

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ANN VEAL,	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 01-407-GMS
	)	
UNITED STATES OF AMERICA,	)	
Defendant,	)	
	)	
DOVER AIR FORCE BASE,	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

**I. INTRODUCTION**

On May 18, 2001, the plaintiff, Ann Veal (“Veal”), a *pro se* litigant, filed a complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.*, seeking monetary damages for personal injury and property damage sustained in a fall at the Dover Air Force Base Exchange in May 2000. Veal alleges that her injuries were caused by the negligence of a federal employee. After exhausting her administrative remedies, Veal filed a timely complaint with the court. Veal, however, failed to effect service of process upon the United States as required by Federal Rule of Civil Procedure 4(i)(1) within the 120 day time limit for service allotted by Federal Rule of Civil Procedure 4(m).

After the 120 day period expired, the court issued an order to show cause directing Veal to demonstrate good cause as to why service of process had not been made in a timely fashion. Veal advised the court that, “without warning,” the attorney that she had been communicating with advised her that he would discontinue his representation. (D.I. 8.) Therefore, the court declined to dismiss Veal’s claim at that time. In November 2001, Veal finally served process upon the Dover Air Force Base and the United States Attorney for the District of Delaware.

On February 15, 2002, the United States moved to dismiss the case pursuant to Federal Rule of Civil Procedure 4(m). The United States noted that to effect proper service on the United States, a plaintiff must: (A) deliver a copy of the summons and the complaint to the United States Attorney for the district in which the action is pending and (B) send a copy of the summons and the complaint to the United States Attorney General by registered or certified mail. *See* FED. R. CIV. P. 4(i)(1)(A-B). The United States then argued that although Veal successfully served process upon the Dover Air Force Base and the U.S. Attorney for the District of Delaware, she had failed to serve the United States Attorney General as required by Rule 4(i)(1)(B).

In an order dated June 26, 2002, the court found that Veal had failed to comply with Rule 4 and therefore granted the United States' motion to dismiss. However, to avoid an unduly harsh penalty to the *pro se* plaintiff, the court also instructed Veal that she could, if she desired, file a motion to vacate the dismissal within fifteen days of the court's order. (D.I. 17 at 6.) The court directed that the motion to vacate, if filed, should show good cause for Veal's failure to timely effect service. The court further indicated that the motion to vacate would be Veal's last opportunity to show good cause as to why she failed to comply with the directives of Rule 4.

Presently before the court is Veal's timely filed motion to vacate the court's dismissal of this action. In her motion, Veal asserts that good cause exists for two reasons. First, she argues that the Office of the Clerk for the United States District Court for the District of Delaware ("the Clerk's Office") failed to provide her with the necessary forms and instructions (in particular, the USM-285 forms) which were necessary for proper service. Second, Veal argues that she was unable to serve process correctly due to her current medical condition of fibromyalgia, a chronic disorder associated with widespread muscle and soft tissue pain, tenderness, and fatigue. According to Veal, some

fibromyalgia sufferers, such as herself, report memory and concentration difficulties which interfere with their day to day cognitive abilities.

For the reasons that follow, the court finds that Veal has not shown that good cause exists for an extension of time to effect service of process. Therefore, the court will deny Veal's motion to vacate.

## II. DISCUSSION <sup>1</sup>

Rule 4(m) provides in part: “[I]f the plaintiff shows good cause for the failure [to make service of the summons and complaint within 120 days after the filing of the complaint], the court shall extend the time for service for an appropriate period.” FED. R. CIV. P. 4(m). Therefore, if good cause exists, the district court *must* extend time for service. *See Petrucelli v. Bohringer and Ratzinger*, 46 F.3d 1298, 1305 (3d Cir. 1995). There is no codified definition of good cause, but guideposts exist to help elucidate the meaning of the phrase. The Third Circuit has stated that in the context of Rule 4(m), good cause means “a demonstration of good faith on the part of the party seeking an enlargement and some reasonable basis for noncompliance within the time specified in the rules.” *Id.* at 1312. “[T]he primary focus is on the plaintiff's reasons for not complying with the time limit in the first place.” *Id.*

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<sup>1</sup> The court notes that the plaintiff has requested that the court excuse any errors that might be attributed to her status as a layperson. While there is some support for this position, *see, e.g., Saundurs v. Dep't. of Veterans Affairs*, 1997 WL 805246, \*1 (E.D. Pa. Dec. 18, 1997) (noting that *pro se* plaintiffs are sometimes entitled to leniency in following the directives of Rule 4), the Supreme Court has stated, “[W]e have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel.” *McNeil v. United States*, 508 U.S. 106, 113 (1993). *See also DiCesare v. Stuart*, 12 F.3d 973, 980 (10th Cir. 1993) (“A *pro se* litigant is still obligated to follow the requirements of FED.R.CIV.P. 4”). Therefore, although the court has taken Veal's *pro se* status into account throughout this litigation, and will do so for the purposes of this motion, the court will not find that the plaintiff's *pro se* status automatically entitles her to a finding of good cause.

Veal contends that good cause exists for two reasons. First, she argues that the Clerk's Office failed to provide her with the materials and guidance which are necessary to enable a layperson to effect service of process. Second, Veal argues that she was unable to correctly effect service of process because she is plagued with memory and comprehension difficulties due to her fibromyalgia. The court finds neither argument compelling, and will now address each in turn.

**A. Failure of Clerk's Office**

Veal argues that the Clerk's Office failed to provide the necessary USM-285 forms which would enable her to properly serve process on all of the appropriate parties. The court cannot accept this argument, since no USM-285 forms are necessary for service upon the Attorney General. Rule 4 clearly states that the Attorney General may be served by "sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia." FED. R. CIV. P. 4(i)(1)(B).

Furthermore, Veal argues that the Clerk's Office failed to provide her with necessary guidance on how to properly serve the defendants. However, the Clerk's Office's has no duty to provide *pro se* plaintiffs with step by step guidance in every case. Rule 4 itself is designed to provide this guidance, as it clearly states the procedure for effecting service of process upon the United States. Veal's failure to read or understand Rule 4 does not constitute good cause for her failure to effect proper service in compliance with Rule 4(i). *See Shore v. Henderson*, 168 F. Supp.2d 428, 431 (E.D. Pa. 2001) (noting that misunderstanding Rule 4 does not constitute good cause). *See also Tuke v. United States*, 76 F.3d 155, 157 (7th Cir. 1996) ("Failure to read a rule is the antithesis of good cause"). Therefore, the court will not vacate the prior dismissal for this reason.

## **B. Medical Condition**

Veal also argues that due to her fibromyalgia, she was unable to properly effect service of process. Good cause may be found when a plaintiff (or plaintiff's attorney) experiences a sudden illness. *See Habib v. General Motors Corp.*, 15 F.3d 72, 74 (6th Cir. 1994).

Typically, in cases finding good cause for sudden illness, the plaintiff or the plaintiff's attorney develops a debilitating medical condition during the latter part of the 120 day period for service of process. For example, in *Moorehead v. Miller*, 102 F.R.D. 834, 836 (D.V.I. 1984), the court found that good cause existed where the *pro se* plaintiff, Moorehead, was hospitalized during the latter part of the 120 period for service of process, and was not released until after the 120 days had elapsed. Veal's case is distinguishable in two important respects. First, Veal's condition was not sudden. Unlike *Moorehead*, there is no evidence that Veal's fibromyalgia first presented itself during the latter half of the 120 day service period. Second, Veal's condition has not excessively hindered her ability to competently litigate this action. Despite her condition, Veal was able to exhaust her administrative remedies and file a complaint with the court. Furthermore, Veal filed timely and coherent responses to both the defendants' motion to dismiss and the court's June 26 order of dismissal. Finally, Veal has been an active and accountable participant in all other aspects of this litigation. Veal's condition is therefore neither so sudden nor so debilitating as to constitute good cause. Thus, the court finds that Veal's medical condition does not provide the court with good cause to vacate the dismissal.

### III. CONCLUSION

The court finds that the two reasons proffered by the plaintiff - lack of guidance from the Clerk's Office and her medical condition - do not constitute the good cause required to excuse a failure to comply with the mandates of Rule 4. Therefore, her motion to vacate will be denied. Since Veal has failed to properly serve the defendants and there was no good cause for the failure, Veal's complaint will be dismissed and her case will be closed.

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. Veal's motion to vacate (D.I. 19) is DENIED.
2. This case is hereby DISMISSED.
3. The Clerk's Office shall close this case.

Dated: August 27, 2002

Gregory M. Sleet  
UNITED STATES DISTRICT JUDGE