

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-02155-BNB

CHRISTOPHER WORTH LUNDY,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting Commissioner of Social Security,

Defendant.

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ORDER OF DISMISSAL

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Plaintiff, Christopher Worth Lundy, filed *pro se* a Complaint (ECF No. 1) and a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 3). He was granted leave to proceed *in forma pauperis* pursuant to § 1915.

On August 14, 2013, the Court entered an order (ECF No. 4) directing Plaintiff to file within thirty days an amended Complaint that complied with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure and provided additional information, including but not limited to a copy of the Commissioner of Social Security's final administrative decision, if available. Magistrate Judge Boland warned Mr. Lundy that if he failed within the time allowed to file an amended Complaint as directed, the Complaint and the action would be dismissed without further notice.

On October 29, 2013, Magistrate Judge Boyd N. Boland ordered Mr. Lundy to show cause (ECF No. 6) within thirty days why the instant action should not be dismissed because he failed within the time allowed to file an amended Complaint as directed in the August 14 order.

In the October 29 order to show cause, Magistrate Judge Boland warned Mr. Lundy of the potential consequence of failing to file an amended Complaint and gave him a final opportunity to comply with the directives of the August 14 order. Specifically, Mr. Lundy was warned that, even if the Court dismisses the instant action without prejudice for failure to comply with the August 14 order, the dismissal may act as a dismissal with prejudice if Mr. Lundy seeks to refile in this Court because the period for filing a Social Security action may have expired. Pursuant to Section 205(g) of the Social Security Act, a civil action must be commenced “within sixty days after the mailing to him of notice of [any final decision of the Commission of Social Security] or within such further time as the Commissioner may allow.” 42 U.S.C. § 405(g).

Magistrate Judge Boland also warned Mr. Lundy that if he failed to file an amended Complaint that complied with the October 29 and the August 14 orders within the time allowed, the Complaint and the action would be dismissed without further notice.

Mr. Lundy has failed within the time allowed to file an amended Complaint that complies with the August 14 order, or otherwise communicate with the Court in any way. Therefore, the Complaint and the action will be dismissed for failure to file an amended Complaint as directed within the time allowed, and for Mr. Lundy’s failure to prosecute.

Finally, the Court certifies pursuant to § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Mr. Lundy files a notice of appeal he also must pay the full \$505.00 appellate filing fee, or file a motion to proceed *in forma pauperis* in the United States Court of

Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24.

Accordingly, it is

ORDERED that the Complaint (ECF No. 1) and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, Christopher Worth Lundy, within the time allowed to file an amended Complaint as directed in the orders of August 14 and October 29, 2013 (ECF Nos. 4 and 6), and for his failure to prosecute. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied. It is

FURTHER ORDERED that any pending motions are denied as moot.

DATED at Denver, Colorado, this 9<sup>th</sup> day of December, 2013.

BY THE COURT:

s/Lewis T. Babcock  
LEWIS T. BABCOCK, Senior Judge  
United States District Court