IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Ali Al-Maqablh,	:	
	:	Case No. 1:11-cv-531
Plaintiff,	:	
v.	:	
University of Cincinnati College of Medicine, et al.,	:	
Defendants.	:	

O R D E R

This matter is before the Court on Defendant University of Cincinnati College of Medicine's motion for summary judgment (Doc. No. 65), Magistrate Judge Bowman's Report and Recommendation of November 5, 2013 (Doc. No. 79) recommending that the motion for summary judgment be granted, and Plaintiff Ali Al-Maqablh's motion to alter judgment and strike summary judgment from the record and to investigate the conduct of the counselors for the defendants (Doc. No. 87). For the reasons that follow, Plaintiff's motion to alter judgment, etc., is not well-taken and is **DENIED.** The Court **ADOPTS** the Report and Recommendation. Defendant's motion for summary judgment is well-taken and is **GRANTED.** The amended complaint is **DISMISSED WITH PREJUDICE.**

Plaintiff Ali Al-Maqablh, proceeding pro se, filed an amended complaint alleging that the University of Cincinnati College of Medicine discriminated against him on the basis of race and national origin in violation of Title VII of the Civil Rights Act of 1964 when it terminated him from the graduate research program.

On May 31, 2013, Defendant filed a motion for summary judgment (Doc. No. 65) on Plaintiff's claims. Defendant asserted three grounds in support of its motion: 1) as a graduate student, Plaintiff was not an "employee" for purposes of Title VII; 2) Plaintiff could not demonstrate a prima facie case of discrimination because he could not identify any similarly-situated, non-protected person who was treated more favorably than him; and 3) Defendant had a legitimate, non-discriminatory reason for terminating Plaintiff from the program that he could not rebut, namely his substandard academic performance and failure to obtain a faculty thesis advisor in a timely manner.

Plaintiff filed a memorandum in opposition to Defendant's motion for summary judgment (Doc. No. 75) on June 28, 2013.

According to Defendant's motion to file reply brief *instanter* (Doc. No. 77), counsel for Defendant received service of Plaintiff's memorandum in opposition on July 1, 2013. Applying S.D. Ohio Civ. R. 7.2(a)(2), counsel believed he had until July 15, 2013 to file a reply brief in support of the motion for summary judgment. Id. at 1. A prior order of the Court (Doc. No. 54), however, had established July 2, 2013 as the date for filing reply briefs. When counsel for Defendant subsequently realized that the date for filing a reply brief had passed by, he contacted Plaintiff to request his consent to an extension in which to file Defendant's reply brief. Plaintiff did not consent to an extension. Consequently, on July 15, 2013, Defendant filed a motion to file its reply brief *instanter* along with its proposed reply brief. Doc. No. 78. Defendant indicated in its motion to file its reply brief *instanter* that Plaintiff did not consent to the motion. Defendant's certificate of service on both pleadings indicates that the papers were served on Plaintiff by regular mail at his address of record. Plaintiff did not a file a

memorandum in opposition to Defendant's motion to file its reply brief *instanter*.

On November 5, 2013, Magistrate Judge Bowman filed a Report and Recommendation (Doc. No. 79) recommending the Defendant's motion for summary judgment be granted. Judge Bowman's report found that Plaintiff was not an employee of the Defendant, and therefore, was not protected by Title VII. In any event, Judge Bowman agreed with Defendant that Plaintiff failed to show that any non-protected persons were treated more favorably than Plaintiff and that he had failed to rebut Defendant's legitimate non-discriminatory reason for discharging him from the graduate research program. The case docket reflects that Judge Bowman's Report and Recommendation was mailed to Plaintiff at his address of record by certified mail. Doc. No. 79-1.

On November 20, 2013, Plaintiff requested a six month extension to file objections to the Report and Recommendation (Doc. No. 81) but the Court entered an order on November 25, 2013 (Doc. No. 83) extending the deadline for objections to January 27, 2014.

Although not captioned as such, on December 2, 2013, Judge Bowman entered an order (Doc. No. 85) granting *nunc pro tunc* Defendant's motion to file its reply brief *instanter*.

Also on December 2, 2013, the case docket indicates that the Postal Service returned Judge Bowman's Report and Recommendation as unclaimed by Plaintiff (Doc. No. 86).

On December 11, 2013, Plaintiff filed a motion to alter judgment, to strike Defendant's motion for summary judgment, and to investigate the conduct of

Defendant's trial counsel. In his motion, Plaintiff claims that Defendant never served him with its motion to file its reply brief *instanter*. Therefore, Plaintiff moves the Court to strike Defendant's motion for summary judgment and to reverse or withdraw Judge Bowman's report because it was based in part on Defendant's reply brief. Plaintiff also wants a three-judge panel to investigate defense counsel's conduct. Plaintiff contends that counsel has taken advantage of his pro se status by serving other papers and communicating with him electronically or by email on some matters but attempting service of Defendant's reply brief by ordinary mail.

The case docket then shows that the Court's order granting Plaintiff an extension to file objections to the Report and Recommendation was returned by the Postal Service unclaimed by Plaintiff. Doc. No. 90.

Plaintiff's motion to alter judgment and to withdraw the Report and Recommendation is not well-taken. Rule 5 of the Federal Rules of Civil Procedure provides, *inter alia,* that "[a] paper is served under this rule by . . . mailing it to the person's last known address—*in which event service is complete upon mailing*[.]" Fed. R. Civ. P. 5(b)(2)(C)(emphasis added). In this case, counsel certified that it mailed Defendant's motion to file its reply brief *instanter* to Plaintiff's address of record. Accordingly, under the rule, Defendant is deemed to have properly completed service of the motion on Plaintiff upon placing it in the mail. Therefore, Plaintiff's contention that Defendant did not serve him with the motion is without merit.

It is possible, of course, that Plaintiff may not have *received* Defendant's motion to file its reply brief out of time. Such an event in all probability would have been sufficient grounds to grant Plaintiff an extension of time in which to file objections to the

Report and Recommendation. In this case, however, the Court *did* grant Plaintiff a two-month extension to file objections to the Report and Recommendation. Moreover, Plaintiff was well-aware early into this two-month period that Defendant had filed a motion for an extension to file a reply brief and that he allegedly had not received a copy of the reply brief. Plaintiff, therefore, had a sufficient period of time in which to obtain a copy of these papers, either from the Court or from defense counsel, and then file his objections to the Report and Recommendation or to establish good cause for another extension. Plaintiff did neither, however, and in fact has not filed any objections based on the merits of the Report and Recommendation.

Additionally, the case docket reflects a number of occasions when important Court orders were mailed to Plaintiff at his address of record and returned by the Postal Service as being unclaimed. Doc. Nos. 38, 40, 86, 90. Plaintiff has an affirmative duty to monitor the Court's docket and to keep apprised of important docket entries. Yeschick v. Mineta, 675 F.3d 622, 629-30 (6th Cir. 2012); Baker v. Thomas, 86 Fed. Appx. 906, 908-09 (6th Cir. 2004). The Court finds that Plaintiff has not fulfilled his duty to keep apprised of the status of the case and that he has failed to prosecute this case by consistently refusing to claim important Court orders sent to his address of record.

Based on the entirety of the record, the Court finds that Plaintiff was served with Defendant's motion to file its reply brief *instanter* and the reply brief itself. The Court also finds that Plaintiff was served with Magistrate Judge Bowman's Report and Recommendation and that he failed to file proper objections to the Report and Recommendation within the time period allowed by the Court. The Court finds, therefore, that Plaintiff has waived objections to the Report and Recommendation.

Finally, having examined the entirety of the record, the Court finds that defense counsel have not committed any violations, ethical or otherwise, with regard to serving papers on Plaintiff.

Having reviewed the Report and Recommendation *de novo* pursuant to 28 U.S.C. § 636 and Fed. R. Civ. P. 72(b), the Court finds that the Magistrate Judge's Report and Recommendation is correct. Accordingly, the Court **ADOPTS** the Report and Recommendation. Defendant's motion for summary judgment is well-taken and is **GRANTED.** The amended complaint is **DISMISSED WITH PREJUDICE.** Plaintiff's motion to alter judgment, to withdraw the Report and Recommendation, and to investigate defense counsel is not well-taken and is **DENIED. THIS CASE IS CLOSED.**

IT IS SO ORDERED

Date May 19, 2014

s/Sandra S. Beckwith
Sandra S. Beckwith
Senior United States District Judge