

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

HERSHEL SPRINGFIELD)
BAYNES,)
)
 Plaintiff,)
v.)
)
UNITED STATES OF AMERICA,)
)
 Defendant.)

Civil Action Number
1:16-cv-01893-AKK-JEO

MEMORANDUM OPINION

On October 3, 2017, Defendant United States of America filed a motion to dismiss the Plaintiff’s medical malpractice claims against Dr. Gary Walton and Dr. Phillip Bobo for lack of subject-matter jurisdiction. Docs. 21 at 1; 22 at 2. The motion is supported by the declaration of Meredith Torres, “a Senior Attorney in the General Law Division, Office of the General Counsel, Department of Health and Human Services (the ‘Department’).” Doc. 23. Ms. Torres attests the Department’s Claims Branch computerized database contains “no record of any administrative tort claim filed by Hershel Springfield Baynes or an authorized representative relating to Whatley Health Services, Inc., Phillip Bobo, M.D. and/or Gary Walton, D.O.” *Id.* at 2.

On October 6, 2017, the magistrate judge ordered the Plaintiff to show cause why this action should not be dismissed for lack of subject-matter jurisdiction.

Doc. 21. The Plaintiff was advised that failure to respond to the order within twenty days would result in dismissal of this action without further notice. *Id.* at 2.

On November 3, 2017, the Plaintiff filed a response. Doc. 25. The response does not allege that the Plaintiff filed an administrative tort claim as required by 28 U.S.C. § 2675(a). *Id.* Accordingly, the court is without jurisdiction to hear the case. Having carefully reviewed and considered *de novo* all the materials in the court file, the court **EXPRESSLY** finds the plaintiff has failed to establish the court has jurisdiction over this action. Accordingly, the defendant's motion to dismiss is **GRANTED**, and this action is due to be dismissed for lack of subject-matter jurisdiction. The case will be **DISMISSED WITHOUT PREJUDICE** by a separate order.

DONE the 6th day of November, 2017.



ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE