

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

DANNY NAIL,

Plaintiff,

v.

Case No. 6:17-cv-1462-Orl-37GJK

U.S. OFFICE OF PERSONNEL
MANAGEMENT,

Defendant.

ORDER

This matter is before the Court *sua sponte* for consideration of Plaintiff Danny Nail's Amended Complaint (Doc. 29). Plaintiff filed the Amended Complaint after the Court entered an Order dismissing Plaintiff's prior Complaint for failing to allege grounds for this Court's exercise of subject matter jurisdiction. (Doc. 28.)

As noted in the Court's previous Order, federal courts must "zealously insure that jurisdiction exists" in every case. *See Smith v. GTE Corp.*, 236 F.3d 1292, 1299 (11th Cir. 2001). At the pleading stage, the Court must demand compliance with Federal Rule of Civil Procedure 8(a)(1), which requires "a short and plain statement of the grounds for the court's jurisdiction" in every complaint.

As to jurisdiction, the Amended Complaint provides: "This court has subject matter jurisdiction and personal jurisdiction over the parties under 5 U.S.C. § 1104 and § 1105." (Doc. 29, ¶ 4.) Neither of these statutory provisions concern the jurisdiction of this Court. Further, Plaintiff does not assert any claim under 5 U.S.C. §§ 1104 or 1105. The

Court observes that perhaps Plaintiff intends to bring this action pursuant to 5 U.S.C. § 8912, based on the attached exhibits and some of the allegations in the complaint but this divination is insufficient to support subject matter jurisdiction. Indeed, this supposition is undermined by the inclusion in the complaint of references to exclusively state law remedies such as Chapter 86 of the Florida Statutes and Fla. Stat. § 627.6698, § 641.28 and/or § 627.428. (Doc. 29 ¶ 5, 41). Accordingly, the Court finds that the Amended Complaint is due to be dismissed without prejudice. *See* Fed. R. Civ. P. 12(h)(3) (requiring dismissal when subject jurisdiction is absent). The Court will give Plaintiff one more opportunity to comply with pleading requirements and establish a basis for this Court's exercise of subject matter jurisdiction.

CONCLUSION

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

- (1) The Amended Complaint (Doc. 29) is **DISMISSED WITHOUT PREJUDICE**.
- (2) On or before October 26, 2017, Plaintiff may file an Amended Complaint.
- (3) Plaintiff is advised that the Court will terminate this action if Plaintiff fails to timely file an Amended Complaint that fully complies with the requirements of the Rules and this Court's Orders.

DONE AND ORDERED in Chambers in Orlando, Florida, on October 16, 2017.




ROY B. DALTON JR.
United States District Judge

Copies to:
Counsel of Record