

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANTHONY ROYAL,

Plaintiff,

v.

1:17-CV-1251
(GTS/CFH)

DAVID SHULKIN, Secretary of Veterans Affairs,

Defendant.

ANTHONY ROYAL,

Plaintiff,

v.

1:17-CV-1252
(GTS/CFH)

DAVID SHULKIN, Secretary of Veterans Affairs,

Defendant.

APPEARANCES:

ANTHONY ROYAL

Plaintiff, *Pro Se*

67 Broad Street

Albany, New York 12202

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in these consolidated *pro se* civil rights actions filed by Anthony Royal (“Plaintiff”) against the above-captioned Secretary of Veterans Affairs (“Defendant”) alleging workplace discrimination on the basis of race and disability under Title VII of the Civil Rights Act of 1964 (“Title VII”) and age discrimination under the Age Discrimination in Employment Act (“ADEA”), is United States Magistrate Christian F.

Hummel's Report-Recommendation recommending as follows: (1) that Plaintiff's Title VII race discrimination claim be permitted to proceed; (2) that Plaintiff's disability discrimination claim (which is characterized as having been brought pursuant to Title VII) be construed as if brought pursuant to the Section 501 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), and also be permitted to proceed; (3) that Plaintiff's age discrimination claim under the ADEA be dismissed without prejudice; and (4) that Plaintiff be permitted an opportunity to file Amended Complaint correcting the pleading deficiencies in his ADEA claim. (Dkt. No. 5.) Plaintiff has not filed an objection to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Hummel's thorough Report-Recommendation, the Court can find no clear error in the Report-Recommendation.¹ Magistrate Judge Hummel employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Hummel's Report-Recommendation (Dkt. No. 5) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; *see also Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

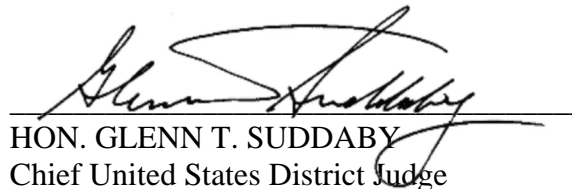
ORDERED that Plaintiff's claims under the ADEA are **DISMISSED** without prejudice, and that, within **THIRTY (30) DAYS** of the date of this Decision and Order, Plaintiff may submit an Amended Complaint which corrects the pleading deficiencies identified in the Report-Recommendation, and which supercedes and replaces the Complaints filed in these actions in all respects; and it is further

ORDERED that Plaintiff's Title VII race discrimination claim shall be permitted to proceed, and that Plaintiff's disability discrimination claim (which is characterized as having been brought pursuant to Title VII) shall be construed as if brought pursuant to the Rehabilitation Act, and shall also be permitted to proceed; and it is further

ORDERED that service of the complaint and summonses be held in abeyance until plaintiff either submits an amended complaint or, after thirty (30) days from the date of this Decision and Order expires; and it is further

ORDERED that if plaintiff files an amended complaint, the Clerk of the Court shall return this case to the Magistrate Judge for review of the sufficiency of the amended complaint and for service. All papers filed in the future should be made in the Lead case 1:17-cv-1251 only.

Dated: March 8, 2018
Syracuse, New York


HON. GLENN T. SUDDABY
Chief United States District Judge