

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-01432-GPG

ELISE VIGIL,

Plaintiff,

v.

SOCIAL SECURITY ADMINISTRATION,

Defendant.

ORDER OF DISMISSAL

Plaintiff, Elise Vigil, initiated this action by filing *pro se* a Complaint (ECF No. 1) and an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (ECF No. 2). On July 9, 2015, Magistrate Judge Gordon P. Gallagher entered an order directing Ms. Vigil to cure certain deficiencies and file an amended complaint if she wished to pursue her claims. (ECF No. 4). Specifically, Magistrate Judge Gallagher directed Ms. Vigil to file a complete Complaint, including the parties, addresses for the parties, jurisdiction, and request for relief sections. Additionally, Ms. Vigil was directed to file a complaint that complied with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. Ms. Vigil was warned that the action would be dismissed without further notice if she failed to cure these deficiencies and file an amended complaint within thirty days.

On August 6, 2015, Ms. Vigil submitted a Letter stating that she did not understand the Court's July 9, 2015 Order and requesting that the Court "send the

request of information in easy language please.” (ECF No. 5). The Court construed the letter as a request for clarification. On August 12, 2015, the Court issued an Order summarizing the July 9, 2015 Order to Cure and Amend in easy-to-understand language and omitting all of the citations and references to case law and statutes. The court allowed Ms. Vigil an additional thirty days from the August 12, 2015 Order to file an amended complaint that cured the noted deficiencies and complied with the pleading requirements of Fed. R. Civ. P. 8 as discussed in the Order.

In response, on September 10, 2015, Ms. Vigil submitted another Letter to the court along with attachments. (ECF No. 7). The Court must construe the filings by Ms. Vigil liberally because she is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court will not act as a *pro se* litigant’s advocate. *See Hall*, 935 F.2d at 1110.

The Letter submitted by Ms. Vigil did not cure the deficiencies specifically noted in the Court’s July 9, 2015 and August 12, 2015 Orders. In the August 12, 2015 Order, the Court specifically directed Ms. Vigil to “submit a new complaint that includes all sections on the court’s form.” (ECF No. 6 at 2). Additionally, the Court ordered Ms. Vigil to “obtain the appropriate court-approved Complaint form, along with applicable instructs at www.cod.uscourts.gov.” (*Id.* at 3). She was also warned that if she failed to file an amended complaint within the time allowed that complied with the Court’s order, the action would be dismissed without further notice. (*Id.* at 3-4). Ms. Vigil failed to follow the court’s orders. She did not submit a new complaint and she did not use the court-approved Complaint form. Instead, she submitted a handwritten Letter. Even

when construing the Letter liberally, it does not cure the noted deficiencies. Therefore, the action will be dismissed without prejudice for failure to cure the deficiencies and follow a court order.

Furthermore, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal she also must pay the full \$505 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. Accordingly, it is

ORDERED that the Complaint (ECF No. 1) and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to file an amended complaint and comply with court orders within the time allowed. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit. It is

FURTHER ORDERED that the Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (ECF No. 2) is DENIED as moot.

DATED at Denver, Colorado, this 15th day of September, 2015.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court