

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

James A. Butler,)
)
 Plaintiff,)
)
 v.)
)
 United States of America,)
)
 Defendant.)
 _____)

C.A. No.: 9:08-cv-02760-JMC

OPINION & ORDER

This matter is now before the court upon Plaintiff James A. Butler’s Motion to Alter or Amend Judgment in which Plaintiff requests that the court reconsider its granting of Defendant’s Motion for Summary Judgment. [Doc. # 131]. The Magistrate Judge’s Report and Recommendation sets forth in detail the relevant facts and legal standards on this matter, and the court incorporates the Magistrate Judge’s recommendation without a recitation. [Doc. # 121].

STANDARD OF REVIEW

The Magistrate Judge’s Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge’s recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

DISCUSSION

Plaintiff is a *pro se* federal prisoner pursuing this action under the Federal Tort Claims Act. Plaintiff alleges that in May 2005 during his transfer from another federal prison to F.C.I. Edgefield (“Edgefield”), he experienced rectal bleeding and diarrhea every hour. Upon his arrival at Edgefield on May 31, 2005, Plaintiff reported to sick call that he had blood in his stool, no appetite, and could not eat. Plaintiff alleges that lab work was done on June 3, 2005, and the results indicated no specialist was warranted. Allegedly, Plaintiff went on sick call at least six times after June 3, but received no care for his illness. Finally, Plaintiff alleges he was hospitalized in September 2005 and diagnosed with colitis, proctitis, and anemia. Plaintiff seeks monetary damages for Defendant’s negligent care.

In the Magistrate Judge’s Addendum to Report and Recommendation, the Magistrate Judge notes Plaintiff’s objections were received after the time given Plaintiff to file the objections had expired. [Doc. # 121-1, at 1]. After reviewing the record, the court has determined that Plaintiff did, in fact, timely file objections. Prior to receiving Plaintiff’s objections, the court granted Defendant’s Motion for Summary Judgment. Plaintiff then filed this Motion to Alter or Amend Judgment.

The court may only grant a Motion to Alter or Amend Judgment if there has been an intervening change in controlling law, new evidence has been discovered that was not available at trial, or to prevent obvious injustice or correct a clear error of law. *Braunstein v. Pickens*, 406 F. App’x 791, 798 (4th Cir. 2011) (citing *Pac. Ins. Co. v. Am. Nat’l. Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998)). Plaintiff fails to articulate any argument that would satisfy this standard.

Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party’s right to further judicial review, including appellate

review, if the recommendation is accepted by the district judge. *See United States v. Schronce*, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Magistrate Judge's Report and Recommendation, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Upon review, the court finds that Plaintiff's objections are non-specific, unrelated to the dispositive portions of the Magistrate Judge's Report and Recommendation, or merely restate his claims.

Accordingly, after a thorough review of the Magistrate Judge's Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation and incorporates it herein by reference.

It is therefore **ORDERED** that the Plaintiff's Motion to Alter or Amend Judgment is **DENIED**.

IT IS SO ORDERED.

s/ J. Michelle Childs
United States District Judge

June 6, 2011
Greenville, South Carolina