

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Raymond P. Moore**

Civil Action No. 11-cv-02721-RM-KMT

BRUCE W. JONES,

Plaintiff,

v.

J. GRIFFITH,¹ Individually and in his official capacity as Correctional Officer at FCI-Florence,
Defendant.

ORDER

THIS MATTER is before the Court on the Amended Recommendation of United States Magistrate Judge (“Recommendation”) (ECF No. 238) that Defendant Griffith’s Motion for Summary Judgment (ECF No. 179) be granted and, accordingly, the Plaintiff’s Fourth Claim, and final claim, be dismissed without prejudice for failure to exhaust administrative remedies. The Magistrate Judge also recommended Plaintiff’s Motion for Judgment on the Pleadings (ECF No. 227) be denied as moot. The Magistrate Judge advised the parties they had fourteen days after the service of a copy of the Recommendation to serve and file written objections to the Recommendation. The time permitted for any objections has expired and no objections to the Recommendation have been filed.

The Court has reviewed the Recommendation and the case file, and concludes the Magistrate Judge’s determination that Plaintiff failed to exhaust administrative remedies² was

¹ Mr. Griffith was originally identified in Plaintiff’s Amended Complaint as Mr. Griffin. (ECF Nos. 27 & 157.)

² The Court finds Plaintiff provided some evidence that he made two attempts to seek an administrative remedy for Defendant Griffith’s alleged refusal to remove restraints for a medical examination, as shown by Case No. 657076-FI dated August 22, 2011, and the Bureau of Prison’s e-mail chain of August 16-17, 2011, discussing Plaintiff’s

thorough and sound, and that there is no clear error on the face of the record. *See* Fed. R. Civ. P. 72(b) Advisory Committee's Notes ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."); *see also Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) ("In the absence of timely objection, the district court may review a magistrate's report under any standard it deems appropriate."). It is therefore ORDERED as follows:

1. That the Magistrate Judge's Recommendation (ECF No. 238), as modified herein, is ADOPTED as an order of this Court;
2. That Defendant Griffith's Motion for Summary Judgment (ECF No. 179) is GRANTED and Plaintiff's Fourth Claim is dismissed without prejudice;
3. That Defendant Griffith's Motion for Judgment on the Pleadings (ECF No. 227) is DENIED AS MOOT; and
4. There being no further claims remaining, Plaintiff's complaint and this case are dismissed.

DATED this 10th day of July, 2014.

BY THE COURT:



RAYMOND P. MOORE
United States District Judge

already filed BP-8 addressing such allegations. (ECF No. 206, pages 7, 10-11.) Nonetheless, the second request for administrative remedy was untimely and, even assuming, *arguendo*, the first request was timely, the evidence shows a failure to exhaust administrative remedies as to such grievance.