

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

VERA S. HENDERSON,

Plaintiff, pro se

v.

UNITED STATES DEPARTMENT OF LABOR,

Defendant.

CASE No. 6:06-CV-00009

ORDER

JUDGE NORMAN K. MOON

This matter is before the Court on Defendant's October 30, 2006 Motion for a Temporary Restraining Order. For the following reasons, this motion is denied.

Although this lawsuit is technically concerned with the Privacy Act's requirement of accurate records maintenance, the overarching concern of Plaintiff is the preservation of workers' compensation payments for an injury suffered in an automobile accident. The present motion seeks to prevent the Office of Workers' Compensation Programs from compelling Plaintiff to submit to an examination by an orthopedic surgeon intended to assess her current medical condition and continuing eligibility for compensation.

In deciding whether to grant a preliminary injunction, this Court usually must consider (1) the likelihood of irreparable harm to the plaintiff if the injunction is denied, (2) the likelihood of harm to the defendant if the injunction is granted, (3) the likelihood that the plaintiff will succeed on the merits, and (4) the public interest. *Blackwelder Furniture Co. v. Seilig Mfg. Co.*, 550 F.2d 189, 193-96 (4th Cir. 1977).

Here, Plaintiff has failed to demonstrate irreparable harm. Although Plaintiff alleges that a “negative report” is inevitable, this is not obvious. This Court is hesitant to assume that properly licensed doctors will bias or alter their medical findings to please the Department of Labor. Furthermore, Plaintiff has no entitlement to a favorable report, only to a medically accurate one. It may be that a negative finding is medically indicated; certainly this Court will not substitute its judgment for that of a doctor. Finally, even if Plaintiff is later able to prove her allegations of bias, any harm may be remedied by ordering changes to her medical file and the payment of back benefits which were based on the biased report.

The Plaintiff also has at most a small chance of success on the merits if her goal is to prevent the government from compelling a medical examination. The relevant statute provides: “An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required...” 5 U.S.C. § 8123(a). Plaintiff complains that because she has no attending physician, there is no “medical conflict,” and thus no legal basis for sending her to a referee physician. As a technical matter, this may be correct. However, as the statute makes clear, the United States can require her to submit to medical examination with or without a conflict on a regular basis, to evaluate the progress of her rehabilitation. Whether this is designated a “Referee Examination,” a “Second Opinion,” or simply a medical exam is irrelevant. Plaintiff is drawing checks from the government on the grounds that she cannot work. She must submit to regular exams to ensure that her injury remains disabling.

The public interest is served by efforts to ensure that only the truly disabled receive workers’ compensation. This factor thus also weighs against the Plaintiff.

For these reasons, the Motion for a Temporary Restraining Order and Preliminary Injunction is DENIED.

The Clerk of the Court is directed to send a certified copy of this Order to the Plaintiff and all counsel of record.

ENTERED: _____
U.S. District Judge

Date