

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

WALTER BENN,

Plaintiff

v.

C-1-07-854

JAMES B. PEAKE, SECRETARY
DEPARTMENT OF VETERANS
AFFAIRS,¹ *et al.*,

Defendants

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no.23), plaintiffs' objections (doc. no. 25) and defendants' response (doc. no. 26). This matter is also before the Court upon the Report and Recommendation filed March 16, 2009 (doc. no. 27) to which there has been no objection.

In his Report and Recommendation dated September 2008 (doc. no. 23), the Magistrate Judge recommended that defendants' Motion to Dismiss should be granted as to plaintiff's retaliation or adverse employment actions claims raised in his previous lawsuit, plaintiff's claims against Earp, Hadden and the EEOC, and plaintiff's disability discrimination claims; and denied as to plaintiff's Age Discrimination Claims.

¹ James B. Peake was sworn into office as the Secretary of the Department of Veterans Affairs on December 20, 2007, and is substituted as the proper defendant in the case.

I.

This action was initiated on October 12, 2007 with the filing of a complaint by pro se plaintiff, Walter Benn against The Department of Veterans Affairs, EEOC Chair, Naomi Earp and EEOC Director of Federal Programs, Carlton Hadden alleging age discrimination. On August 23, 2007, the EEOC denied plaintiff's request for reconsideration of the Agency's final decision and provided notice of plaintiff's right to sue.

In a prior Complaint, Case No. C-1-05-380, plaintiff alleged he was subjected to retaliation and adverse employment actions by his employer, the VA, after he raised allegations of waste and fraud against other VA employees. He filed a complaint with the Merit System Protection Board relating to the fraud allegations and also asserted a claim for disability discrimination. The Magistrate Judge recommended plaintiff's retaliation claims and adverse employment claims be dismissed for failure to state a claim and the District Court adopted the Report and Recommendation.

Plaintiff's complaint in the present case attempts to raise the retaliation claims and adverse employment claims. These issues, having been previously adjudicated, are subject to the doctrine of issue preclusion.

II.

Plaintiff objects only to the Judge's Report and Recommendation dismissing the Complaint against Carlton Hadden and Naomi Earp.

The Report and Recommendation dated March 16, 2009 (doc. no. 27) recommends plaintiff's Motion for Summary Judgment be denied. No objections have been filed.

III.

CONCLUSION

Upon a *de novo* review of the record, especially in light of plaintiff's objections to the Report and Recommendation filed September 30, 2008 (doc. no. 23), the Court finds that plaintiff's objection has been adequately addressed and properly disposed of by the Judge and presents no particularized arguments that warrant specific responses by this Court. The Court finds that the Magistrate Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of this case and agrees with the Judge.

Accordingly, the Court hereby **ADOPTS AND INCORPORATES BY REFERENCE** **HEREIN** the Report and Recommendation of the United States Magistrate Judge (doc. no. 23). Defendants' Motion to Dismiss (doc. no. 13) is **GRANTED IN PART** as to plaintiff's retaliation and adverse employment claims raised in his previous lawsuit, plaintiff's claims against Earp, Hadden and the EEOC, and plaintiff's disability discrimination claims; and defendants' Motion is **DENIED** as to plaintiff's age discrimination claims against the VA.

As to the Report and Recommendation filed March 16, 2009 , plaintiff has filed no objections. Therefore, the Court hereby **ADOPTS AND INCORPORATES BY REFERENCE HEREIN** the Report and Recommendation (doc. no. 27) and plaintiff's Motion for Summary Judgment (doc. no. 20) is **DENIED**. This matter is **RECOMMITTED** to the United States Magistrate Judge for further proceedings according to law.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court