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

BECKLEY DIVISION

CHARLES EDWARD BAILEY,

Plaintiff,

v. CIVIL ACTION NO. 5:17-cv-04614

BECKLEY VA MEDICAL CENTER,

Defendant.

MEMORANDUM OPINION AND ORDER

On December 26, 2017, the Plaintiff, proceeding *pro se*, filed an *Application to Proceed Without Prepayment of Fees and Costs* (Document 1) and a Complaint (Document 2) in this matter. By *Standing Order* (Document 3) entered on that date, the action was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.

By *Order* (Document 4) dated December 27, 2017, the Plaintiff's *Application to Proceed Without Prepayment of Fees and Costs* (Document 1) was denied. On January 16, 2018, the Plaintiff filed a letter-form motion, cross-filed in both Civil Action Nos. 5:17-cv-04614 and 5:17-cv-04615, for reconsideration of his application to proceed without prepayment of fees and costs (Document 5 in 5:17-cv-04614). Based on the Court's rulings set forth hereinafter, it is **ORDERED** that the Plaintiff's motion for reconsideration of his application to proceed without

prepayment of fees and cost (Document 5) is **DENIED AS MOOT** as it relates to Civil Action No. 5:17-cv-04614.

On February 16, 2018, in Civil Action No 5:17-cv-04615, the Plaintiff filed a Response (Document 9 therein), advising that he wishes to withdraw Civil Action No. 5:17-cv-04614 and pursue only Civil Action No. 5:17-cv-04615. By *Order* (Document 10) dated March 15, 2018, the Court directed the Clerk to file that Response in Civil Action No. 5:17-cv-04614 as a letter-form motion to dismiss action. The same was filed in Civil Action No. 5:17-cv-04614 on that date (Document 11).

On February 20, 2018, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 9) wherein it is recommended that the Plaintiff's letter-form motion to dismiss action be granted, that the Plaintiff's Complaint be dismissed without prejudice, and that this action be removed from the Court's docket. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by March 9, 2018, and none were filed.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Plaintiff's letter-form motion to dismiss action

(Document 11) be **GRANTED**, that the Plaintiff's Complaint (Document 2) be **DISMISSED WITHOUT PREJUDICE**, and that this action be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Aboulhosn, counsel of record, and any unrepresented party.

ENTER: March 15, 2018

IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA