

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL FULLER #19477,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. 1:21-CV-938

HON. ROBERT J. JONKER

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

Plaintiff Michael Fuller alleges negligence and dereliction of duty by employees of the Department of Veterans Affairs regarding his request to apportion his benefits to someone else. The United States moves to dismiss. The Magistrate Judge issued a Report and Recommendation that the Court grant the motion to dismiss. Plaintiff has filed objections to this Report and Recommendation.

The Court has reviewed Magistrate Judge Green's Report and Recommendation in this matter (ECF No. 27) and Plaintiff's Objections (ECF No. 34). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE, § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's Objections. The Court finds the Magistrate Judge's Report and Recommendation, which recommends granting Defendant's motion to dismiss (ECF No. 13), is factually sound and legally correct.

The Magistrate Judge carefully and thoroughly considered the evidentiary record, the parties' arguments, and the governing law. In his objections, Plaintiff primarily reiterates and expands arguments he has already presented.¹ His objections do not address the Report and Recommendation in any persuasive way. To the contrary, none of Plaintiff's objections² change the fundamental analysis. For the very reasons the Report and Recommendation details, this Court lacks subject matter jurisdiction over Plaintiff's claims and thus dismissal of this action is appropriate.

ACCORDINGLY, IT IS ORDERED:

1. The Report and Recommendation of the Magistrate Judge (ECF No. 27) is **APPROVED AND ADOPTED** as the Opinion of the Court.

2. Defendant's Motion to Dismiss (ECF No. 13) is **GRANTED**.

3. Plaintiff's Motion to Appoint Counsel (ECF No. 17) is **DENIED**.

¹ While the motion to dismiss was pending, Plaintiff filed a motion seeking the appointment of counsel. (ECF No. 17). The Magistrate Judge previously denied a motion to appoint counsel (ECF No. 11). Nothing in the renewed motion, or anything subsequent, disturbs this analysis. Accordingly, the Court denies the motion to appoint counsel.

² In his second objection, Plaintiff asserts that the Magistrate failed to adjudicate his Fourteenth Amendment claims. (ECF No. 34, PageID.182). The Fourteenth Amendment does not apply to actions by the federal government. *See Newsom v. Vanderbilt Univ.*, 653 F.2d 1100, 1113 (6th Cir. 1981).

4. This case is **DISMISSED**. A separate Judgment shall issue.

The Court discerns no good-faith basis for appeal of this matter. *See McGore v. Wigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997); 28 U.S.C. § 1915(a)(3).

Dated: August 2, 2022

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE