistrate's report has the same effects as would a failure to object." *Howard v. Sec'y of Health and Human Servs.,* 932 F.2d 505, 509 (6th Cir.1991); *see also Hyatt v. Town of Lake Lure,* 314 F.Supp.2d 562, 580 (W.D.N.C.2003).

Veney v. Astrue, 539 F. Supp. 2d 841, 845 (W.D. Va. 2008). The court went on to explain why general objections in the form of repackaged prior pleadings are disfavored:

> In short, unsatisfied by the findings and recommendations in the Report, Plaintiff has simply ignored it, attempting instead to seek re-argument and reconsideration of her entire case in the guise of objecting.
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> . . .
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> Allowing a litigant to obtain de novo review of her entire case by merely reformatting an earlier brief as an objection "mak[es] the initial reference to the magistrate useless. The functions of the district court are effectively duplicated as both the magistrate and the district court perform identical tasks. This duplication of time and effort wastes judicial resources rather than saving them, and runs contrary to the purposes of the Magistrates Act." *Howard,* 932 F.2d at 509.

Veney, 539 F. Supp. 2d 844-46 (W.D. Va. 2008). Further, as the Fourth Circuit explained in *Midgette*,

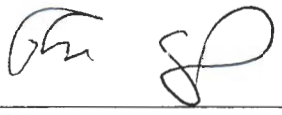
> To conclude otherwise would defeat the purpose of requiring objections. We would be permitting a party to appeal any issue that was before the magistrate judge, regardless of the nature and scope of objections made to the magistrate judge's report. Either the district court would then have to review every issue in the magistrate judge's proposed findings and recommendations or courts of appeals would be required to review issues that the district court never considered. In either case, judicial resources would be wasted and the district court's effectiveness based on help from magistrate judges would be undermined.

Midgette, 478 F.3d at 622. As Plaintiff has not made a specific objection to any portion of the R. & R., the Court need only satisfy itself that the Magistrate has made no clear error on the face of the record. *See Howell v. Holland*, No. 4:13-CV-00295-RBH, 2015 WL 751590, at *4 (D.S.C. Feb. 23, 2015). Finding no clear error in the Magistrate's determination, the Court adopts the R. & R. as the order of the Court.

IV. Conclusion

For the reasons set forth above, Defendant's partial motion for summary judgment (Dkt. No. 6) is granted.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

July 17, 2017
Charleston, South Carolina