

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Keith C. Mitchell,)
)
)
)
Plaintiff,)
)
)
-vs-) Civil Action No. 3:10-2458-MBS
)
)
)
)
United Parcel Service,)
)
)
Defendant.)

O R D E R

Plaintiff Keith Mitchell (“Mitchell”), proceeding pro se, filed this employment discrimination case on September 21, 2011 against his former employer Defendant United Parcel Service, Inc. (“UPS”) alleging he was discharged because of his race in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq. (ECF No. 1.) In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling.

UPS filed a motion to dismiss pursuant to Rule 37(b)(2)(A) of the Federal Rules of Civil Procedure due to Mitchell’s failure to comply with the court’s July 26, 2011 discovery order. (ECF No. 89.) That same day, an order was issued pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th

Cir. 1975), advising Mitchell of the dismissal procedures and the possible consequences of failing to respond adequately. (ECF No. 91.) Mitchell filed a response in opposition to UPS's motion on September 19, 2011 and UPS filed a reply on September 29, 2011. (ECF Nos. 98 and 99.)

On October 25, 2011, the Magistrate Judge issued a Report and Recommendation in which she recommended that the court grant UPS's motion to dismiss and that the case be dismissed with prejudice. (ECF No. 100.) The Magistrate Judge also recommended that UPS be awarded reasonable attorney's fees that it incurred in preparing and filing its motion to dismiss and its reply brief. Id. Mitchell has not filed objections to the Report and Recommendation.

The Magistrate makes only a recommendation to the court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the Report and Recommendation or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. 261, 270 (1976). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation and incorporates it herein except to the extent that it requires Mitchell to pay UPS's attorney's fees.¹ UPS's request for attorney's fees is denied. This action is DISMISSED with prejudice.

¹. The court believes dismissal is an appropriate sanction for Mitchell's failure to comply with the court's July 26, 2011 order directing Mitchell to fully respond to UPS's discovery requests.

IT IS SO ORDERED.

/s/Margaret B. Seymour
United States District Judge

Columbia, South Carolina
November 15, 2011.

NOTICE OF RIGHT TO APPEAL

**Plaintiff is hereby notified of the right to appeal this order
pursuant to Rules 3 and 4 of the Federal Rules of Appellant Procedure.**