

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

## **OPINION, MEMORANDUM AND ORDER**

This matter is before the Court upon its own motion. Plaintiff, a prisoner and frequent filer of lawsuits who is subject to 28 U.S.C. § 1915(g), filed a complaint pursuant to 42 U.S.C. § 1983 and also sought leave to proceed in forma pauperis. This Court conducted initial review pursuant to 28 U.S.C. § 1915 and noted that, while plaintiff stated he was in imminent danger of serious physical injury, he only alleged and sought relief for past harm. In an Order dated July 12, 2017, this Court permitted plaintiff leave to file an amended complaint to more clearly set forth why he believed he was in imminent danger of serious physical injury. Plaintiff was cautioned that his failure to timely respond would result in the dismissal of his case without prejudice and without further notice.

The Order was mailed to plaintiff at the address he provided, but on July 27, 2017, it was returned to the Court as undeliverable. A new address was obtained for plaintiff, and the Order was resent to him there. To date, however, plaintiff has neither filed an amended complaint nor sought additional time to do so. Plaintiff was given meaningful notice of what was expected, and cautioned that his case would be dismissed if he failed to timely comply. Therefore, this action will be dismissed without prejudice due to plaintiff's failure to prosecute his case and his failure

to comply with this Court's July 12, 2017 order. Fed. R. Civ. P. 41(b); see also *Dudley v. Miles*, 597 F. App'x 392 (8th Cir. 2015) (per curiam) (affirming dismissal without prejudice where pro se plaintiff failed to file an amended complaint despite being cautioned that dismissal could result from failure to do so); *Brown v. Frey*, 806 F.2d 801, 803-04 (8th Cir. 1986) (a district court has the power to dismiss an action for the plaintiff's failure to comply with any court order).

Accordingly,

**IT IS HEREBY ORDERED** that this action is **DISMISSED** without prejudice. A separate order of dismissal will be entered herewith.

**T IS FURTHER ORDERED** that plaintiff's motion for leave to proceed in forma pauperis (Docket No. 2) is **DENIED** as moot.

**T IS FURTHER ORDERED** that plaintiff's motion for the appointment of counsel (Docket No. 5) is **DENIED** as moot.

**IT IS HEREBY CERTIFIED** that an appeal from this dismissal would not be taken in good faith.

Dated this 29th day of August, 2017



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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE