

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Tammie Smith,)	Civil Action No.: 7:14-2058-BHH
)	
)	
Plaintiff,)	
)	
vs.)	
)	
)	<u>Opinion and Order</u>
Daimler Trucks NA, LLC, Freightliner)	
Custom Chassis Corp., and Daimler)	
Trucks NA Disability Benefits Plan,)	
)	
Defendants.)	
_____)	

This matter is before the Court on the Report and Recommendation (“Report”) (ECF No. 55) of United States Magistrate Judge Kevin F. McDonald recommending that Plaintiff’s motion for summary judgment (ECF No. 32) as to the Count VIII claim for violation of ERISA Section 502 be granted and Defendants’ partial motion for summary judgment (ECF No. 45) be granted as to Plaintiff’s ADA accommodation claim and denied as to all other claims.

In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 D.S.C., this Family and Medical Leave Act matter was referred to United States Magistrate Kevin F. McDonald, for consideration of pretrial matters. The magistrate judge prepared a thorough Report and Recommendation. (ECF No. 55.) Objections to the Report were due by February 8, 2016. Neither party has filed Objections.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S.

261 (1976). The Court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). 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 careful review of the record, the applicable law, and the Report of the Magistrate Judge, the Court finds no clear error. Accordingly, the Court **ACCEPTS** and incorporates the Report, (ECF No. 55), by reference into this Order. It is therefore **ORDERED** that Plaintiff’s motion for summary judgment (ECF No. 32) as to the Count VIII claim for violation of ERISA Section 502 be granted, Defendants’ partial motion for summary judgment (ECF No. 45) be granted as to Plaintiff’s ADA accommodation claim and denied as to all other claims.

IT IS SO ORDERED.

/s/Bruce Howe Hendricks
United States District Judge

February 25, 2016
Greenville, South Carolina