

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

LESTER V. KERAN, JR.,

Plaintiff,

v.

Civil Action 2:21-cv-1943
Judge Edmund A. Sargus, Jr.
Magistrate Judge Chelsey M. Vascura

ANNETTE C. SMITH, DIRECTOR, *et al.*,

Defendants.

ORDER and REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff's Amended Complaint (ECF No. 11).

Plaintiff was granted leave to amend his Complaint to address the deficiencies identified in the undersigned's May 3, 2021 Report and Recommendation (ECF No. 4), which found that Plaintiff (1) failed to allege personal involvement by any of the named Defendants; but that even if Plaintiff had done so, he still (2) failed to state an Eighth Amendment claim based on Defendants' failure to provide sufficient training on various sheet metal shop machinery, because Plaintiff did not allege that he was required to work in the metal shop or otherwise forced to endure unsafe conditions; and (3) failed to state a Fourteenth Amendment claim based on the loss of his job in the sheet metal shop, because prisoners have no constitutionally right to prison employment or to a particular prison job. (R. & R. 6–10, ECF No. 4.)

Plaintiff's Amended Complaint addresses the first deficiency by making allegations of personal involvement by each of the named Defendants. (Am. Compl., *passim*, ECF No. 11.) However, the Amended Complaint still suffers from the second and third deficiencies.

Accordingly, in light of Plaintiff's Amended Complaint, the May 3, 2021 Report and Recommendation (ECF No. 4) is **VACATED**. However, for the reasons stated above and in the May 3, 2021 Report and Recommendation, the undersigned continues to **RECOMMEND** that the Court **DISMISS** this action pursuant to §§ 1915(e)(2) and 1915A(b)(1) for failure to state a claim on which relief may be granted.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A Judge of this Court shall make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District Judge review the Report and Recommendation *de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

IT IS SO ORDERED.

/s/ *Chelsey M. Vascura*
CHELSEY M. VASCURA
UNITED STATES MAGISTRATE JUDGE