

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

EDWARD LEE GILLIAM,

Plaintiff,

v.

Case No: 2:16-cv-255-FtM-99CM

U.S. DEPARTMENT OF VETERANS
AFFAIRS,

Defendant.

OPINION AND ORDER

This matter comes before the Court on plaintiff's Response to Opinion and Order (Doc. #12) filed on December 27, 2016, and construed as a motion for reconsideration. For the reasons set forth herein, the motion is denied.

On December 12, 2016, the Court issued an Opinion and Order (Doc. #11) noting that plaintiff's Response to: Report and Recommendation (Doc. #10) was filed as an objection but that it appeared to be a proposed Amended Complaint. The Court found no objections to the finding that plaintiff did not qualify to proceed *in forma pauperis*, or the recommendation that the motion for appointment of counsel be denied, and accepted the recommendations of the magistrate judge. The Court directed plaintiff to pay the filing fee and to file a Second Amended Complaint.

A non-final order may be revised at any time before the entry of a final judgment. Fed. R. Civ. P. 54(b). The decision to grant a motion for reconsideration is within the sound discretion of the trial court and will only be granted to correct an abuse of discretion. Region 8 Forest Serv. Timber Purchasers Council v. Alcock, 993 F.2d 800, 806 (11th Cir. 1993). "The courts have delineated three major grounds justifying reconsideration of such a decision: (1) an intervening change in controlling law; (2) the availability of new evidence; (3) the need to correct clear error or prevent manifest injustice." Sussman v. Salem, Saxon & Nielsen, P.A., 153 F.R.D. 689, 694 (M.D. Fla. 1994).

Plaintiff seeks reconsideration arguing that objections were contained in his Response to: Report and Recommendation (Doc. #10) but not acknowledged or addressed by the Opinion and Order. More specifically, plaintiff refers to paragraph G, which provided that plaintiff was now only making \$11 an hour with a 36 hour workweek and that he had depleted his retirement TSP account to pay attorney fees and to sustain reduced living conditions. (Doc. #10, p. 9.) Plaintiff is proceeding unrepresented in this case, and a review of the Motion to Proceed In Forma Pauperis and Financial Affidavit (Doc. #2) reflects this same salary. If plaintiff is asserting that he now qualifies to proceed *in forma pauperis* based on a change in financial circumstances, he may file an Affidavit to

that effect with a renewed motion before the deadline below to pay the filing fee. The motion for reconsideration based on paragraph G is denied.

Plaintiff also refers to paragraph F providing that plaintiff was seeking an appointment of counsel because the Veteran's Administration is committing criminal violations against him. (Doc. #10, p. 9.) A civil case must be "factually or legally so complex as to warrant the assistance of counsel", Holt v. Ford, 862 F.2d 850, 853 (11th Cir. 1989), and the Court finds that plaintiff's case fails to qualify for an appointment of counsel. Therefore, reconsideration based on paragraph F is denied. If plaintiff believes that criminal charges are appropriate, he must speak to the appropriate prosecutorial authorities as this is a civil case only.

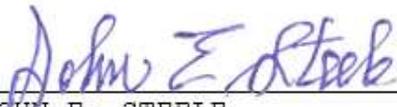
Accordingly, it is hereby

ORDERED:

1. Plaintiff's Response to Opinion and Order, construed as a motion for reconsideration (Doc. #12) is **DENIED**.
2. The deadline to file an amended motion and affidavit to proceed as an indigent based on a significant change in financial circumstances, or to pay the full filing fee, is extended **through and including January 27, 2017**.

3. The deadline to file a Second Amended Complaint that incorporates all allegations and facts within a single document is extended **through and including February 10, 2017.**

DONE and ORDERED at Fort Myers, Florida, this 29th day of December, 2016.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Counsel of Record