

**United States Court of Appeals
For The Eighth Circuit**
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

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June 03, 2021

Mr. Timothy S. Smith
Apartment 717
9955 Kempwood Drive
Houston, TX 77080

RE: 21-2136 Timothy Smith v. Unum Life Ins. Co. of America

Dear Mr. Smith:

Enclosed is a copy of the dispositive order in the referenced appeal. Please note that FRAP 40 of the Federal Rules of Appellate Procedure requires any petition for rehearing to be filed within 14 days after entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. This court strictly enforces the 14 day period. **No grace period for mailing is granted** for pro-se-filed petitions. A petition for rehearing or a motion for an extension of time must be filed with the Clerk's office within the 14 day period.

Michael E. Gans
Clerk of Court

MVP

Enclosure(s)

cc: Ms. Kate M. Fogarty
Ms. Lauren Hoglund
Mr. Terrance J. Wagener

District Court/Agency Case Number(s): 0:19-cv-01659-MJD

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 21-2136

Timothy S. Smith

Plaintiff - Appellant

v.

Unum Life Insurance Company of America

Defendant - Appellee

Appeal from U.S. District Court for the District of Minnesota
(0:19-cv-01659-MJD)

JUDGMENT

Before COLLTON, GRUENDER, and SHEPHERD, Circuit Judges.

The court has carefully reviewed the original file of the United States District Court and orders that this appeal be dismissed for lack of jurisdiction. The appellant's motion to proceed on appeal in forma pauperis is denied as moot.

June 03, 2021

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

TIMOTHY SMITH,

Plaintiff,

v.

MEMORANDUM OF LAW & ORDER
Civil File No. 19-1659 (MJD/LIB)

UNUM LIFE INSURANCE
COMPANY OF AMERICA,

Defendant.

Blake R. Bauer and Stephen J. Fields, Fields Law Firm, Counsel for Plaintiff.

Terrance J. Wagener and Lauren Hoglund, Messerli & Kramer P.A., Counsel for Defendant.

I. INTRODUCTION

This matter is before the Court on Defendant's Motion for Final Judgment.

[Docket No. 28]

II. BACKGROUND

A. Factual Background

The factual background of this case is set forth in detail in the Report and Recommendation [Docket No. 20], which was adopted by this Court [Docket No. 25]. Defendant Unum Life Insurance Company of America ("Unum") is the

insurer and claim administrator of Plaintiff Timothy Smith's employee benefits plan, including a group disability insurance policy. Smith became disabled under the terms of the Plan, and Unum granted his claim and paid him disability benefits for two years. Unum terminated his disability benefits on March 30, 2018. Plaintiff appealed Unum's decision to terminate benefits through the claims administrative process, but his appeal was denied on October 23, 2018.

On November 5, 2018, Smith, through his counsel, Blake R. Bauer, sent a demand letter to Unum requesting to settle the case for \$120,000. Settlement negotiations ensued between Bauer and Ann Courtney, Assistant Vice President and Legal Counsel for Unum Group, the parent company of Defendant Unum. On January 10, 2019, the parties agreed to settle the case for \$50,000. Smith later had second thoughts about accepting the \$50,000 settlement offer and attempted to disavow the settlement and settle for a higher amount of money. Unum refused to engage in further negotiations because a settlement agreement had already been reached.

B. Procedural History

On June 25, 2019, Smith filed a Complaint against Unum in this Court. [Docket No. 1] The Complaint asserts that Unum's failure to provide benefits under the Plan constitutes a breach of the Plan.

On November 12, 2019, Unum filed a Motion to Enforce Settlement Agreement. On March 11, 2020, the Court adopted the Report and Recommendation of Magistrate Judge Brisbois [Docket No. 20] and granted Defendant's Motion to Enforce Settlement Agreement. [Docket No. 25]

Plaintiff continues to be represented by counsel. However, in June and August 2020, he sent two pro se letters to the Court stating that he did not want to settle his case and that he wanted to go to trial. [Docket Nos. 26-27]

On July 6, 2020, Unum provided a settlement check payable to Plaintiff for \$50,000. ([Docket No. 31] Wagener Decl. ¶ 2.) Unum's counsel mailed the check to Bauer. (Id. ¶ 3.) Bauer received the check on July 13. ([Docket No. 40] Bauer Decl. ¶ 2.) On September 18, Bauer sent Unum's settlement check back to Unum by U.S. mail. (Id. ¶ 3.)

On September 30, 2020, Unum filed the current Motion for Final Judgment. Plaintiff continues to be represented by counsel, who filed an opposition brief to the current motion.

III. DISCUSSION

"A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Catlin v. United States, 324 U.S. 229, 233 (1945).

On March 11, 2020, the Court ordered that the parties' settlement be enforced. [Docket No. 25] Under the terms of the settlement, Plaintiff agreed to release all of his claims for long-term disability benefits against Defendant in exchange for \$50,000. (See Report & Recommendation at 13). Unum delivered the \$50,000 check to Plaintiff's counsel, complying with its obligation under the settlement agreement. The Court has already ruled that the settlement agreement is a binding contract, and Unum has complied with its terms. Plaintiff's refusal to accept or cash the check does not change this fact. See Rogalla v. Rubbelke, 112 N.W.2d 581, 581-84 (Minn. 1961) (affirming district court's dismissal and entry of judgment because a valid settlement had been established, even though Plaintiff refused to cash the settlement check).

Plaintiff admits that the Court held that there was an enforceable settlement and does not dispute that Unum has fulfilled the terms of that settlement agreement, but he continues to argue that he did not agree to settle the case. He asks that the Court reconsider its previous decision and not enforce the settlement.

The Court will not alter its order enforcing the settlement. Plaintiff offers no basis for the Court to amend its order. He repeats the same arguments he

originally made in opposing the motion to enforce the settlement and has not identified any compelling circumstances, such as fraud, mistake, or changed conditions, to justify reconsideration. See, e.g., Broadway v. Norris, 193 F.3d 987, 990 (8th Cir. 1999).

The Court grants Defendant's request and enters judgment. There are no remaining issues for the Court to decide. Plaintiff offers no argument in opposition to the entry of judgment other than to assert that the Court's March 2020 Order was incorrect. The Court ruled that the settlement agreement was enforceable. Defendant has fulfilled its obligation under the settlement agreement by sending Plaintiff's counsel a check for \$50,000. In exchange, Plaintiff's claims against Defendant must be dismissed.

Plaintiff strongly disagrees with the Court's decision. Entering judgment permits Plaintiff to appeal that decision to the Eighth Circuit. There are no further issues for this Court to decide, and entering judgment at this time is in the best interests of both parties.

Accordingly, based upon the files, records, and proceedings herein, **IT IS
HEREBY ORDERED:**

Defendant's Motion for Final Judgment [Docket No. 28] is
GRANTED, and this action is **DISMISSED** with prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: December 7, 2020

s/ Michael J. Davis

Michael J. Davis

United States District Court

UNITED STATES DISTRICT COURT
District of Minnesota

Timothy Smith,

JUDGMENT IN A CIVIL CASE

Plaintiff(s),

v.

Case Number: 19-cv-1659 MJD/LIB

Unum Life Insurance Company of America,

Defendant(s).

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

Defendant's Motion for Final Judgment [Docket No. 28] is **GRANTED**, and this action is **DISMISSED** with prejudice.

Date: 12/8/2020

KATE M. FOGARTY, CLERK



UNITED STATES DISTRICT COURT
District of Minnesota

Warren E. Burger Federal Building and U.S. Courthouse 316 North Robert Street, Suite 100 St. Paul, MN 55101 (651) 848-1100	U.S. Courthouse 300 South Fourth Street Suite 202 Minneapolis, MN 55415 (612) 664-5000	Gerald W. Heaney Federal Building and U.S. Courthouse and Customhouse 515 West First Street, Suite 417 Duluth, MN 55802 (218) 529-3500	Edward J. Devitt U.S. Courthouse and Federal Building 118 South Mill Street, Suite 212 Fergus Falls, MN 56537 (218) 739-5758
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CIVIL NOTICE

The appeal filing fee is \$505.00. If you are indigent, you can apply for leave to proceed in forma pauperis, ("IFP").

The purpose of this notice is to summarize the time limits for filing with the District Court Clerk's Office a Notice of Appeal to the Eighth Circuit Court of Appeals or the Federal Circuit Court of Appeals (when applicable) from a final decision of the District Court in a civil case.

This is a summary only. For specific information on the time limits for filing a Notice of Appeal, review the applicable federal civil and appellate procedure rules and statutes.

Rule 4(a) of the Federal Rules of Appellate Procedure (Fed. R. App. P.) requires that a Notice of Appeal be filed within:

1. Thirty days (60 days if the United States is a party) after the date of "entry of the judgment or order appealed from;" or
2. Thirty days (60 days if the United States is a party) after the date of entry of an order denying a timely motion for a new trial under Fed. R. Civ. P. 59; or
3. Thirty days (60 days if the United States is a party) after the date of entry of an order granting or denying a timely motion for judgment under Fed. R. Civ. P. 50(b), to amend or make additional findings of fact under Fed. R. Civ. P. 52(b), and/or to alter or amend the judgment under Fed. R. Civ. P. 59; or
4. Fourteen days after the date on which a previously timely Notice of Appeal was filed.

If a Notice of Appeal is not timely filed, a party in a civil case can move the District Court pursuant to Fed. R. App. P. 4(a)(5) to extend the time for filing a Notice of Appeal. This motion must be filed no later than 30 days after the period for filing a Notice of Appeal expires. If the motion is filed after the period for filing a Notice of Appeal expires, the party bringing the motion must give the opposing parties notice of it. The District Court may grant the motion, but only if excusable neglect or good cause is shown for failing to file a timely Notice of Appeal.