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

Bradley Marshall, Plaintiff, v. Stephen L. Purcell, Jennifer Gee, United States Department of Labor, and John Does and Jane Does 1-5, Defendants.	)	Case No. 2:12-cv-84-RMG **ORDER**

This matter comes before the Court on Plaintiff's motion to alter or amend a judgment pursuant to Rule 59(e). (Dkt. No. 63). For the reasons set forth below, the Court denies this motion.

Background

On December 11, 2012, the Court entered an order upon the Report and Recommendation of Magistrate Judge Hendricks granting Defendants' motion to dismiss and for summary judgment ("December 11 Order"). (Dkt. No. 60). Plaintiff subsequently filed the present motion requesting the Court alter or amend the December 11 Order.

Legal Standard

Federal Rule of Civil Procedure 59(e) governs motions to alter or amend a judgment; however, the rule does not provide a standard courts may use to grant such motions. The Fourth Circuit has articulated "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." *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (citing *EEOC v. Lockheed Martin Corp.*, 116 F.3d

110, 112 (4th Cir. 1997); *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993)). "Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance." *Pac. Ins. Co.*, 148 F.3d at 403 (internal citations omitted). Rule 59(e) provides an "extraordinary remedy that should be used sparingly." *Id.* (internal citation omitted).

Discussion

The Court finds that Plaintiff has failed to establish clear error, manifest injustice, or an intervening change in law, and therefore denies his motion to alter to amend the December 11 Order. Plaintiff's motion is essentially a re-argument of his objections to the Magistrate's Report and Recommendation, that is to say, that he was denied due process when the Department of Labor's Office of Administrative Law Judges ("OALJ") did not afford him an in-person hearing before disqualifying him from appearing as a representative before that tribunal pursuant to 29 C.F.R. § 18.34(g). Plaintiff again argues that the OALJ improperly interpreted and misapplied 29 C.F.R. § 18.34(g) and the *Selling* factors in reaching its decision. *See Selling v. Radford*, 243 U.S. 46, 50-51 (1917). This is not a proper ground for a Rule 59(e) motion. *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605, 2617 n.5 (2008) (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.")). Plaintiff also asserts that *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156 (2012), is an intervening change in controlling law. (Dkt. No. 63 at 13). That case, however, does not discuss disqualification of representatives under 29 C.F.R. § 18.34(g), but rather involves employees' rights to overtime wages under the Fair Labor Standards Act. *Id.* Further, to the extent Plaintiff argues that the OALJ's interpretation of 29 C.F.R. § 18.34 is not

entitled to deference under *Christopher* because it is a change in the Department of Labor's interpretation of that regulation, Plaintiff has not cited any cases where the agency establishes a different position from the one it took in his case. Indeed, the agency applied the regulation in a similar fashion in a prior case. *See In re Slavin*, ARB No. 04-088, at 19 http://www.oalj.dol.gov/Public/ARB/DECISIONS/ARB_DECISIONS/MIS/04_088.MISP.PDF (Apr. 29, 2005). In conclusion, Plaintiff has not presented any grounds in his motion from which the Court may properly grant relief under Rule 59(e).

Conclusion

For the reasons set forth above, Plaintiff's motion to alter or amend a judgment (Dkt. No. 63) is DENIED.

AND IT IS SO ORDERED.

Richard Mark Gergel
United States District Court Judge

January 2, 2013
Charleston, South Carolina