

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

SEAN E. WOOD, :
 :
 Plaintiff : **CIVIL ACTION NO. 3:17-1390**
 :
 v. : **JUDGE MANNION**
 :
 THE SECRETARY OF THE ARMY, :
 :
 Defendant :

ORDER

Pending before the court is the report of Magistrate Judge Susan E. Schwab, which recommends that the plaintiff's motion for summary judgment, (Doc. 9), be denied and the defendant's motion to dismiss or, in the alternative, for summary judgment, (Doc. 16), be granted. (Doc. 42). The plaintiff has filed objections to the report. (Doc. 43). Based upon the court's review of the record, the plaintiff's objections will be overruled and Judge Schwab's report and recommendation adopted in its entirety.

When objections are timely filed to the report and recommendation of a magistrate judge, the district court must review *de novo* those portions of the report to which objections are made. 28 U.S.C. §636(b)(1); Brown v. Astrue, 649 F.3d 193, 195 (3d Cir. 2011). Although the standard is *de novo*, the extent of review is committed to the sound discretion of the district judge, and the court may rely on the recommendations of the magistrate judge to the extent it deems proper. Rieder v. Apfel, 115 F.Supp.2d 496, 499 (M.D.Pa.

2000) (citing United States v. Raddatz, 447 U.S. 667, 676 (1980)).

For those sections of the report and recommendation to which no objection is made, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

The plaintiff filed a complaint, and later an amended complaint, in which he alleges that he was subject to an illegal summary court martial while in the United States Army and was wrongfully discharged in violation of Army regulations. The plaintiff alleges that the defendant’s lack of investigation of his “claims since 1984 has allowed an officer in charge to get away with murder, perjury, and a hate crime.” The plaintiff seeks to have this court review the “illegal court actions and subsequent illegal discharge,” and to “remove all illegal court actions and discharge and grant [him] the proper relief in accordance with Army regulations.” In addition, the plaintiff seeks to have

this court review “the wrongful death of a soldier that is also still suffering from the lies told.”

To the extent the plaintiff is seeking an investigation into the death of the other soldier, Judge Schwab recommends that the plaintiff’s amended complaint be dismissed for lack of standing. The plaintiff does not object to this portion of Judge Schwab’s report. The court finds no clear error of record with respect to this recommendation and agrees with the sound reasoning which led Judge Schwab to her conclusion. Therefore, this portion of Judge Schwab’s report will be adopted.

With respect to the plaintiff’s other claims, Judge Schwab recommends that the plaintiff’s complaint be dismissed as barred by the applicable six-year statute of limitations set forth in 28 U.S.C. §2401(a). In his objections, the plaintiff argues that his action should not be considered time-barred based upon the continuing offense doctrine. The plaintiff, however, provides no factual support for his contention. The court has reviewed the report of Judge Schwab and agrees, based upon the facts of record, that the plaintiff’s action is time-barred. Therefore, the plaintiff’s objections will be overruled and the report of Judge Schwab adopted in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The plaintiff’s objections to the report and recommendation of Judge Schwab, (**Doc. 43**), are **OVERRULED**.

- (2) The report and recommendation of Judge Schwab, (**Doc. 42**), is **ADOPTED IN ITS ENTIRETY**.
- (3) The plaintiff's motion for summary judgment, (**Doc. 9**), is **DENIED**, and the defendant's motion to dismiss or, in the alternative, for summary judgment, (**Doc. 16**), is **GRANTED**.
- (4) The Clerk of Court is directed to **CLOSE THIS CASE**.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: July 18, 2018

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