

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

DRU DION KRAMER,

Plaintiff,

v.

**EMPLOYMENT SECURITY BOARD
OF REVIEW,**

Defendant.

Case No. 17-CV-4001-DDC-KGS

ORDER

On January 5, 2017, plaintiff Dru Dion Kramer filed a Complaint (Doc. 1) and a Motion to Proceed Without Prepayment of Fees (Doc. 3). On January 11, 2017, Judge K. Gary Sebelius issued a Report and Recommendation (Doc. 6), recommending that the district judge dismiss the action for lack of subject matter jurisdiction. Judge Sebelius explained that plaintiff's Complaint fails to plead either federal question or diversity jurisdiction. And, thus, plaintiff has failed to establish that the court has subject matter jurisdiction in this case.

Judge Sebelius noted in his Report and Recommendation that plaintiff may serve and file objections to the Report and Recommendation under 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72, within 14 days after service. Doc. 6 at 3. He also advised plaintiff that failing to make a timely objection to the Report and Recommendation waives any right to appellate review of the proposed findings of fact, conclusions of law, or recommended disposition. *See id.* (explaining that “[i]f no objections are timely filed, no appellate review will be allowed by any court.”). The Clerk sent a copy of the Report and Recommendation to plaintiff by certified mail. *See* Docket Entry for Doc. 6 (stating “[a] copy of this order was sent to plaintiff by certified mail . . .”).

The Clerk received a certified mail receipt showing that Mr. Kramer received and signed for the mailing on January 17, 2017. Doc. 8.

Service of the Report and Recommendation was accomplished by “mailing it to [plaintiff’s] last known address—in which event service [was] complete upon mailing.” Fed. R. Civ. P. 5(b)(2)(C); *see also ReVoal v. Brownback*, No. 14-4076, 2014 WL 5321093, at *1 (D. Kan. Oct. 16, 2014). That mailing occurred on January 11, 2017, when the Clerk mailed the Report and Recommendation to plaintiff. *See* Doc. 6. The time for plaintiff to file any objections to the Report and Recommendation thus has expired.¹

To date, plaintiff has filed no objections to the Report and Recommendation, nor has he sought any extension of time to file an objection. Because plaintiff has filed no objection to the Report and Recommendation within the time prescribed, and he has sought no extension of time to file an objection, the court accepts, adopts, and affirms the Report and Recommendation in its entirety.

IT IS THEREFORE ORDERED that, after reviewing the file *de novo*, the Report and Recommendation issued by United States Magistrate Judge K. Gary Sebelius on January 11, 2017 (Doc. 6) is **ACCEPTED, ADOPTED and AFFIRMED**. The court dismisses this action under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.

IT IS SO ORDERED.

Dated this 6th day of February, 2017, at Topeka, Kansas

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge

¹ Plaintiff’s deadline for responding is extended by three days under Fed. R. Civ. P. 6(d), because service was made by mail. Even adding these three additional days to the 14-day response time, the deadline for responding to Judge Sebelius’ Report and Recommendation has expired.