

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ANTHONY D. WILLIAMS,

Plaintiff,

v.

KRISTINE A. AULEPP, et al.,

Defendants.

Case No. 16-3044-EFM-DJW

MEMORANDUM AND ORDER

The matters before the Court are Plaintiff's motions for leave to amend the Amended Complaint (Docs. 44, 52); Plaintiff's Motion for a Stay on All Proceedings Due to Retaliatory Transfer (Doc. 57); and Defendants' Motions for Extension of Time to File Answer (Docs. 51, 55). Plaintiff seeks to amend his Amended Complaint (Doc. 18) to reinstate his claims under the Federal Tort Claims Act ("FTCA").¹ The Court ordered Plaintiff to show cause as to why his FTCA claims should not be dismissed for lack of administrative exhaustion.² The Court dismissed his FTCA claims because Plaintiff had not shown he had complied with the FTCA's administrative requirements.³ Specifically, the Court found Plaintiff's evidence—five "final denials" from the Bureau of Prisons—was inadequate to demonstrate administrative exhaustion. Those documents did not set forth the claims or a description of the claims to which they pertained. Moreover, Plaintiff did not file suit within six months of four of those denials as required by 28 U.S.C. § 2401(b). The fifth denial pertained to events at a different federal

¹ 28 U.S.C. § 2671, *et. seq.*

² *See* Doc. 8.

³ Doc. 25 at 19–21. The Court also noted that Plaintiff did not show good cause in response to the Court's previous Order.

facility, and that claim was not properly joined in this case. Plaintiff filed a motion for reconsideration, which the Court granted in part and denied in part.⁴ However, his FTCA claims remain dismissed for the reasons given in his January 17, 2017 Order.

Plaintiff's motions for leave to amend have two flaws. First, both motions violate D. Kan. Rule 15.1, which provides that any motion for leave to file an amendment must "attach the proposed pleading or other document."⁵ Neither motion contains a proposed Amended Complaint. Second, Plaintiff has not attached or pointed to anything new that justifies allowing these claims to proceed. As the Court has previously pointed out, Plaintiff conflates exhaustion of administrative remedies under the Prison Litigation Reform Act, *et seq.*, and exhaustion of administrative remedies under the FTCA. Plaintiff has provided nothing to alleviate the problems identified by the Court regarding his FTCA claims.⁶

Because the Court denies Plaintiff leave to amend, the Court grants Defendants' Motion for Extension of Time to File Answer (Doc. 55). Defendants' Motion for Extension of Time (Doc. 51) is therefore moot. Defendants shall answer or otherwise plead within sixty (60) days of this Order.

Plaintiff's Motion for a Stay on All Proceedings Due to Retaliatory Transfer (Doc. 57) is denied. According to the Bureau of Prisons' inmate locator website, the transfer has already occurred. Further, Plaintiff identifies no reason to stay the proceedings. Nor can the Court identify any reason this case should be stayed until further notice.

Finally, Waiver of Service of Summons as to Defendants Claude Maye, P. Leonhard, Shannon Phelps, and Glenna Crews returned unexecuted. (Doc. 36) The Bureau of Prisons

⁴ Doc. 32.

⁵ D. Kan. Rule 15.1(a)(2)

⁶ *See* Docs. 8, 13, 25, and 32.

(“BOP”) wrote the Court a letter stating that Defendants Maye and Leonhard were no longer employed with the BOP, that Shannon Phelps is now employed at the Federal Correctional Facility in Beaumont, Texas, and that Glenna Crews is now employed at the North Central Regional Office in Kansas City, Kansas. In discharging its obligations under 28 U.S.C. § 1915(d), the Court therefore orders the Federal Bureau of Prisons to provide the Court with the last known addresses for Defendants Maye and Leonhard. The Court also directs the Clerk’s Office issue summons to Shannon Phelps at FCI Beaumont Low, 5560 KNAUTH ROAD BEAUMONT, TX 77705, and to Glenna Crews at Bureau of Prisons, North Central Regional Office, 400 STATE AVENUE, SUITE 800 KANSAS CITY, KS 66101.

IT IS THEREFORE ORDERED BY THE COURT that Plaintiff’s Motions for leave to amend the Amended Complaint (Docs. 44, 52) and his Motion for a Stay on All Proceedings Due to Retaliatory Transfer (Doc. 57) are denied.

IT IS FURTHER ORDERED that Defendants’ Motion for Extension of Time to File Answer (Doc. 55) is granted, rendering Defendants’ Motion for Extension of Time (Doc. 51) moot. Defendants shall answer or otherwise plead within sixty (60) days of this Order.

IT IS FURTHER ORDERED that, within fourteen (14) days of this Order, the Bureau of Prisons to provide the Court with the last known addresses for Defendants Maye and Leonhard.

IT IS FURTHER ORDERED that the Clerk’s Office issue summons to Shannon Phelps at FCI Beaumont Low, 5560 KNAUTH ROAD BEAUMONT, TX 77705, and to Glenna Crews at Bureau of Prisons, North Central Regional Office, 400 STATE AVENUE, SUITE 800 KANSAS CITY, KS 66101.

Dated July 11, 2017, at Kansas City, Kansas.

s/ David J. Waxse
David J. Waxse
U.S. Magistrate Judge