

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

MARJORIE R. WHITE,

Plaintiff,

-vs-

Case No. 6:07-cv-822-Orl-28DAB

**VOLUSIA COUNTY SCHOOL BOARD,
AND MARGARET SMITH,
Superintendent,**

Defendants.

REPORT AND RECOMMENDATION

TO THE UNITED STATES DISTRICT COURT

This cause came on for consideration without oral argument on the following motion filed herein:

MOTION: MOTION TO PROCEED IN FORMA PAUPERIS (Doc. No. 2)

FILED: May 16, 2007

THEREON it is RECOMMENDED that the motion be DENIED.

Upon submitting an affidavit of indigency, any court of the United States may authorize a party to proceed *in forma pauperis*. 28 U.S.C. § 1915(a). However, the Court may dismiss the case or refuse to permit it to continue without payment of fees if the Court determines that the action is frivolous or malicious. A cause of action should not be considered frivolous unless it is “without arguable merit.” *Sun v. Forrester*, 939 F.2d 924, 925 (11th Cir. 1991), *cert. denied*, 503 U.S. 921

(1992) (quoting *Harris v. Menendez*, 817 F.2d 737, 739 (11th Cir. 1987)). To determine if a plaintiff should be permitted to proceed *in forma pauperis*, a district court must determine “whether there is ‘a factual and legal basis . . . for the asserted wrong, however inartfully pleaded.’” *Id.* quoting *Watson v. Ault*, 525 F.2d 886, 892 (5th Cir. 1976).

Here, Plaintiff asserts that the basis of her action is age discrimination, “demotion without cause or notice.” Although it is clear from her Complaint that Plaintiff feels she was treated unfairly by her employer with respect to an inventory control audit issue, the Complaint is devoid of any allegations that the allegedly unfair treatment was due to her age.¹ Generally speaking, there is no cause of action for unfair treatment in the workplace, unless that treatment was motivated by discriminatory intent. Here, no such allegation is present. As pled, the Complaint fails to state a cause of action.

Additionally, Plaintiff’s financial affidavit indicates that she receives a regular income and has assets that disqualify her for pauper status.

It is therefore **respectfully recommended** that the motion be **denied** and the Complaint be **dismissed, with leave to amend**. Should this recommendation be adopted, Plaintiff, if she wishes to proceed with this action, should be directed to pay the filing fee and file an amended complaint which states a cause of action within the limited jurisdiction of this Court.

Failure to file written objections to the proposed findings and recommendations contained in this report within ten (10) days from the date of its filing shall bar an aggrieved party from attacking the factual findings on appeal.

¹Although the attachments to the Complaint indicate that Plaintiff is 64 years old, she does not allege that her age was the reason she was demoted without cause.

Recommended in Orlando, Florida on May 18, 2007.

David A. Baker

DAVID A. BAKER
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Presiding District Judge
Unrepresented Party
Courtroom Deputy