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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CURTIS HARDY §

VS. § CIVIL ACTION NO. 1:07-CV-615

DOUGLAS BYRD §

MEMORANDUM ORDER OVERRULING DEFENDANT'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Curtis Hardy, a federal prison, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to the Federal Tort Claims Act (FTCA) and *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), against Douglas Byrd.

The court ordered that this matter be referred to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends granting the defendant's motion to dismiss with respect to the FTCA claim. The magistrate judge also recommended denying the motion with respect to the constitutional claim.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Defendant filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). Defendant contends that plaintiff failed to state a claim upon which relief may be granted because he suffered de minimis injuries. Accepting

plaintiff's allegations as true, the court is unable to conclude that being unable to walk is a de minimis injury. Therefore, after careful consideration, the court concludes the objections are without merit.

ORDER

Accordingly, defendant's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. Defendant's motion to dismiss is **GRANTED** with respect to the FTCA claim. The motion is **DENIED** with respect to the constitutional claim. A partial judgment will be entered in accordance with the magistrate judge's recommendation.

SIGNED this the 21 day of July, 2009.

Thad Heartfield

United States District Judge