

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NOV 30 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CASSANDRA BONITA CHARLES,

Plaintiff-Appellant,

v.

U.S. OFFICE OF PERSONNEL
MANAGEMENT; et al.,

Defendants-Appellees.

No. 21-15222

D.C. No.
2:19-cv-02555-KJM-AC
Eastern District of California,
Sacramento

ORDER

Before: HAWKINS, WATFORD, and LEE, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 24) is denied. *See*
9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

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ORDER

Before: HAWKINS, WATFORD, and LEE, Circuit Judges.

On May 20, 2021, the court dismissed this appeal for failure to prosecute because appellant had not responded to the April 9, 2021 order to show cause. *See* 9th Cir. R. 42-1. Appellant has now responded to the order to show cause.

The motion to reinstate this appeal is granted (Docket Entry No. 17). The May 20, 2021 order is vacated, and the appeal is reinstated.

A review of the record and appellant's response to this court's April 9, 2021 order to show cause demonstrates that this court lacks jurisdiction over this appeal because the February 5, 2021 notice of appeal was not filed within 60 days after the district court's judgment entered on November 6, 2020. *See* 28 U.S.C. § 2107(b); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional); *see also Bowles v. Russell*, 551 U.S. 205

(2007) (court lacks authority to create equitable exceptions to jurisdictional requirement of timely notice of appeal). Consequently, this appeal is dismissed for lack of jurisdiction.

All other pending motions are denied as moot.

DISMISSED.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CASSANDRA B. CHARLES,

No. 2:19-cv-2555 KJM AC (PS)

Plaintiff,

ORDER

v.
U.S. OFFICE OF PERSONNEL
MANAGEMENT, et al,

Defendants.

Plaintiff, proceeding pro se, filed the above-entitled action. The matter was referred to a United States Magistrate Judge as provided by Local Rule 302(c)(21).

On April 27, 2020, the magistrate judge filed amended findings and recommendations, which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within twenty-one days. ECF No. 13. Plaintiff has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis.

The court writes briefly here to address plaintiff's objections. First, contrary to Ms. Charles's argument, the provisions of 28 U.S.C. § 1915(a) apply to any "person" who is "unable

1 to pay such fees or give security," not just incarcerated persons. Second, the Magistrate Judge
2 correctly described the standard that applies to the screening process under § 1915(e) and
3 correctly determined that the second amended complaint does not state a claim of age
4 discrimination; it pleads neither that Ms. Charles was qualified for each position nor that similarly
5 qualified younger applicants were hired in her place. *See, e.g., Cotton v. City of Alameda*, 812
6 F.2d 1245, 1248 (9th Cir. 1987). Third, the Magistrate Judge correctly determined that the Civil
7 Rights Act of 1964 does not protect older workers as a class. *See, e.g., Smith*, 544 U.S. at 232.
8 Finally, as explained in the findings and recommendations, plaintiff's ADA claims could not
9 succeed even if they were properly exhausted. *See* F&Rs at 5–6, ECF No. 13.

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. The amended findings and recommendations filed April 27, 2020, are adopted in full;
12 and
13 2. Plaintiff's second amended complaint (ECF No. 10) is DISMISSED with prejudice and
14 this case is CLOSED.

15 DATED: November 5, 2020.

16 
17 CHIEF UNITED STATES DISTRICT JUDGE
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**Additional material
from this filing is
available in the
Clerk's Office.**