

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

**JAMES M. VARDON,**

**Plaintiff,**

vs.

**Case No. 8:11-CV-1032-T-27TBM**

**FLORIDA STATE  
BOARD OF ADMINISTRATION, a/k/a  
Florida Department of  
Management Services,**

**Defendant.**

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**ORDER**

**BEFORE THE COURT** is a “Memo” (Dkt 8) filed by the pro se Plaintiff, which is construed as a motion for reconsideration of a June 22, 2011 Order (Dkt. 5). Upon consideration, the motion is GRANTED in part.

The June 22, 2011 Order adopted the Report and Recommendation submitted by the Magistrate Judge (Dkt. 3) and dismissed Plaintiff’s Complaint. Plaintiff asserts that, although the Order states that he filed no objections to the Report and Recommendation, he did file objections.

The Report and Recommendation (Dkt. 3) was entered on the docket on June 1, 2011 and was mailed to Plaintiff on the following day. Plaintiff’s objections were filed on June 24, 2011 (Dkt. 6). See Local Rul 6.02(a) (“Within fourteen (14) days after . . . service [of a report and recommendation], any party may file and serve written objections thereto.”); Fed. R. Civ. P. 72(b)(2)

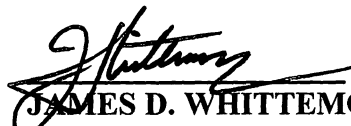
(“Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations.”). A review of Plaintiff’s objections shows that, even if timely, they are unfounded and do not require a different resolution of the Magistrate Judge’s Report and Recommendation.

However, Plaintiff also notes that, although the June 22, 2011 Order directed him to file an amended complaint, he had already done so two days before the Magistrate Judge entered his Report and Recommendation. As Plaintiff did not have the benefit of the Magistrate Judge’s Report and Recommendation when he filed the Amended Complaint (Dkt. 4), and the Amended Complaint suffers from the same defects, the June 22, 2011 Order should have dismissed both Complaints. Accordingly, Plaintiff’s construed motion for reconsideration (Dkt. 5) is **GRANTED** in part as follows.

- 1) The June 22, 2011 Order (Dkt. 5) is **VACATED**.
- 2) The Magistrate Judge’s Report and Recommendation (Dkt. 3) is adopted, confirmed, and approved and is made a part of this order for all purposes, including appellate review.
- 3) Plaintiff’s Complaint (Dkt. 1) and Amended Complaint (Dkt. 4) are both **DISMISSED**.
- 4) Plaintiff’s Application to Proceed *in forma pauperis* (Dkt. 2) is **DENIED** without prejudice.
- 5) Plaintiff shall file a second amended complaint within **twenty (20) days** of the date of this Order, failing which this case will be dismissed without further notice.
- 6) The second amended complaint shall include a short and plain statement of Plaintiff’s claims and shall include (a) a brief description of the event or events upon which each claim is based,

(b) a brief description of what Defendant did or failed to do and how Defendant's act or omission injured Plaintiff, and (c) a short and plain statement of the basis for federal subject matter jurisdiction.

**DONE AND ORDERED** in chambers this 15<sup>th</sup> day of July, 2011.

  
**JAMES D. WHITTEMORE**  
United States District Judge

Copies to: *pro se* Plaintiff