

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

SHEILA MEUSE,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	2:15cv847-MHT
)	(WO)
ROBERT A. MCDONALD,)	
Secretary of Veterans)	
Affairs,)	
)	
Defendant.)	

OPINION AND ORDER

Pursuant to Title VII, plaintiff filed this lawsuit alleging discrimination on the basis of race, color, and gender during her employment at the Department of Veterans Affairs, including a hostile-environment claim and a constructive-discharge claim. This lawsuit is now before the court on the recommendation of the United States Magistrate Judge that plaintiff's claims be dismissed for failure to state a claim. There are no objections to the recommendation. After an independent and de novo review of the record, the court concludes that the magistrate judge's recommendation

should be adopted, with one exception: the claims should be dismissed without prejudice and with leave to amend.

A pro se plaintiff "must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice." Bank v. Pitt, 928 F.2d 1108, 1112 (11th Cir. 1991), overruled on other grounds by Wagner v. Daewoo Heavy Indus. Am. Corp., 314 F.3d 541, 542 (11th Cir. 2002) (en banc); see also Carter v. HSBC Mortgage Servs., Inc., 622 F. App'x 783, 786 (11th Cir. 2015) (explaining that Bank is controlling law for pro se plaintiffs). There are two caveats to this rule, in which leave to amend is not required: "(1) where the plaintiff has indicated that she does not wish to amend her complaint; and (2) where a more carefully drafted complaint could not state a claim and is, therefore, futile." Carter, 622 F. App'x at 786.

Plaintiff's claims must be dismissed without prejudice and with leave to amend, because plaintiff potentially could allege a viable claim by amending her complaint to cure the deficiencies noted by the Magistrate Judge.

Accordingly, it is ORDERED that:

(1) The United States Magistrate Judge's recommendation (doc. no. 17) is adopted, with the exception set forth above.

(2) Plaintiff's claims are dismissed without prejudice and with leave to file an amended complaint by October 21, 2016.

It is further ORDERED that no costs are taxed.

This case is not closed, and is referred back to the Magistrate Judge for further proceedings.

DONE, this the 30th day of September, 2016.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE