

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MICHAEL K. GOLDEN,

Plaintiff,

v.

Civil Action No. 5:09CV22
(STAMP)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Background

On February 18, 2009, the pro se¹ plaintiff brought the above-styled civil action. The defendant thereafter filed its answer to the complaint, as well as a copy of the Transcript of the Administrative Proceedings in this matter.

The case was referred to United States Magistrate Judge John S. Kaul for submission of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B). On January 26, 2010, the magistrate judge ordered the plaintiff to file a brief in support of his claims on or before February 26, 2010. In that order, the magistrate judge also advised the plaintiff that failure to file a brief within the time allotted would result in the entry of a report recommending dismissal of the plaintiff's complaint.

¹Pro se describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1341 (9th ed. 2009).

Following a review of the docket which indicated that the plaintiff had not filed a brief or motion in support of his claim as of March 25, 2010, the magistrate judge entered a report and recommendation recommending that the plaintiff's complaint be dismissed with prejudice for failure to prosecute and for failure to comply with the court's January 26, 2010 order. To date, no objections or other communications have been filed with this Court.

II. Applicable Law

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate and, under these circumstances, the parties' right to de novo review is waived. See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Because the plaintiff did not file objections, this Court reviews the report and recommendation of the magistrate judge for clear error.

III. Discussion

The magistrate judge found that the plaintiff did not file a brief or motion in support of his claim after having been ordered to do so. A review of the record indicates that the plaintiff has not filed any such motion or brief, nor has he filed a motion for extension of time in which to file the brief or otherwise

communicated with this Court to explain his reasons for noncompliance. This Court concludes that the magistrate judge's findings are not clearly erroneous, and, accordingly, finds that the plaintiff's complaint should be dismissed for failure to prosecute.

IV. Conclusion

For the reasons set forth above, this Court finds that the magistrate judge's recommendation is not clearly erroneous and hereby AFFIRMS and ADOPTS the report and recommendation of the magistrate judge in its entirety. Accordingly, the plaintiff's complaint is DISMISSED WITH PREJUDICE for failure to prosecute his claim. Further, it is ORDERED that this civil action be DISMISSED and STRICKEN from the active docket of this Court.

Moreover, this Court finds that the plaintiff was properly advised by the magistrate judge that failure to timely object to the report and recommendation in this action will result in a waiver of appellate rights. Thus, the plaintiff's failure to timely file objections to the magistrate judge's proposed findings and recommendation bars the plaintiff from appealing the judgment of this Court. See 18 U.S.C. § 636(b)(1); Wright v. Collins, 766 F.2d 841, 845 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this memorandum opinion and order to the pro se plaintiff by certified mail and to counsel of record herein.

DATED: April 23, 2010

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE