

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 20-1078

RANDY WILLIAMS,

Plaintiff - Appellant,

v.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION; T. SCOTT
BECK; GENE MCCASKILL; AISHA TAYLOR,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Florence.
Mary G. Lewis, District Judge. (4:19-cv-01340-MGL)

Submitted: May 19, 2020

Decided: May 21, 2020

Before NIEMEYER, HARRIS, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Randy Williams, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Randy Williams appeals the district court's order dismissing without prejudice his civil complaint challenging the administration of his workers' compensation benefits. The district court referred his case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2018). The magistrate judge recommended dismissing the complaint without prejudice for lack of subject matter jurisdiction and advised Williams that failure to file timely, specific objections to this recommendation could waive appellate review of a district court order based upon these recommendations.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. *Martin v. Duffy*, 858 F.3d 239, 245 (4th Cir. 2017); *Wright v. Collins*, 766 F.2d 841, 846-47 (4th Cir. 1985); *see also Thomas v. Arn*, 474 U.S. 140, 154-55 (1985). Although Williams received proper notice and filed timely objections to the magistrate judge's recommendation, he has waived appellate review because the district court determined that his objections were not specific to the particularized legal recommendations made by the magistrate judge. *See Martin*, 858 F.3d at 245 (holding that, "to preserve for appeal an issue in a magistrate judge's report, a party must object to the finding or recommendation on that issue with sufficient specificity so as reasonably to alert the district court of the true ground for the objection" (internal quotation marks omitted)). Accordingly, we affirm the judgment of the district court.

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



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

RANDY WILLIAMS,
Plaintiff,

vs.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION, T.
SCOTT BECK, GENE McCASKILL, and
AISHA TAYLOR,
Defendants.

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Civil Action No. 4:19-01340-MGL

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
AND DISMISSING PLAINTIFF'S COMPLAINT**

Plaintiff Randy Williams (Williams), proceeding pro se, filed this action seeking damages against Defendants South Carolina Workers' Compensation Commission (SCWCC), T. Scott Beck, Gene McCaskill, and Aisha Taylor (collectively, Defendants) for state tort claims. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting Williams's complaint be summarily dismissed without prejudice and without issuance and service of process for lack of subject matter jurisdiction. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo*

determination of those portions of the Report to which a specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). The Court need not conduct a de novo review, however, “when a party makes general and conclusory objections that do not direct the court to a specific error in the [Magistrate Judge’s] proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982); *see* Fed. R. Civ. P. 72(b).

The Magistrate Judge filed the Report on May 15, 2019. Williams filed his first set of Objections to the Report (Objections) on May 23, 2019. Williams filed supplements to his Objections twenty times between May 28, 2019, and December 17, 2019 (Supplements). The Court has reviewed the objections but holds them to be without merit. It will therefore enter judgment accordingly.

The Magistrate Judge’s recommendation focused exclusively on the lack of a federal cause of action alleged in the complaint, undermining Williams’s assertion of federal question jurisdiction. Most of Williams’s objections restate the substance of his allegations against Defendants, without addressing the jurisdictional issues identified by the Magistrate Judge. Some of these objections are directed at arguments not appearing in the Report at all. These allegations are quintessential “general objections,” thus, fail to require de novo review. *Id.* The Court finds no clear error on the face of the record.

Through the Objections and Supplements, Williams claims Title VII of the Civil Rights Act, the Judicial Misconduct and Disabilities Act of 1980, the False Claims Act, the Fourth Amendment, and 42 U.S.C. §§ 1983 and 1985 are all applicable to his case. Within the Supplements, Williams also makes vague allegations of violations of his constitutional and civil rights. The complaint, however, fails to identify any of these federal statutes as the basis for the

suit, claiming violations of state medical malpractice laws, with references to a failure by the SCWCC to properly enforce South Carolina's worker compensation laws. Complaint at 13; Twelfth Set of Supporting Documents to Complaint at 1.

"[F]ederal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Here, the complaint states only state-law claims; no federal causes of actions are presented. Williams has made no effort to amend his complaint to conform with the potential federal causes of action identified in his Objections and Supplements. The face of Williams's complaint precludes this Court from exercising federal question jurisdiction over the action and the Court will therefore overrule Williams's objections.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Williams's objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of the Court Williams's complaint is **DISMISSED WITHOUT PREJUDICE** and without issuance or service of process for lack of subject matter jurisdiction. Further, because of the dismissal, Williams's motion for spoliation of evidences is **DEEMED MOOT**.

IT IS SO ORDERED.

Signed this 13th day of January 2020 in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Randy Williams,)	C/A No.: 4:19-1340 MGL-KDW
)	
Plaintiff,)	
)	
v.)	
)	REPORT AND RECOMMENDATION
South Carolina Workers Compensation)	
Commission; T. Scott Beck; Gene)	
McCaskill, and Aisha Taylor,)	
)	
Defendants.)	
)	

Randy Williams (“Plaintiff”), proceeding pro se, filed a Complaint against South Carolina Workers Compensation Commission and Commissioners T. Scott Beck, Gene McCaskill, and Aisha Taylor alleging Defendants failed to properly enforce or administer the terms of his 2008 worker’s compensation award and benefits. ECF No. 1. Plaintiff seeks monetary damages. *Id.* Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(e) (D.S.C.), the undersigned is authorized to review such complaints for relief and submit findings and recommendations to the district judge. For the reasons that follow, the undersigned recommends that the district judge dismiss the Complaint without prejudice and without issuance of service of process.

I. Discussion

A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of the pro se complaint. Pro se complaints are held to a less stringent standard than those drafted by attorneys, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), and a federal district court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case, *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). In evaluating a pro se

complaint, the plaintiff's allegations are assumed to be true. *Erickson*, 551 U.S. at 94 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007)).

Nonetheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts that set forth a claim cognizable in a federal district court. *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 684 (2009) (outlining pleading requirements under Fed. R. Civ. P. 8 for “all civil actions”). The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so; however, a district court may not rewrite a complaint to include claims that were never presented, *Barnett v. Hargett*, 174 F.3d 1128 (10th Cir. 1999), construct the plaintiff's legal arguments for him, *Small v. Endicott*, 998 F.2d 411 (7th Cir. 1993), or “conjure up questions never squarely presented” to the court, *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).

B. Analysis

Federal courts are courts of limited jurisdiction, “constrained to exercise only the authority conferred by Article III of the Constitution and affirmatively granted by federal statute.” *In re Bulldog Trucking, Inc.*, 147 F.3d 347, 352 (4th Cir. 1998). Accordingly, a federal court is required, *sua sponte*, to determine whether a valid basis for its jurisdiction exists “and to dismiss the action if no such ground appears.” *Id.* at 352; *see also* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”). Although the absence of subject matter jurisdiction may be raised at any time during the case, determining jurisdiction at the outset of the litigation is the most efficient procedure. *Lovern v. Edwards*, 190 F.3d 648, 654 (4th Cir. 1999).

There is no presumption that a federal court has jurisdiction over a case, *Pinkley, Inc. v. City of Frederick, Maryland*, 191 F.3d 394, 399 (4th Cir. 1999), and a plaintiff must allege facts

essential to show jurisdiction in his pleadings, *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936). *See also Dracos v. Hellenic Lines, Ltd.*, 762 F.2d 348, 350 (4th Cir. 1985) (“[P]laintiffs must affirmatively plead the jurisdiction of the federal court.”). To this end, Federal Rule of Civil Procedure 8(a)(1) requires that the complaint provide “a short and plain statement of the grounds for the court’s jurisdiction[.]” When a complaint fails to include “an affirmative pleading of a jurisdictional basis[,] a federal court may find that it has jurisdiction if the facts supporting jurisdiction have been clearly pleaded.” *Pinkley*, 191 F.3d at 399 (citations omitted). However, if the court, viewing the allegations in the light most favorable to a plaintiff, finds insufficient allegations in the pleadings, the court will lack subject matter jurisdiction. *Id.*

Here, Plaintiff contends the court has subject matter jurisdiction over his claims pursuant to federal question jurisdiction, 28 U.S.C. § 1331. ECF No. 1 at 3. Section 1331 of Title 28, United States Code, provides that “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” “[A] claim of federal question jurisdiction is to be resolved on the basis of the allegations of the complaint itself.” *Burgess v. Charlottesville Sav. and Loan Ass’n*, 477 F.2d 40, 43 (4th Cir. 1973). Therefore, a complaint must “contain allegations ‘affirmatively and distinctly’ establishing federal grounds ‘not in mere form, but in substance’ and ‘not in mere assertion, but in essence and effect.’” *Id.* (citing *Cuyahoga Co. v. Northern Ohio Co.*, 252 U.S. 388, 397 (1920)). “[T]he mere assertion in a pleading that the case is one involving the construction or application of the federal laws does not authorize the District Court to entertain the suit.” *Malone v. Gardner*, 62 F.2d 15, 18 (4th Cir. 1932).

The undersigned finds Plaintiff’s Complaint fails to establish any viable ground for federal subject matter jurisdiction under 28 U.S.C. § 1331. Although Plaintiff alleges the court has federal question jurisdiction pursuant to 28 U.S.C. § 1251, *see* ECF No. 1 at 3, this statute is not relevant to this matter as it establishes the types of cases over which the United States Supreme Court has

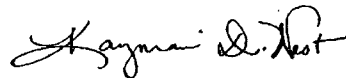
original jurisdiction. Additionally, Plaintiff's Complaint does not allege Defendants violated any federal statute or constitutional provision, nor is any type of federal question jurisdiction otherwise evident from the face of the complaint. Instead Plaintiff's Complaint references state law causes of action, including negligence and other intentional tort claims. However, § 1331 does not independently provide this court with subject matter jurisdiction over these state law claims. Because Plaintiff has not shown that the court has federal question jurisdiction over his claims, his Complaint is subject to summary dismissal.¹

II. Conclusion and Recommendation

The undersigned recommends that the court dismiss the Complaint without prejudice and without issuance of service of process.

IT IS SO RECOMMENDED.

May 15, 2019
Florence, South Carolina



Kaymani D. West
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**

¹ Plaintiff's Complaint also fails to demonstrate sufficient facts to satisfy the requirements of 28 U.S.C. § 1332 for diversity jurisdiction, as he and Defendants are South Carolina citizens. ECF No. 1.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. [I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

**Robin L. Blume, Clerk
United States District Court
Post Office Box 2317
Florence, South Carolina 29503**

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

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(4:19-cv-01340-MGL)

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Plaintiff - Appellant

v.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION; T.
SCOTT BECK; GENE MCCASKILL; AISHA TAYLOR

Defendants - Appellees

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge Harris, and Judge Richardson.

For the Court

/s/ Patricia S. Connor, Clerk