

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number:08-22304-CIV-MARTINEZ-BROWN

CHESTER A. PEARSON,

Plaintiff,

vs.

JAMES B. PEAKE, Secretary of Veterans Affairs,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

THE MATTER was referred to the Honorable Stephen T. Brown, United States Magistrate Judge for a Report and Recommendation on Defendant's Motion for Summary Judgment (**D.E. No. 35**). The Magistrate Judge filed a Report and Recommendation (**D.E. No. 43**). The Court has reviewed the entire file and record. No objections were filed.

The Court notes that even if the Court were to consider facts from Plaintiff's deposition that Plaintiff failed to raise in response to Defendant's statement of material facts, those factual assertions are not material to this matter. Save for minor details, such as whether Plaintiff's supervisor saw him sitting on top of the resident cabinet or simply called to him from the hall in order to determine why he was not feeding his patients, Plaintiff's factual disputes do not contradict his supervisor's perception of events. In terms of showing evidence that a legitimate nondiscriminatory reason is a pretext, it is not enough to claim that the details of the underlying event were different from those reported to and by the supervisors; rather, Plaintiff must produce evidence showing that his supervisor knew the event did not occur as described and was using it

as a pretext for discrimination. *See Nix v. WLCY Radio/Rahall Commc'n*, 738 F.2d 1181, 1187 (11th Cir. 1984) (an "employer may fire an employee for . . . a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason."). Plaintiff has not pointed to any such evidence showing the reasons proffered were unworthy of credence. Therefore, his claims are subject to summary judgment. Accordingly, it is

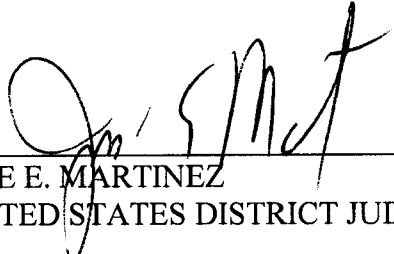
ADJUDGED that United States Magistrate Judge 's Report and Recommendation (**D.E. No. 43**) is **AFFIRMED** and **ADOPTED**. Accordingly, it is

ADJUDGED that

1. Defendant's Motion for Summary Judgment (**D.E. No. 35**) is **GRANTED**. Final Judgment shall be entered by separate order.

2. This case is **CLOSED**, and all pending motions are **DENIED AS MOOT**.

DONE AND ORDERED in Chambers at Miami, Florida, this 16 day of March, 2010.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Brown
All Counsel of Record