

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KRISTAN D. NELSON,

Plaintiff

v.

C-1-11-335

Clermont County Veterans' Service Commission

Defendants

ORDER

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 85). Pursuant to the record established at the hearings held on October 2, 2012 and February 26, 2013, there are no objections.

Upon a *de novo* review of the record, the Court finds that the Judge has accurately set forth the applicable law and has properly applied it to the particular facts of this case. Accordingly, in the absence of any objection by plaintiff, this Court accepts the Report as uncontroverted.

The Report and Recommendation of the United States Magistrate Judge (doc. no. 85) is hereby **ADOPTED AND INCORPORATED HEREIN BY REFERENCE**. Defendant's second Motion to Dismiss Portions of Plaintiff's First Amended Complaint for Failure to State a Claim (doc. no. 36) is **GRANTED in part**, to the extent that all of Count Five (state law retaliation) and portions of Counts Four and Six are **DISMISSED** from plaintiff's First Amended Complaint. Plaintiff's claim of FMLA retaliation and intentional infliction of emotional distress, based upon the same alleged retaliatory conduct under the FMLA, **IS NOT DISMISSED**, pending further development of the record; plaintiff's Motion for Leave to File a Second Amended Complaint (doc. no. 51) is **GRANTED in part**, to the extent that plaintiff is permitted to file a Second Amended Complaint , consistent with the Report and Recommendation, that does not re-assert claims against the Clermont County Board of Commissioners or renew plaintiff's ADA claim; defendant's Motion to Dismiss Plaintiff's Motion for Leave to File a Second Amended Complaint (doc. no. 58) is **GRANTED in part**, to the extent that plaintiff is not be permitted to re-assert claims previously dismissed exclusively on legal

grounds; and, except as specifically granted in part herein, the motions of both parties (doc. nos. 36, 51, and 58) are DENIED.

The Clerk of Courts is hereby DIRECTED to file plaintiff's Tendered Second Amended Complaint and Jury Demand (doc. no. 87). Defense shall file their Answer to the Second Amended Complaint within fourteen (14) days.

Counsel shall submit a proposed scheduling order within ten (10) days of this Order.

IT IS SO ORDERED.

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