

FILED: February 19, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1717
(1:17-cv-01365-LMB-TCB)

DAVID GREEN, JR.

Plaintiff - Appellant

v.

MATTHEW G. WHITAKER, Acting Attorney General of the United States of America, Department of Justice; KATHERINE H. REILLY, Acting Deputy Director, Executive Office for Immigration Review; TERRYNE MURPHY, CIO, Executive Office for Immigration Review; ANA KOCUR, Deputy Director, Executive Office for Immigration Review

Defendants - Appellees

O R D E R

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Motz, Judge Agee, and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk

UNPUBLISHED

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Plaintiff - Appellant,

v.

MATTHEW G. WHITAKER, Acting Attorney General of the United States of America, Department of Justice; KATHERINE H. REILLY, Acting Deputy Director, Executive Office for Immigration Review; TERRYNE MURPHY, CIO, Executive Office for Immigration Review; ANA KOCUR, Deputy Director, Executive Office for Immigration Review,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:17-cv-01365-LMB-TCB)

Submitted: November 29, 2018

Decided: December 6, 2018

Before MOTZ and AGEE, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

David Green, Jr., Appellant Pro Se. Catherine M. Yang, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David Green, Jr., appeals the magistrate judge's order denying his motion for appointment of counsel and the district court's order granting Appellees' motion to dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. We have reviewed the record and find no reversible error. Because the parties did not consent to proceed before a magistrate judge and Green did not challenge the magistrate judge's order by objecting in the district court, the denial of his motion to appoint counsel is not subject to our appellate review. *See* 28 U.S.C. § 636(b), (c) (2012); *Colorado Bldg. & Constr. Trades Council v. B.B. Andersen Constr. Co.*, 879 F.2d 809, 811 (10th Cir. 1989); *Gleason v. Sec'y of Health & Human Servs.*, 777 F.2d 1324, 1324 (8th Cir. 1985). To the extent that Green seeks review of the Merit Systems Protection Board's decision sustaining his termination, we conclude that the decision should stand. *See Hooven-Lewis v. Caldera*, 249 F.3d 259, 266 (4th Cir. 2001) (providing standard of review). For the remainder of Green's claims, we affirm for the reasons stated by the district court. *Green v. Whitaker*, No. 1:17-cv-01365-LMB-TCB (E.D. Va. May 1, 2018). We also deny Green's motion for appointment of counsel on appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED