

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CELESTE GUICE,

Plaintiff,

v.

Case No: 8:15-cv-2935-T-27TBM

THOMAS E. PEREZ, SECRETARY,
UNITED STATES DEPARTMENT OF
LABOR,

Defendant.

ORDER

BEFORE THE COURT is Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* (Dkt. 2), and a Report and Recommendation recommending that it be denied (Dkt. 7). Plaintiff, proceeding *pro se*, filed objections to the Report and Recommendation (Dkt. 8). Upon consideration, Plaintiff's objections are **OVERRULED** and the Report and Recommendation is **ADOPTED** as the opinion of the Court. Plaintiff's Complaint is **DISMISSED without prejudice**.

INTRODUCTION

Plaintiff Celeste L. Guice, a Group Leader Mail Handler for the United States Postal Service, seeks reversal of a decision by the Department of Labor's Office of Workers' Compensation Programs ("OWCP") denying her workers' compensation benefits. (*See* Dkt. 1). Guice moved to proceed *in forma pauperis*. (Dkt. 2). Magistrate Judge Thomas B. McCoun III recommended that the motion be denied and the complaint be dismissed because it is a shotgun pleading that does not comply with the Federal Rules of Civil Procedure. (Dkt. 7). Plaintiff timely objected to the report and recommendation. (Dkt. 8).

STANDARD

A district court may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1). Those portions of the report and recommendation to which objection is made are accorded *de novo* review. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). Objections must "pinpoint the specific findings that the party disagrees with." *United States v. Schultz*, 565 F.3d 1353, 1360 (11th Cir. 2009); see *Leatherwood v. Anna's Linens Co.*, 384 Fed. App'x 853, 857 (11th Cir. 2010). In the absence of specific objections, there is no requirement that findings be reviewed *de novo*. *Garvey v. Vaughn*, 993 F.2d 776, 779 n.9 (11th Cir. 1993). Nevertheless, the district court reviews the report and recommendation for "clear error" even in the absence of objections. *Macort v. Prem, Inc.*, 208 Fed. App'x 781, 784 (11th Cir. 2006). Even if no objections to the findings or recommendations have been filed, the district court may "undertake 'further review . . . , *sua sponte* or at the request of a party, under a *de novo* or any other standard.'" *Stephens v. Tolbert*, 471 F.3d 1173, 1176 (11th Cir. 2006) (quoting *Thomas v. Arn*, 474 U.S. 140, 154 (1985)).

DISCUSSION

The Magistrate Judge correctly recommended dismissal of the complaint for failure to state a claim, because it does not comply with Rules 8(a)(2) and 10(b), Fed. R. Civ. P. (requiring "short and plain" statements of plaintiff's claim in "numbered paragraphs each limited as far as practicable to a single set of circumstances.")¹ The complaint includes 48 pages and 411 pages of exhibits and

¹ Plaintiff argues that because she has been granted *in forma pauperis* status in other cases in which she filed similar complaints, *in forma pauperis* status should be granted in this case. However, the "court shall dismiss" any case filed *in forma pauperis* when it "fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii). Because the complaint fails to state a claim, the complaint must be dismissed, notwithstanding the result of motions to proceed *in forma pauperis* in different cases with different complaints.

fails to list the allegations in numbered paragraphs that are limited to a single set of circumstances.² Because the complaint as drafted fails “to give the defendant[] adequate notice of the claims against them and the grounds upon which each claim rests,” it is a shotgun pleading subject to dismissal. *See Weiland v. Palm Beach Cty. Sheriff’s Office*, 792 F.3d 1313, 1323 (11th Cir. 2015).

CONCLUSION

1. Plaintiff’s Motion for Leave to Proceed *In Forma Pauperis* (Dkt. 2) is **DENIED without prejudice.**
2. The Report and Recommendation (Dkt. 7) is **ADOPTED** as the opinion of the Court.
3. Plaintiff’s objections to the Report and Recommendations (Dkt. 8) are **OVERRULED.**
4. Plaintiff’s Complaint (Dkt. 1) is **DISMISSED without prejudice.**
5. Plaintiff is granted 20 days to amend her complaint. **Failure to timely file an amended complaint will result in dismissal without further notice.**

DONE AND ORDERED this 22nd day of February, 2016.


JAMES D. WHITTEMORE
United States District Judge

Copy to: unrepresented party

² While Plaintiff may have included exhibits to the complaint to provide “the Court with an accurate and detailed representation of all relevant and prior actions and decisions rendered by DOL,” that does not excuse the 48 page complaint. (*See* Dkt. 8 p. 4).