

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

Robert Anthony Brown,

Plaintiff,

v.

Case No. 02-2586-JWL

**Anthony J. Principi, Secretary,
Department of Veterans Affairs,**

Defendant.

MEMORANDUM & ORDER

On July 14, 2004, the court issued an order granting defendant's motion for summary judgment and dismissing plaintiff's complaint in its entirety. On August 18, 2004, plaintiff, appearing pro se, filed a motion requesting that the court grant him "10 days to reply to the court's Motion for summary judgment." On August 30, 2004, plaintiff filed a second motion in which he reiterates his request for an extension of time to respond to the court's order. In that motion, plaintiff states that he "feels there is evidence that needs to be brought to the court's attention." The motions are denied.

Although plaintiff has not identified the procedural vehicle through which he intends to present additional evidence to the court, the court construes plaintiff's motion as a motion for an extension of time to file a motion to alter or amend the judgment under Fed. R. Civ. P. 59(e) or, in the alternative, to seek relief from a judgment under Fed. R. Civ. P. 60(b). *See Hawkins v. Evans*, 64 F.3d 543, 546 (10th Cir. 1995) (court construes a motion to reconsider as a motion under either Rule 59(e) or Rule 60(b)).

According to Rule 59(e), any motion to alter or amend a judgment must be filed within 10 days after entry of the judgment. Fed. R. Civ. P. 59(e). The court has no authority to extend this 10-day period. See Fed. R. Civ. P. 6(b); *Weitz v. Lovelace Health System, Inc.*, 214 F.3d 1175, 1179 (10th Cir. 2000) (district court lacked authority to grant motion for additional time to file Rule 59(e) motion). Thus, because plaintiff's motion was filed more than 10 days after entry of judgment, plaintiff's motions for an extension of time is denied to the extent the prospective motion to reconsider is contemplated under Rule 59(e).

A motion for relief from judgment or order pursuant to Rule 60(b), however, may be filed "within a reasonable time" but, under certain circumstances, not more than one year after the judgment or order was entered. Fed. R. Civ. P. 60(b). Thus, plaintiff need not move the court for an extension of time within which to file a motion under Rule 60(b). Accordingly, plaintiff's motions for an extension of time is denied as moot to the extent plaintiff's prospective motion to reconsider is contemplated under Rule 60(b). The court notes, however, that relief under Rule 60(b) is "extraordinary and may be granted only in exceptional circumstances." *Amoco Oil Co. v. United States Environmental Protection Agency*, 231 F.3d 694, 697 (10th Cir. 2000). Moreover, plaintiff is cautioned that a Rule 60(b) motion is not a vehicle to reargue the merits of the underlying judgment, to advance new arguments which could have been presented in the party's original motion papers, or as a substitute for appeal. *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000); *Cashner v. Freedom Stores, Inc.*, 98 F.3d 572, 576-77 (10th Cir. 1996).

IT IS THEREFORE ORDERED BY THE COURT THAT plaintiff's motion for leave (doc. #63) and plaintiff's motion for an extension of time (doc. #65) are denied as moot.

IT IS SO ORDERED this 3rd day of September, 2004.

s/ John W. Lungstrum _____
John W. Lungstrum
United States District Judge