

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

**RODOLFO ANTONIO LOPEZ, JR.,
Plaintiff,**

v.

Case No: 6:17-cv-941-Orl-18TBS

**DEPARTMENT OF VETERANS
AFFAIRS,
Defendant.**

ORDER

THIS CAUSE comes for consideration on Plaintiff Rodolfo Antonio Lopez, Jr.'s Motion to Proceed *in Forma Pauperis* (the "IFP Motion") (Doc. 2) and his Motion to Proceed with Supporting Facts to Sustain a Case in Federal Court ("Motion to Proceed") (Doc. 8). The IFP Motion was referred to a United States Magistrate Judge for a report and recommendation. On May 25, 2017, the United States Magistrate Judge issued a report and recommendation (the "Report and Recommendation") (Doc. 3) recommending that the IFP Motion be denied and that the case be dismissed for lack of subject matter jurisdiction. (*Id.* at 4.) Subsequently, on June 8, 2017 Plaintiff filed the Motion to Proceed (Doc. 8). Plaintiff does not reference the Report and Recommendation in the Motion to Proceed, but he does appear to object to the Report and Recommendation through his position that the Court has jurisdiction over his case. Plaintiff included numerous documents as part of the Motion to Proceed, including written communications from the Department of Veterans Affairs apprising Plaintiff of his non-eligibility for disability benefits and the status of a pending appeal. (*Id.* at 5-14.)

The Veterans Judicial Review Act, 38 U.S.C. § 511 *et seq.*, provides that the decision of the Secretary of Veterans Affairs as to any "questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits . . . shall be final and conclusive

and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise.” 38 U.S.C. § 511(a). The applicable law in this case provides that the Court lacks jurisdiction over appeals related to benefits decisions of the Secretary. *See Cheves v. Dep’t of Veterans Affairs*, 227 F. Supp. 2d 1237, 1246 (M.D. Fla. 2002) (“Even assuming that determinations made by the VA were wrong, the plaintiffs may not bring this case in federal district court.”). As such, the Court lack subject matter jurisdiction over Plaintiff’s claims.

After de novo review of the portions of the Report and Recommendation to which Plaintiff objects and review and consideration of the Motion to Proceed, the Court finds that it does not have subject matter jurisdiction over Plaintiff’s case. Accordingly, it is hereby **ORDERED** and **ADJUDGED** as follows:

1. United States Magistrate Judge Thomas B. Smith’s Report and Recommendation (Doc. 3) is **APPROVED** and **ADOPTED** and is made part of this Order for all purposes, including appellate review.

2. Plaintiff Rodolfo Antonio Lopez, Jr.’s Motion to Proceed *in Forma Pauperis* (Doc. 2) is **DENIED**.

3. Plaintiff Rodolfo Antonio Lopez, Jr.’s Motion to Proceed with Supporting Facts to Sustain a Case in Federal District Court (Doc. 8) is **DENIED**.

4. The Clerk of the Court is directed to **DISMISS** this case without leave to amend.

DONE and **ORDERED** in Orlando, Florida on this 16 day of June, 2017.



G. KENDALL SHARP
SENIOR UNITED STATES DISTRICT JUDGE

Copies furnished to: Unrepresented Parties