UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARISOL CAMINERO,

Plaintiff,

-against-

METROPOLITAN TRANSPORTATION AUTHORITY,

Defendant.

MEMORANDUM DECISION AND ORDER

03 Civ. 4187 (GBD) (DCF)

GEORGE B. DANIELS, United States District Judge:

Plaintiff Marisol Caminero brings this action against her former employer, Defendant Metropolitan Transportation Authority (the "MTA"), pursuant to the Federal Employers' Liability Act (the "FELA"), 45 U.S.C. §§ 51–60, alleging that Defendant negligently maintained its workplace and equipment, causing her physical injuries. (Compl., ECF No. 1.) Defendant moves to dismiss Plaintiff's complaint for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). (Mot. to Dismiss, ECF No. 15.)

Before this Court is Magistrate Judge Debra C. Freeman's May 2, 2019 Report and Recommendation (the "Report"), recommending that Defendant's motion be granted and that this action be dismissed with prejudice.[1] (Report, ECF No. 29, at 1.) Magistrate Judge Freeman advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections on appeal. (*Id.* at 11.) On May 15, 2019, Plaintiff requested an extension of time to file objections, from May 16, 2019 to May 21, 2019. (Pl.'s Letter dated May 15, 2019, ECF No. 30.) Plaintiff then filed objections on May 21, 2019. (Pl.'s Objs. to Mag. J.'s R. & R.

[1] The relevant factual and procedural background is set forth in greater detail in the Report and is incorporated by reference herein.

("Objs."), ECF No. 32-1.) Subsequently, on June 4, 2019, Defendant filed a response to Plaintiff's objections. (Def.'s Resp. to Pl.'s Objs. to Mag. J.'s R. & R., ECF No. 34.)

Having reviewed Magistrate Judge Freeman's Report, and Plaintiff's objection and Defendant's response, this Court ADOPTS the Report in full and overrules Plaintiff's objections. Accordingly, Defendant's motion to dismiss is GRANTED.

I. FACTUAL BACKGROUND

Plaintiff commenced this action in 2003, seeking damages under the FELA for injuries she allegedly sustained on two separate occasions while employed by Defendant as an MTA Police Officer. (*See generally* Compl.) Plaintiff alleges that she was first injured in September 2000, when Defendant negligently placed on top of an employee locker a battery charger that fell and hit her head. (*Id.* at 2.) Plaintiff claims that she was injured a second time in January 2002, when she was patrolling Grand Central Station in a golf cart that jerked violently because it had been negligently maintained by Defendant. (*Id.* at 3.)

The parties first appeared for a conference on September 3, 2003. (Minute Entry dated Sept. 3, 2003.) At a second conference on December 10, 2003, Plaintiff's counsel informed this Court that Plaintiff needed back surgery and suggested that this Court "put [this case] on a suspended calendar to be activated by [Plaintiff's counsel's] letter indicating that those issues have been resolved, or . . . to have a control date in maybe June." (Conference Tr. dated Dec. 10, 2003 at 2:25–3:3.) This Court indicated that it would take the case off the calendar and suspend the scheduling order, and it instructed Plaintiff to provide an update by June 2004 as to the status of Plaintiff's surgery. (*Id.* at 3:20–4:1.) By letter dated June 7, 2004, Plaintiff's counsel advised this Court that Plaintiff was pregnant but had not yet given birth and that her back surgery would be delayed. (Decl. of Helene R. Hechtkopf in Supp. of Def.'s Mot. to Dismiss ("Hechtkopf Decl."),

Ex. 3 (Pl.'s Letter dated June 7, 2004), ECF No. 16-3.) Plaintiff's counsel therefore "request[ed] that the case continue on a suspense calendar to be activated by letter of counsel." (*Id.*) Accordingly, by an Order dated June 8, 2004, this Court formally placed the case on the suspense docket and directed the parties to submit a status letter no later than December 1, 2004. (Order dated June 8, 2004, ECF No. 8.)[2]

Twenty-one months later, on September 6, 2006, given that there had been "no action for more than twelve months," Judge Kimba M. Wood, who was then the Chief Judge of this Court, closed this case administratively. (Order dated Sept. 6, 2006, ECF No. 9.)[3]

Twelve years later, on September 19, 2018, Plaintiff filed a letter motion noting that Plaintiff "ha[d] completed her surgeries" and requesting "that the case be placed on the Court's active calendar." (Pl's Letter dated Sept. 19, 2018, ECF No. 10.) On September 20, 2018, this Court scheduled a status conference for January 17, 2019. (Order dated Sept. 20, 2018.)[4] Subsequently, on December 19, 2018, Defendant moved to dismiss for failure to prosecute. (Mot. to Dismiss.)

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[2] On November 30, 2004, Plaintiff's counsel provided this Court with a letter update, which was not filed on the docket. (Hechtkopf Decl., Ex. 5 (Pl.'s Letter dated Nov. 30, 2004), ECF No. 16-5.) Plaintiff's counsel stated in the letter that Plaintiff gave birth on June 29, 2004 but that her back surgery was still delayed. (*Id.*) He noted that Plaintiff is "hopeful that her surgery can be scheduled for some time in January." (*Id.*) He also requested that Plaintiff be permitted to provide a further update in May 2005. (*Id.*) Plaintiff failed, however, to provide any such update to this Court. (Report at 3.)

[3] Plaintiff's next communication with this Court was on January 10, 2012, when Plaintiff's counsel notified this Court through an undocketed letter that the name of his law firm had changed. (Decl. of Marc Wietzke ("Wietzke Decl."), Ex. C (Pl.'s Letter dated Jan. 10, 2012), ECF No. 23-3.)

[4] This conference was adjourned several times—twice upon the parties' request and once, *sua sponte*, upon Plaintiff's request for an extension of time to file objections to the Report—and has never taken place. (Memo Endorsement dated Jan. 14, 2019, ECF No. 21; Memo Endorsement dated Mar. 12, 2019, ECF No. 28; Order dated May 16, 2019.)

II. LEGAL STANDARDS

A. Reports and Recommendations.

A court "may accept, reject, or modify, in whole or in part, the findings or recommendations" set forth in a magistrate judge's report. 28 U.S.C. § 636(b)(1)(C). The court must review *de novo* the portions of a magistrate judge's report to which a party properly objects. *Id.* The court, however, need not conduct a *de novo* hearing on the matter. *See United States v. Raddatz*, 447 U.S. 667, 675–76 (1980). Rather, it is sufficient that the court "arrive at its own, independent conclusion" regarding those portions of the report to which objections are made. *Nelson v. Smith*, 618 F. Supp. 1186, 1189–90 (S.D.N.Y. 1985) (citation omitted).

Portions of a magistrate judge's report to which no or "merely perfunctory" objections are made are reviewed for clear error. *See Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006) (citations omitted). The clear error standard also applies if a party's "objections are improper—because they are 'conclusory,' 'general,' or 'simply rehash or reiterate the original briefs to the magistrate judge.'" *Stone v. Comm'r of Soc. Sec.*, No. 17 Civ. 569 (RJS), 2018 WL 1581993, at *3 (S.D.N.Y. Mar. 27, 2018) (citation omitted). Clear error is present when "upon review of the entire record, [the court is] 'left with the definite and firm conviction that a mistake has been committed.'" *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006) (citation omitted).

B. Rule 41(b) Failure to Prosecute.

Rule 41(b) authorizes a district court to dismiss an action "[i]f the plaintiff fails to prosecute or to comply with . . . a court order." Fed. R. Civ. P. 41(b). "The primary rationale underlying a dismissal under [Rule] 41(b) is the failure of [a] plaintiff in his duty to process his case diligently." *Lyell Theatre Corp. v. Loews Corp.*, 682 F.2d 37, 43 (2d Cir. 1982). Any significant delay in prosecution, even a "delay of a 'matter of months,'" can prejudice the

defendant and can warrant dismissal. *Atuegwu v. United States,* No. 18 Civ. 1518 (PAE), 2019 WL 2023720, at *2 (S.D.N.Y. May 8, 2019) (quoting *Yadav v. Brookhaven Nat'l Lab.*, 487 F. App'x 671, 673 (2d Cir. 2012)). District courts must weigh five factors when deciding whether to dismiss an action under Rule 41(b), namely, whether:

> (1) the plaintiff's failure to prosecute caused a delay of significant duration; (2) plaintiff was given notice that further delay would result in dismissal; (3) defendant was likely to be prejudiced by further delay; (4) the need to alleviate court calendar congestion was carefully balanced against plaintiff's right to an opportunity for a day in court; and (5) the trial court adequately assessed the efficacy of lesser sanctions.

Lewis v. Rawson, 564 F.3d 569, 576 (2d Cir. 2009) (citations omitted). No single factor is dispositive in this inquiry. *Id.* The court need not make "exhaustive factual findings," but should support its decision with adequate reasoning. *Baptiste v. Sommers*, 768 F.3d 212, 217 (2d Cir. 2014) (per curiam).

III. PLAINTIFF'S CLAIMS ARE DISMISSED FOR FAILURE TO PROSECUTE

Magistrate Judge Freeman appropriately found that dismissal of this action is warranted, given Plaintiff's failure to prosecute her claims.

A. Plaintiff's Failure to Prosecute Caused a Prolonged Delay.

The first factor—the duration of delay caused by Plaintiff's failure to prosecute—strongly favors dismissal. As noted above and in the Report, from the time that this case was placed on the suspense docket in June 2004, to the time that Plaintiff requested it to be restored back to the active calendar in September 2018, fourteen years had expired. Plaintiff made only two letter communications with this Court over the span of fourteen years: (1) a November 30, 2004 letter noting that her back surgery was delayed and (2) a January 10, 2012 letter informing that counsel's law firm name had changed. (Report at 5–6; Hechtkopf Decl., Ex. 5 (Pl.'s Letter dated Nov. 30, 2004); Wietzke Decl., Ex. C (Pl.'s Letter dated Jan. 10, 2012.) Moreover, during that period, there

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