2016 WL 3960910
Only the Westlaw citation is currently available.
United States District Court,
W.D. Oklahoma.

Neal Flowers, Plaintiff,
v.
Undersheriff Jim Mullet, et al., Defendants.

No. CIV-16-30-C
|
Signed 06/27/2016

Attorneys and Law Firms

Neal Flowers, Wynnewood, OK, pro se.

Jessica L. Dark, Randall J. Wood, Pierce Couch Hendrickson Baysinger & Green, Oklahoma City, OK, for Defendants.

REPORT AND RECOMMENDATION

GARY M. PURCELL, UNITED STATES MAGISTRATE JUDGE

***1** Plaintiff, a state prisoner appearing *pro se* and *in forma pauperis*, has brought this civil rights action pursuant to 42 U.S.C. § 1983. In his Complaint filed January 14, 2016, Plaintiff names three Defendants who are officials at the Garvin County Detention Center: "Undersheriff Jim Mullet," "Sheriff Larry Rhodes," and "Jail Administrator Josh White." Following the filing of the Complaint, the matter was referred to the undersigned Magistrate Judge for proposed findings and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B).

Before the Court are Defendants Mullet, Rhodes, and White's Motions to Dismiss the action against them (Docs. # 20, 21, 22). Although Plaintiff was advised in the Order entered May 25, 2016 (Doc. # 23), of his opportunity to respond to Defendants' Motions to Dismiss under Rule 12(b) and Rule 56, Plaintiff has not responded within the allotted time period.

The Court's docket in this case reflects that the Court's Order entered May 25, 2016, was mailed to Plaintiff at his last known address and that the mail was returned to the Court with the notation that it was undeliverable because Plaintiff was no longer in custody and his former custodian was unable to forward the mail. In light of the return of the Court's correspondence, it is clear that Plaintiff has not complied with the Court's procedural rule requiring him to provide the Court and opposing counsel with notice of any change in his address. LCvR 5.4.

Defendants have styled their individual motions as a Motion to Dismiss under Fed. R. Civ. P. 12(b)(6). However, because Defendants rely, in part, on evidentiary documents outside of the pleadings in support of their Motion, and Plaintiff was advised of his responsibilities under Rules 12 and 56 in responding to Defendants' Motions, Defendant's Motions will be considered, in part, as motions seeking summary judgment. See Brown v. Zavaras, 63 F.3d 967, 969 (10th Cir. 1995)(courts may convert motion to dismiss into motion for summary judgment in order to consider matters outside of the pleadings).

I. Standard of Review

A motion to dismiss may be granted when the plaintiff has "failed to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). All well-pleaded facts, as distinguished from conclusory allegations, are accepted as true, and those facts are viewed in the light most favorable to the non-moving party. Beedle v. Wilson, 422 F.3d 1059, 1063 (10th Cir. 2005). To survive a motion to dismiss, a complaint must present factual allegations that "raise a right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). This review contemplates the assertion of "enough facts to state a claim to relief that is plausible on its face." Id. at 570. Thus, "when the allegations in a complaint, however true, could not raise a [plausible] claim of entitlement to relief," the cause of action should be dismissed. Id. at 558.

A *pro se* plaintiff's complaint must be broadly construed under this standard. See Erickson v. Pardus, 551 U.S. 89, 94 (2007); Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the generous construction to be given the *pro se* litigant's allegations "does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based." Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). See Whitney v. New Mexico, 113 F.3d 1170, 1173-1174 (10th Cir. 1997)(courts "will not supply additional factual allegations to round out

a plaintiff's complaint or construct a legal theory on a plaintiff's behalf"). A court evaluating a Rule 12(b)(6) motion to dismiss may consider the complaint as well as any documents attached to it as exhibits. Hall, 935 F.2d at 1112.

***2** "A court shall grant summary judgment if 'the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.' " Id. (quoting Fed. R. Civ. P. 56(a)). "A movant is not always required to come forward with affidavits or other evidence to obtain summary judgment; once the movant points out an absence of proof on an essential element of the nonmovant's case, the burden shifts to the nonmovant to provide evidence to the contrary." Hall v. Bellmon, 935 F.2d 1106, 1111 n.5 (10th Cir. 1991). A nonmovant can properly oppose summary judgment with affidavits, but the "affidavits must be based upon personal knowledge and set forth facts that would be admissible in evidence; conclusory and self-serving affidavits are not sufficient." Id. at 1111.

In considering a motion for summary judgment, the court reviews the evidence and inferences drawn from the record in the light most favorable to the nonmoving party. Burke v. Utah Transit Auth. & Local, 462 F.3d 1253, 1258 (10th Cir. 2006)(quotation omitted). A dispute is "genuine" if a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). "Material facts" are "facts which might affect the outcome of the suit under the governing law." Id. "At the summary judgment stage, a complainant cannot rest on mere allegations, but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true." Burke, 462 U.S. at 1258 (internal quotation marks and citations omitted). [1] "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)(quotations omitted).

II. Background

According to the uncontroverted Special Report filed by Garvin County Detention Center officials, Plaintiff was detained in the Garvin County Detention Center on drug-related charges beginning January 4, 2015. Special Report (Doc. # 19), at 2. Plaintiff filed a previous 42 U.S.C. § 1983 action in this Court on April 14, 2015, against three Garvin County Detention Center officials concerning the conditions of his confinement in the jail. Neal Flowers v. Larry Rhodes, et al., No. CIV-15-396-C. That action was ultimately dismissed due to Plaintiff's failure to exhaust available administrative remedies and, alternatively, on the ground of mootness.

On January 19, 2016, Plaintiff was transported to the Cleveland County Detention Center pursuant to a writ. Special Report (Doc. # 19), Ex. 3, at 2. Plaintiff was released from that facility on May 17, 2016, after posting bond. Id., Ex. 4 (Appearance Bond).

III. First Amendment Free Exercise of Religion

In his first ground for § 1983 relief, Plaintiff alleges that he has been denied his "Freedom of Religion" because "they took my bible." Although Plaintiff lists all three Defendants in this claim, Plaintiff's only specific factual allegation is that "Undersheriff Jim Mullet purposely [and] deliberatly [sic] took my bible for no reason. I wrote request of staff to him and Josh White pleading for my Bible." Plaintiff does not allege when the Bible was confiscated or any other circumstances.

Defendant Rhodes and Defendant White have moved to dismiss Plaintiff's first claim on the ground that Plaintiff has failed to allege sufficient facts to demonstrate that either Defendant Rhodes or Defendant White participated in the alleged conduct. "Because vicarious liability is inapplicable to ... § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009). Thus, "[i]ndividual liability under § 1983 must be based on personal involvement in the alleged constitutional violation." Foote v. Spiegel, 118 F.3d 1416, 1423 (10th Cir. 1997); see Jenkins v. Wood, 81 F.3d 988, 994-995 (10th Cir. 1996) ("[P]laintiff must show the defendant personally participated in the alleged violation, and conclusory allegations are not sufficient to state a constitutional violation.")(internal citation omitted).

***3** Although Plaintiff alleges in a conclusory manner that "[t]hey took my bible," he specifically alleges that only Defendant Mullet participated in the conduct alleged to have violated his First Amendment rights in his first claim. Plaintiff further alleges that he submitted a request

to staff to Defendant Mullet and Defendant White, but "[t]he denial of a grievance, by itself without any connection to the violation of constitutional rights alleged by plaintiff, does not establish personal participation under § 1983." Stewart v. Beach, 701 F.3d 1322, 1328 (10th Cir. 2012)(quotation omitted). Defendants Rhodes and White's Motions to Dismiss the claim against them in ground one should be granted.

As to the claim in ground one of the Complaint against Defendant Mullet, it is clearly established that Plaintiff, as a pretrial detainee, "must be accorded a reasonable opportunity to pursue his religion" consistent with the First Amendment's free exercise clause. Mosier v. Maynard, 937 F.2d 1521, 1525 (10th Cir. 1991). However, "[a] prisoner need not be afforded his preferred means of practicing his religion as long as he is afforded sufficient means to do so." Murphy v. Mo. Dep't of Corr., 372 F.3d 979, 983 (8th Cir. 2004) (citing Hammons v. Saffle, 348 F.3d 1250, 1256 (10th Cir. 2003)).

The uncontroverted facts show that Plaintiff submitted a Request to Staff dated January 12, 2016, to Defendant White, the Jail Administrator of the Garvin County Detention Center, asking why a Bible had been removed from his cell. In Defendant White's response dated January 12, 2016, Defendant White advised Plaintiff that "[t]he bible was taken by mistake. The jail staff was shaking down the cell and taking any extra items that were in the cell. There were several extra bibles that were believed to be extra and unused. The bible in question was returned [to Plaintiff]." Special Report (Doc. # 19), Ex. 9. Defendant White avers in his uncontroverted affidavit submitted with the Special Report that during a search of Plaintiff's cell sometime in December 2015 or January 2016 jail staff removed an extra Bible from the cell, but when Plaintiff asked for the Bible to be returned about a week later Defendant White determined that the confiscated Bible should be returned to Plaintiff and a jail official returned the Bible to Plaintiff. Defendant White further avers that during the time that Plaintiff was without the confiscated Bible he had at least one other Bible in his cell. Special Report (Doc. # 19), Ex. 10.

Viewing the uncontroverted facts in the light most favorable to Plaintiff, there is no material issue for trial, and Defendant Mullet is entitled to summary judgment concerning Plaintiff's claim of a First Amendment deprivation. See, e.g., Tarply v. Allen County, Ind., 312 F.3d 895, 898-99 (7th Cir. 2002)(holding no violation of the First Amendment shown where jail prohibited inmate's access to his own Bible but provided access to alternative Bible which "offered [the plaintiff] the essential materials for his religious studies"). Defendant Mullet's Motion to Dismiss Plaintiff's first claim, construed as a motion for summary judgment, should be granted.

IV. Retaliation

Plaintiff also alleges as part of his first ground for § 1983 relief that "[t]hey have been harassing and threating [sic] me since my Case # CIV-396-15-C. Now they are taking my freedom of religion." This latter allegation appears to assert a claim of unconstitutional retaliation.

"[P]rison officials may not retaliate against or harass an inmate because of the inmate's exercise of his constitutional rights." Peterson v. Shanks, 149 F.3d 1140, 1144 (10th Cir. 1998) (quotations omitted). To establish a First Amendment retaliation claim, a plaintiff must demonstrate three elements: "(1) that the plaintiff was engaged in constitutionally protected activity; (2) that the defendant's actions caused the plaintiff to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity; and (3) that the defendant's adverse action was substantially motivated as a response to the plaintiff's exercise of constitutionally protected conduct." Shero v. City of Grove, 510 F.3d 1196, 1203 (10th Cir. 2007).

***4** "[I]t is not the role of the federal judiciary to scrutinize and interfere with the daily operations of a state prison, and our retaliation jurisprudence does not change this role." Peterson, 149 F.3d at 1144. "[A]n inmate is not inoculated from the normal conditions of confinement experienced by convicted felons serving time in prison merely because he has engaged in protected activity." Id. Thus, a prisoner claiming retaliation "must prove that 'but for' the retaliatory motive, the incidents to which he refers, including the disciplinary action, would not have taken place." Id. "An inmate claiming retaliation must 'allege specific facts showing retaliation because of the exercise of the prisoner's constitutional rights." Id. (quoting and emphasizing Frazier v. Dubois, 922 F.2d 560, 562 n.1 (10th Cir. 1990)).

Plaintiff has not asserted a plausible claim of unconstitutional retaliation. He has alleged only conclusions without specific facts showing retaliation because of the filing of his previous action in this Court. Therefore, Defendants Rhodes, White, and Mullet's Motions to Dismiss Plaintiff's retaliation claim should be granted.

V. Deliberate Indifference to Serious Medical Needs

In his third ground for § 1983 relief (set forth in ground two of the Complaint), Plaintiff alleges he has been subjected to an Eighth Amendment violation due to "deliberate medical neglect." He alleges in support of this claim that "Dr. Whitehouse has perscribed [sic] me 3 perscription [sic] and Sheriff Larry Rhodes, Jim Mullet [and] Josh White has [sic] kept them from me. I need my medication. Josh keep saying he's gotta talk to Jim Mullet [and] that's been over 4 weeks ago." Plaintiff also alleges "I have drainage, headaches, my breathing at night is bad, can't breath [sic] need my inhaler."

"Although the Due Process clause governs a pretrial detainee's claim of unconstitutional conditions of confinement, the Eighth Amendment standard provides the benchmark for such claims." Craig v. Eberly, 164 F.3d 490, 495 (10th Cir. 1998)(citation omitted). See City of Revere v. Mass. General Hospital, 463 U.S. 239, 244 (1983)(due process protections for detainees are "at least as great as the Eighth Amendment protections available to a convicted prisoner").

"To succeed on an Eighth Amendment claim, ..., a plaintiff is required to identify 'acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.' " Callahan v. Poppell, 471 F.3d 1155, 1160 (10th Cir. 2006)(quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)). See also Farmer v. Brennan, 511 U.S. 825, 828 (1994)(holding "prison official's 'deliberate indifference' to a substantial risk of serious harm to an inmate violates the Eighth Amendment"); Mata v. Saiz 427 F.3d 745, 751 (10th Cir. 2005)(Eighth Amendment is violated if prison officials show "deliberate indifference to an inmate's serious medical needs").

> The test for a "deliberate indifference" claim under the Eighth Amendment has both an objective and a subjective component. The objective component of the test is met if the harm suffered is sufficiently serious to implicate the Cruel and Unusual Punishment Clause. The subjective component is met if a prison official knows of and disregards an excessive risk to inmate health or safety.

Kikumura v. Osagie, 461 F.3d 1269, 1291 (10th Cir. 2006)(quotations and citations omitted).There are two types of conduct that may constitute deliberate indifference to a serious medical need. "First, a medical professional may fail to treat a serious medical condition properly." Sealock v. Colo., 218 F.3d 1205, 1211 (10th Cir. 2000). Second, a prison official may "prevent an inmate from receiving treatment or deny him access to medical personnel capable of evaluating the need for treatment." Id. See also Self v. Crum, 439 F.3d 1227, 1231 (10th Cir. 2006). When the harm is alleged to have resulted from a delay in medical care, the harm must be "substantial," such as that resulting in a permanent disability or in substantial pain. Al–Turki v. Robinson, 762 F.3d 1188, 1193 (10th Cir. 2014); see also Sealock, 218 F.3d at 1210 ("[N]ot every twinge of pain suffered as the result of delay in medical care is actionable."); Mata, 427 F.3d at 753 (reiterating requirement for "significant, as opposed to trivial, suffering"). But "a prisoner who merely disagrees with a diagnosis or a prescribed course of treatment does not state a constitutional violation." Perkins v. Kansas Dep't of Corr., 165 F.3d 803, 811 (10th Cir. 1999).

***5** Because Defendants are not medical professionals who provided medical care to Plaintiff, it is the second type of claim that applies as to Defendants.

The Special Report includes an affidavit authored by Defendant Mullet concerning Plaintiff's claims. Plaintiff has not controverted the averments set forth in this affidavit, in which Defendant Mullet avers that

> [w]hen Plaintiff was first prescribed allergy medications, the medications were picked up by the jail staff. The costs associated with these prescriptions were removed from Plaintiff's commissary books to pay for the pre-existing [sic]

> medications.... Around July of 2015, Mr. Flower's mother visited at the jail and asked me why money was being taken from Plaintiff's books. I informed her that money was withdrawn as payments for his medications. Ms. Flowers instructed me to not withdraw money from Plaintiff's books [and] rather, for Plaintiff to advise her when they were ready and she would pick up the prescriptions at the pharmacy and bring them to the jail ... I informed Mr. Flowers on several occasions in 2015 that his medications were available to pick up at the pharmacy by his family. His family never picked up the medications at the pharmacy.

Special Report (Doc. # 19), Ex. 6.

The uncontroverted Special Report includes a copy of a Request to Staff submitted by Plaintiff on August 17, 2015, to Defendants White and Mullet. In this request, Plaintiff stated that he needed medical treatment for "asthma" as he was having difficulty breathing "at night." Id., Ex. 13. Defendant White responded to this Request to Staff the following day and advised that an appointment had been made for Plaintiff with Dr. Whitehouse. On August 21, 2015, Plaintiff was transported to the office of Dr. Whitehouse for outpatient medical treatment for "Allergic Rhinitis." He was prescribed an aerosol inhaler, a generic nasal spray (fluticasone), a topical cream, and an over-the-counter allergy medication (Claritin® or its generic equivalent, loratadine). Id., Ex. 15. The jail's medication records show Plaintiff was given fluticasone and loratadine on a daily basis beginning August 22, 2015, through the end of October 2015, and fluticasone on fourteen days during the month of November 2015. Id., E's. 18, 19, 23, 29.

The uncontroverted Special Report includes a copy of Plaintiff's Request to Staff dated November 16, 2015, in which Plaintiff again complained of allergies and asthma symptoms, "especially at night." Id., Ex. 26. A note from an unidentified source appearing on this Request to Staff indicates Plaintiff's allergy and asthma medications were filled at a pharmacy and the prescriptions were ready for Plaintiff's family to pick up. Id., Ex. 27. In response to another Request to Staff completed by Plaintiff and dated November 18, 2015, in which Plaintiff again requests his "medication," Defendant Mullet responded that Plaintiff had "pre existing conditions" and that jail officials would be willing to help Plaintiff contact his family or physician for "help in this area." Id., Ex. 28.

The uncontroverted Special Report includes a discharge summary indicating that on December 22, 2015, Plaintiff was transported to Dr. Whitehouse's office for treatment, and he was seen by a physician's assistant in the office. Plaintiff was prescribed the same three medications for asthma and allergic rhinitis. Id., Ex. 31.

***6** The uncontroverted Special Report includes a Request to Staff form dated January 12, 2016,[2] two days before Plaintiff filed his Complaint in this action. In this Request to Staff directed to Defendants White and Mullet, Plaintiff states, "It's been over 4 weeks] since I went to doctor and was prescribed medication. Josh White stated he had to talk with Jim Mullet.... Need a answer about my medication?" Special Report (Doc. # 19), Ex. 33. In response to this Request to Staff, Defendant Mullet responded on January 13, 2016, that Plaintiff's "last appointment was 12/22/15. The [allergy medications were] called in to Reaves [Pharmacy]. They are there waiting for your family to pay and pick them up." Id.

In the unique circumstances presented by this case, it appears that Plaintiff's family convinced jail officials to allow them to obtain Plaintiff's allergy and asthma medications and take those medications to the jail to be distributed to Plaintiff. Plaintiff alleges a four week delay in providing him with three prescription medications, and it is presumed Plaintiff is referring to the allergy and asthma medications prescribed for him at Dr. Whitehouse's office in December 2015. There is no assertion or evidence that jail officials prevented Plaintiff's family from providing the prescribed medications. Although jail officials may have negligently delayed Plaintiff's receipt of his prescribed allergy and asthma medications, there is no disputed material issue for trial concerning the issue of delay in providing Plaintiff with his prescribed allergy and asthma medications. Plaintiff alleges that when he requested that the jail provide him with those medications Defendant White indicated he would speak with Defendant Mullet concerning Plaintiff's request.

The uncontroverted facts show that Plaintiff was prescribed the allergy and asthma medications on December 22, 2015, and he was transferred to another jail facility on January 19, 2016. Plaintiff states that in the absence of his prescribed allergy and asthma medications for this approximately four week period he suffered sinus drainage, headaches, and difficulty breathing "at night." Plaintiff's vague allegations of symptoms do not evidence substantial harm resulting from the approximately four week delay in providing Plaintiff with his prescribed allergy and asthma medications. Therefore, Defendants Rhodes, White, and Mullet's Motions to Dismiss, construed as motions for summary judgment, should be granted.

VI. Official Capacity

Plaintiff asserts in his Complaint that he is suing Defendants in both their individual and official capacities. Plaintiff's claims against Defendants in their official capacities are essentially claims against Garvin County, which employs the Defendants. See Watson v. City of Kansas City, 857 F.2d 690, 695 (10th Cir. 1988). For a municipality to be liable under § 1983 for the acts of its employees, a plaintiff must prove: "(1) that a municipal employee committed a constitutional violation, and (2) that a municipal policy or custom was the moving force behind the constitutional deprivation." Becker v. Baseman, 709 F.3d 1019, 1025 (10th Cir. 2013)(internal quotation marks omitted). Accord, Myers v. Oklahoma County Bd. of County Camrose, 151 F.3d 1313, 1320 (10th Cir. 1998)("[I]t order to hold a municipality [or county] liable for an employee's constitutional violations, a plaintiff must show not only that a constitutional violation occurred, but also that some [county] policy or custom was the moving force behind the violation.").

***7** Plaintiff has not alleged that Garvin County maintains an official policy, or even a custom or practice, that caused the alleged conduct alleged in the Complaint. Therefore, Plaintiff has failed to state a claim for relief under 42 U.S.C. § 1983 against Defendants in their official capacities. The cause of action against Defendants in their official capacities should therefore be dismissed under Rule 12(b)(6).

RECOMMENDATION

Based on the foregoing findings, it is recommended that (1) Defendants Rhodes and White's Motions to Dismiss Plaintiff's claim of a First Amendment violation be GRANTED and this claim against Defendants Rhodes and White be dismissed without prejudice under Rule 12(b)(6) for failure to state a claim upon which relief may be granted; (2) Defendants Rhodes, White, and Mullet's Motions to Dismiss Plaintiff's claim of unconstitutional retaliation be GRANTED and this claim against Defendants Rhodes, White, and Mullet be dismissed without prejudice under Rule 12(b)(6) for failure to state a claim upon which relief may be granted; (3) Defendant Mullet's Motion to Dismiss, construed as a motion for summary judgment, be GRANTED as to Plaintiff's claim of a First Amendment violation and judgment be entered in favor of Defendant Mullet and against the Plaintiff on this claim; (4) Defendants Rhodes, White, and Mullet's Motions to Dismiss, construed as motions for summary judgment, be GRANTED as to Plaintiff's claim of deliberate indifference to his medical needs and judgment be entered in favor of Defendants Rhodes, White, and Mullet and against the Plaintiff on this claim; and (5) Defendants Rhodes, White, and Mullet's Motions to Dismiss should be GRANTED as to Plaintiff's claims against Defendants in their official capacities and those claims should be dismissed without prejudice under Rule 12(b)(6) for failure to state a claim upon which relief may be granted.

The parties are advised of their respective right to file an objection to this Report and Recommendation with the Clerk of this Court by July 18th, 2016, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The failure to timely object to this Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States, 950 F.2d 656 (10th Cir. 1991); cf. Marshall v. Cater, 75 F.3d 1421, 1426 (10th Cir. 1996)("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.").

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

ENTERED this 27th day of June, 2016.

All Citations

Not Reported in F.Supp.3d, 2016 WL 3960910

Footnotes

1 In a prisoner civil rights case such as this one, the plaintiff's complaint is treated as an affidavit if it alleges facts based on the plaintiff's personal knowledge and has been sworn under penalty of perjury. Hall, 935 F.2d at 1111.

2 Plaintiff actually dated the form "1-12-15." However, it appears that Plaintiff mistakenly dated the form as having been submitted in January 2015, when it was actually submitted in January 2016.