

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:17-CV-174-D

VALERIE K. HESTER,

Plaintiff,

v.

STATE OF NORTH CAROLINA, OFFICE
OF DISABILITY ADJUDICATION AND
REVIEW, NANCY A. BERRYHILL,
Acting Commissioner of Social Security,
and JONATHAN BLAIR BISER,

Defendants.

ORDER

On May 1, 2017, Valerie K. Hester (“Hester”), appearing pro se, filed a motion to proceed in forma pauperis under 28 U.S.C. § 1915 [D.E. 3]. On May 3, 2017, the court referred the motion to Magistrate Judge Swank for frivolity review [D.E. 5]. On September 13, 2017, Magistrate Judge Swank issued a Memorandum and Recommendation (“M&R”) [D.E. 9] and recommended that Hester’s application to proceed in forma pauperis be granted and that the complaint be dismissed as frivolous. On September 29, 2017, Hester objected to the M&R [D.E. 11] and filed a motion to sue under the Federal Tort Claims Act (“FTCA”) [D.E. 12]. On October 6, 2017, Hester filed an addendum to her motion to sue under the FTCA [D.E. 13].

“The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the magistrate judge’s report or specified proposed findings or recommendations to which objection is made.” Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (emphasis, alteration, and quotation omitted); see 28 U.S.C. § 636(b). Absent a timely

objection, “a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond, 416 F.3d at 315 (quotation omitted).

The court has reviewed the M&R, the record, and Hester’s objections. As for those portions of the M&R to which Hester made no objection, the court is satisfied that there is no clear error on the face of the record. As for the objections, the court has reviewed the objections and the M&R de novo. Hester’s objections are baseless and are overruled. The court adopts the conclusions in the M&R.

The court construes Hester’s motion to sue under the FTCA and her addendum as a motion to amend her complaint to add an FTCA claim. The court denies the motion to amend as futile.

In sum, Hester’s application to proceed in forma pauperis [D.E. 3] is GRANTED, and Hester’s complaint is DISMISSED as frivolous. Hester’s motion for default judgment [D.E. 6], motions to expedite [D.E. 7, 8], and motion to sue under the FTCA [D.E. 12] are DENIED. The clerk shall close the case.

SO ORDERED. This 16 day of October 2017.



JAMES C. DEVER III
Chief United States District Judge