

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ATTWOOD MICHAEL PALLASH,)	
Plaintiff,)	Civil Action No. 17-289ERIE
)	
v.)	
)	
DEPARTMENT OF VETERANS AFFAIRS, et al,)	Chief Judge Conti
Defendants.)	Magistrate Judge Baxter
)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is recommended that this action be dismissed due to Plaintiff’s failure to prosecute.

II. REPORT

This civil action was filed in this Court on October 30, 2017. By Order dated January 3, 2018, this Court directed that Plaintiff file an amended complaint before January 16, 2018. The Order explained that Plaintiff’s original complaint was illegible and that once a legible complaint was received, this Court would order service by the U.S. Marshal Service. ECF No. 4.

On January 23, 2018, this Court issued a show cause order directing Plaintiff to show cause, by February 2, 2018, for his failure to file a legible amended complaint. ECF No. 6.

As of today’s date, Plaintiff has failed to file an amended complaint and he has failed to respond to the show cause order.

The Third Circuit has set out a six-factor balancing test to guide a court in determining whether dismissal of a case is appropriate. Poulis v. State Farm Fire & Casualty Co., 747 F.2d 863 (3d Cir. 1984). The court must consider: 1) the extent of the party’s personal responsibility;

2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; 3) a history of dilatoriness; 4) whether the conduct of the party or attorney was willful or in bad faith; 5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and 6) the meritoriousness of the claim or defense. Id. at 868. Not all of the six factors need to weigh in favor of dismissal before dismissal is warranted. Hicks v. Feeney, 850 F.2d 152 (3d Cir. 1988).

Applying the Poulis factors to the present matter, this Court recommends the dismissal of this matter. Since the filing of this matter, Plaintiff has taken none of the necessary first steps to prosecute this case. This case is months old, yet Plaintiff has not taken the initial steps to file a legible complaint. Without a legible complaint, this case cannot proceed. Plaintiff is proceeding *pro se* and therefore bears all of the responsibility for any failure in the prosecution of his claims. Alternative sanctions, such as monetary penalties, are inappropriate with indigent parties. Although it is possible that Plaintiff's allegations could state a claim, the merits of the claim are impossible to determine at this early stage of the proceedings. Accordingly, this action should be dismissed due to Plaintiff's failure to prosecute.

III. CONCLUSION

It is respectfully recommended that the instant action due to Plaintiff's failure to prosecute.

In accordance with 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72, the parties must seek review by the district court by filing Objections to the Report and Recommendation within fourteen days. Any party opposing the objections shall have fourteen days to respond thereto. See Fed.R.Civ.P. 72(b)(2). Failure to file timely objections may constitute a waiver of appellate

rights. See Brightwell v. Lehman, 637 F.3d 187, 194 n.7 (3d Cir. 2011); Nara v. Frank, 488 F.3d 187 (3d Cir. 2007).

/s/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States Magistrate Judge

Dated: February 14, 2018