

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN PATRICK WORDS,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Case No. 11-cv-14261

HONORABLE STEPHEN J. MURPHY, III

ORDER ADOPTING REPORT & RECOMMENDATION (docket no. 26),
STRIKING WITHOUT PREJUDICE DEFENDANT'S MOTION TO DISMISS (docket
no. 13), **AND GRANTING PLAINTIFF LEAVE TO FILE AN AMENDED COMPLAINT**

In this matter, pro se plaintiff Kevin Words brings claims under the Federal Tort Claims Act and the Eighth Amendment of the United States Constitution, against the United States of America and several employees of the Federal Bureau of Prisons ("Defendants"). The Court referred all pretrial matters to a magistrate judge, including Defendants' amended motion to dismiss. See Order of Referral, ECF No. 22. On January 21, 2013, the magistrate issued a Report and Recommendation ("Report"), recommending that the Court terminate Defendants' motion to dismiss and allow Plaintiff to file an amended complaint. See Report, ECF No. 26. The Report is now before the Court for review.

Civil Rule 72 provides that a party's specific written objections to a magistrate judge's Report, filed within fourteen days of service, are entitled to de novo review. See Fed. R. Civ. P. 72(b)(2); see also 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). In the absence of specific objections, however, de novo review of a Report is not required. The Court will not undertake de novo

review here because the fourteen days provided under the Civil Rule have passed, and neither party has filed any objections.

The Court has reviewed the record and the Report and agrees with the reasoning and analysis of the magistrate judge. The Court will adopt the Report, terminate the motion to dismiss, and grant Plaintiff leave to file an amended complaint. In light of Plaintiff's pro se status and the opportunity provided by this Order for him to amend his complaint, the Court will reproduce here two pertinent observations from the Report:

The undersigned . . . finds that it would be futile to incorporate claims in an amended complaint that pertain to the amputation of Plaintiff's left leg unless Plaintiff exhausted that claim prior to filing this lawsuit. The documents submitted to the Court do not establish exhaustion. Plaintiff should be instructed that his amended complaint should only include claims that he believes have been fully exhausted before the lawsuit was filed. With regard to his *Bivens* claim Plaintiff should also be instructed that he should allege facts to show that each Defendant was personally involved in, or otherwise authorized, approved of, or knowingly acquiesced in the alleged unconstitutional conduct. *Copeland v. Machulis*, 57 F.3d 476, 481 (6th Cir. 1995). Allegations against the Warden or Assistant Warden must allege more than that they were simply involved in the denial of a grievance. See, e.g., *Lee v. Mich. Parole Bd.*, 104 Fed. App'x 490, 493 (6th Cir. 2004).

ORDER

WHEREFORE it is hereby **ORDERED** that the Report & Recommendation of January 22, 2013 (docket no. 26) is **ADOPTED**.

IT IS FURTHER ORDERED that Defendants' motion to dismiss (docket no. 13) is **TERMINATED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that Plaintiff is **GRANTED** leave to file an amended complaint. The amended complaint must be filed within 21 days of service of this order. Defendants may then file an answer or other response to the amended complaint, as provided under the Federal Rules of Civil Procedure and this Court's local rules. If Plaintiff fails to file an amended complaint by the date set, Defendants may re-file the instant motion or file a different motion for dismissal of Plaintiff's claims as they deem necessary.

SO ORDERED.

s/Stephen J. Murphy, III _____
STEPHEN J. MURPHY, III
United States District Judge

Dated: February 14, 2013

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on February 14, 2013, by electronic and/or ordinary mail.

Carol Cohron _____
Case Manager