

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

BRIAN TIMOTHY BRANTLEY,

Plaintiff,

v.

Case No: 2:15-cv-802-FtM-29CM

DRUG ENFORCEMENT  
ADMINISTRATION,

Defendant.

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**OPINION AND ORDER**

This matter is before the Court on consideration of the Magistrate Judge's Report and Recommendation (Doc. #40), filed July 27, 2017, recommending that plaintiff's Motion for Summary Judgment (Doc. #34) be denied, defendant's Cross Motion for Summary Judgment (Doc. #38) be granted, and that plaintiff's claims be dismissed with prejudice. No objections have been filed and the time to do so has expired.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). In the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject or modify, in

whole or in part, the findings and recommendations, 28 U.S.C. § 636(b)(1). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. Southern Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994); Castro Bobadilla v. Reno, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), aff'd, 28 F.3d 116 (11th Cir. 1994) (Table).

After conducting an independent examination of the file and upon due consideration of the Report and Recommendation, the Court accepts the Report and Recommendation of the magistrate judge to dismiss for failure to exhaust administrative remedies. "Before seeking review by a court of a component's adverse determination, a requester generally must first submit a **timely** administrative appeal." 28 C.F.R. § 16.8(e) (emphasis added). It is undisputed that plaintiff's appeal was closed for failure to file a timely appeal. (Doc. #38-1, Exh. K.) Although exhaustion under FOIA is not jurisdictional, timely exhaustion is required to state a claim. Taylor v. Appleton, 30 F.3d 1365, 1368 n.3 (11th Cir. 1994). See, e.g., Bonilla v. U.S. Dep't of Justice, 535 F. App'x 891, 893 (11th Cir. 2013) (finding dismissal appropriate when appeal was not timely filed). The Court agrees that summary judgment in favor of the government is appropriate, however the case will be deemed dismissed without prejudice for the failure to exhaust.

Accordingly, it is now

**ORDERED:**

1. The Report and Recommendation (Doc. #40) is hereby **adopted in part** and the findings otherwise incorporated herein. The dismissal will be without prejudice.

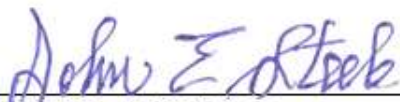
2. Plaintiff's Motion for Summary Judgment (Doc. #34) is **DENIED**.

3. Defendant's Cross Motion for Summary Judgment (Doc. #38) is **GRANTED** on the basis of the failure to exhaust administrative remedies.

4. The Clerk shall enter judgment in favor of defendant and against plaintiff and the case is dismissed without prejudice for failure to exhaust administrative remedies.

5. The Clerk is further directed to terminate all pending motions and deadlines, and close the file.

**DONE and ORDERED** at Fort Myers, Florida, this 25th day of August, 2017.

  
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JOHN E. STEELE  
SENIOR UNITED STATES DISTRICT JUDGE

Copies:  
Hon. Carol Mirando  
United States Magistrate Judge

Counsel of Record  
Unrepresented parties