

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-00486-REB-KLM

CURTIS M. FOGLE,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Defendant's **Unopposed Motion for Medical Examination** [#30] (the "Motion"). A motion seeking permission to conduct an Independent Medical Examination ("IME") pursuant to Fed. R. Civ. P. 35 must be based on two prerequisites: (1) the plaintiff's mental or physical condition must be "in controversy"; and (2) "good cause" for the examination must exist. *LeFave v. Symbios, Inc.*, No. Civ. A. 99-Z-1217, 2000 WL 1644154, at *4 (D. Colo. Apr.14, 2000). Here, "Plaintiff seeks compensatory damages (past and future) for physical injury allegedly sustained from the administration of a blue dye into his right eye in connection with a medical procedure on March 2, 2011, performed at the Department of Veterans Affairs Medical Center in Cheyenne, Wyoming." *Motion* [#30] at 1. The Court finds that this statement satisfies the first element of the test under Rule 35. Further, "Plaintiff has varying degrees of pain and physical complaints that he attributes to the effects of the dye. Some of these effects,

however, may be attributable to the aging process and other pre-existing health issues.”

Id. The Court finds that this statement satisfies the second element of the test under Rule 35. Accordingly,

IT IS HEREBY **ORDERED** that the Motion [#30] is **GRANTED**. An IME of Plaintiff's eyes shall be performed by Dr. Thomas P. Campell, M.D., an ophthalmologist located in Wheat Ridge, Colorado on **February 26, 2015**. See *Motion* [#30] at 2; *Motion to Compel* [#32] at 3.

Dated: February 17, 2015

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kristen L. Mix". The signature is stylized with a large, flowing "K" and "M".

Kristen L. Mix
United States Magistrate Judge