

APPENDIX A: Fourth Circuit's *per curiam* Opinion, March 20, 2023

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1775

AUBREY J. EL,

Plaintiff - Appellant,

v.

UNITED STATES DEPARTMENT OF COMMERCE, Gina Raimondo, Secretary,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Robert G. Doumar, Senior District Judge. (2:18-cv-00190-RGD-DEM)

Submitted: March 16, 2023

Decided: March 20, 2023

Before WILKINSON, AGEE, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Aubrey J. El, Appellant Pro Se. Joel Eric Wilson, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Aubrey J. El appeals the district court's orders denying relief in his employment discrimination action and denying his motion for reconsideration. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *El v. United States Dep't of Com.*, No. 2:18-cv-00190-RGD-DEM (E.D. Va. Nov. 7, 2019; Feb. 8, 2022; June 27, 2022). 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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

AUBREY J. EL,

Plaintiff,

v.

ACTION NO. 2:18cv190

**THE UNITED STATES
DEPARTMENT OF COMMERCE,
*Gina Raimondo, Secretary,***

Defendant.

FINAL ORDER

This matter is before the Court in this closed case on the following motions filed by pro se

Plaintiff:

- (i) Plaintiff's "Motion for Reconsideration Pursuant to Rule 59(e) and Statement of Objections to this Court's Order of Dismissal Entered on February 8, 2022" ("First Motion for Reconsideration"), ECF No. 124;
- (ii) Plaintiff's "Motion to Compel Discovery" ("Motion to Compel"), ECF No. 125;
- (iii) Plaintiff's "Motion to Amend Plaintiff's Motion for Reconsideration Pursuant to Rule 59(e) and Statement of Objections to this Court's Order of Dismissal (ECF No. 122) Entered on February 8, 2022" (ECF No. 124)" ("Motion to Amend"), ECF No. 131;
- (iv) Plaintiff's "Motion for Reconsideration Pursuant to Rule 59(e) and Statement of Objections to this Court's Order of Dismissal Entered on February 8, 2022" ("Amended Motion for Reconsideration"), ECF No. 132;
- (v) Plaintiff's "Motion to Extend Time for Filing Plaintiff's Replies to Defendant's Oppositions" ("Motion for Extension"), ECF No. 137; and
- (vi) Plaintiff's "Motion to Strike Defendant USDOC's Motion for Summary Judgment and Declaration of Ms. Sharon Wilgus" ("Motion to Strike"), ECF No. 141.

For the reasons set forth below, Plaintiff's Motion for Extension, ECF No. 137, is **DENIED** as unnecessary; Plaintiff's Motion to Amend, ECF No. 131, is **GRANTED**; Plaintiff's First Motion for Reconsideration, ECF No. 124, is **DISMISSED** as moot; Plaintiff's Amended Motion for Reconsideration, ECF No. 132, is **DENIED**; Plaintiff's Motion to Compel, ECF No. 125, is **DENIED**; and Plaintiff's Motion to Strike, ECF No. 141, is **DENIED**.

I. Relevant Background

Plaintiff was previously employed by Defendant as a General Vessel Assistant for the National Oceanic and Atmospheric Administration. Am. Compl. at 11, 25, ECF No. 33. Plaintiff filed an Amended Complaint that asserted ten employment discrimination and retaliation-related claims against Defendant pursuant to Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act. *Id.* at 23–46.

On November 7, 2019, the Court entered an Order granting Defendant's Motion to Dismiss as to all of the claims asserted in Plaintiff's Amended Complaint except Count VIII. Order at 1–26, ECF No. 43. In Count VIII, Plaintiff alleged that Defendant retaliated against him for filing an Equal Employment Opportunity complaint by refusing to reinstate Plaintiff's employment after his termination. Am. Compl. at 41–43.

On February 8, 2022, the Court entered a Dismissal Order that, inter alia, granted Defendant's Motion for Summary Judgment as to Count VIII and dismissed this case in its entirety. Dismissal Order, ECF No. 122. Thereafter, Plaintiff filed the six motions referenced above, which are addressed in turn below.

II. Plaintiff's Motion for Extension

On May 18, 2022, Plaintiff filed a Motion to Amend and an Amended Motion for Reconsideration. Mot. Amend, ECF No. 131; Am. Mot. Recons., ECF No. 132. Defendant timely opposed both motions. Opp'n Mot. Amend, ECF No. 135; Opp'n Am. Mot. Recons., ECF

No. 136. Pursuant to Rule 7(F)(1) of the Local Civil Rules for the United States District Court for the Eastern District of Virginia, Plaintiff had until June 7, 2022 to file any intended Replies. See E.D. Va. Loc. Civ. R. 7(F)(1).

On June 7, 2022, Plaintiff filed timely Replies, as well as a Motion for Extension, in which Plaintiff asks the Court to extend his reply deadline to June 8, 2022. See Reply Mot. Amend, ECF No. 138; Reply Am. Mot. Recons., ECF No. 139; Mot. Extension at 1, ECF No. 137. Because Plaintiff's Motion for Extension, ECF No. 137, is unnecessary, it is hereby **DENIED**.

III. Plaintiff's First Motion for Reconsideration and Motion to Amend

Plaintiff filed his First Motion for Reconsideration on March 8, 2022. First Mot. Recons., ECF No. 124. On May 18, 2022, Plaintiff filed a Motion to Amend, in which he seeks to file an Amended Motion for Reconsideration that (i) corrects certain typographical, grammatical, and drafting errors in his First Motion for Reconsideration; (ii) "add[s] citations to case law"; (iii) "expand[s] arguments that were made in the original" filing; and (iv) includes "additional exhibits." Mot. Amend at 1-2, ECF No. 131. Plaintiff filed an Amended Motion for Reconsideration, ECF No. 132, which Plaintiff intends to serve as the operative reconsideration motion. See Am. Mot. Recons., ECF No. 132.

In deference to Plaintiff's pro se status, the Court will authorize Plaintiff's requested amendment. Accordingly, Plaintiff's Motion to Amend, ECF No. 131, is **GRANTED**. Plaintiff's Amended Motion for Reconsideration, which the parties have already fully briefed, will supersede Plaintiff's First Motion for Reconsideration and will serve as the operative reconsideration motion in this matter. As a result, Plaintiff's First Motion for Reconsideration, ECF No. 124, is **DISMISSED** as moot.

IV. Plaintiff's Amended Motion for Reconsideration

Plaintiff brings his Amended Motion for Reconsideration pursuant to Federal Rule 59(e). Am. Mot. Recons. at 1–31, ECF No. 132. Federal Rule 59(e) authorizes a party to file a “motion to alter or amend a judgment . . . no later than 28 days after the entry of the judgment.” Fed. R. Civ. P. 59(e). As the United States Court of Appeals for the Fourth Circuit has explained:

While the Rule itself provides no standard for when a district court may grant such a motion, courts interpreting Rule 59(e) have recognized three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.

Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). “[R]econsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” Pacific Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). Rule 59(e) “may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.” Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n.5 (2008). Further, “[m]ere disagreement” with a court’s decision “does not support a Rule 59(e) motion.” United States ex rel. Becker v. Westinghouse Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (quoting Hutchinson, 994 F.2d at 1082).

In his Amended Motion for Reconsideration, Plaintiff argues that the Court’s February 8, 2022 Dismissal Order contains “clear errors of law and fact.” Am. Mot. Recons. at 2, 4. To support his position, Plaintiff argues, among other things, that the Court failed to conduct a proper summary judgment analysis, improperly accepted “Defendant’s misrepresentations,” failed to properly “examine the record,” ignored relevant disputes, made “arbitrary findings of fact,” failed to “fully explain its reasoning,” and “misrepresent[ed] the evidence.” Id. at 2–29. Additionally, Plaintiff argues that the Court improperly resolved several other motions throughout the course of this litigation. Id. at 2, 4–5, 8–9 (arguing that the Court improperly

granted Defendant's Rule 12(b)(6) motion as to nine of Plaintiff's ten initial claims, and thereafter wrongly denied Plaintiff's motion to reinstate the nine dismissed claims, as well as Plaintiff's requests to amend his Amended Complaint and to extend discovery).

Upon review, the Court finds that Plaintiff's Amended Motion for Reconsideration lacks merit. Specifically, the Court finds that the factual assertions and arguments set forth therein fail to establish that there is a need "to accommodate an intervening change in controlling law," "to account for new evidence not available at trial," or "to correct a clear error of law or prevent manifest injustice." Hutchinson, 994 F.2d at 1081. Although it is clear that Plaintiff disagrees with the Court's findings in its February 8, 2022 Dismissal Order, "[m]ere disagreement does not support a Rule 59(e) motion." United States ex rel. Becker, 305 F.3d at 290 (quoting Hutchinson, 994 F.2d at 1082). Further, it is clear that Plaintiff, through his Amended Motion for Reconsideration, seeks to relitigate issues that were previously presented to the Court. Rule 59(e) may not be used for such purposes. Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n.5 (2008). Accordingly, Plaintiff's Amended Motion for Reconsideration, ECF No. 132, is **DENIED**.

V. Plaintiff's Motion to Compel and Motion to Strike

One month after the Court entered its Dismissal Order in this action, Plaintiff filed a Motion to Compel, in which he asks the Court to require Defendant to produce certain documents and to respond to certain discovery requests. Mot. Compel at 1, ECF No. 125. Additionally, Plaintiff filed a Motion to Strike on June 13, 2022, in which he asks the Court to strike Defendant's Motion for Summary Judgment, which was granted by the Court in its February 8, 2022 Dismissal Order. Mot. Strike at 1-7, ECF No. 141.

As summarized above, the Court herein denies Plaintiff's Amended Motion for Reconsideration. See supra Part IV. Thus, this remains a closed case. The Court finds that

Plaintiff's request for discovery in this closed case is unwarranted. The Court further finds that Plaintiff's request to strike a previously-granted motion in this closed case is likewise unwarranted. Accordingly, Plaintiff's Motion to Compel, ECF No. 125, and Motion to Strike, ECF No. 141, are **DENIED**.

VI. Conclusion

For the reasons set forth above, Plaintiff's Motion for Extension, ECF No. 137, is **DENIED** as unnecessary; Plaintiff's Motion to Amend, ECF No. 131, is **GRANTED**; Plaintiff's First Motion for Reconsideration, ECF No. 124, is **DISMISSED** as moot; Plaintiff's Amended Motion for Reconsideration, ECF No. 132, is **DENIED**; Plaintiff's Motion to Compel, ECF No. 125, is **DENIED**; and Plaintiff's Motion to Strike, ECF No. 141, is **DENIED**.

Plaintiff is ADVISED that this is a closed case. Any further filings by Plaintiff in this closed case, other than a notice of appeal, shall be docketed by the Clerk as a submission only, without any further Order of the Court.

Plaintiff may appeal this Final Order by forwarding a written notice of appeal to the Clerk of the United States District Court, Norfolk Division, 600 Granby Street, Norfolk, Virginia 23510. The written notice must be received by the Clerk within sixty days from the date of entry of this Final Order.

The Clerk is **DIRECTED** to docket this Final Order in the Court's electronic filing system.¹

IT IS SO ORDERED.

/s/

Norfolk, Virginia

Robert G. Doumar
Senior United States District Judge

June 27, 2022

¹ The Court previously granted Plaintiff's E-Noticing Registration Request. Order at 3, ECF No. 6. Thus, when this Final Order is docketed, Plaintiff and counsel for Defendant will receive an automatically generated e-mail message from the Court's electronic filing system containing a Notice of Electronic Filing, with a hyperlink to this Final Order.

APPENDIX E United States Court of Appeals for the Fourth Circuit's
‘Order’ Denying Petition for Rehearing & Rehearing *En Banc*

FILED: May 22, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1775
(2:18-cv-00190-RGD-DEM)

AUBREY J. EL

Plaintiff - Appellant

v.

UNITED STATES DEPARTMENT OF COMMERCE, Gina Raimondo,
Secretary

Defendant - Appellee

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 Wilkinson, Judge Agee, and
Judge Harris.

For the Court

/s/ Patricia S. Connor, Clerk