

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT MATTHEWS,

Plaintiff,

v.

5:17-CV-0448
(GTS/ATB)

CSX TRANSPORTATION,

Defendant.

APPEARANCES:

ROBERT MATTHEWS

Plaintiff, *Pro Se*
4770 Boyle Drive
Syracuse, New York 13215

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Robert Matthews (“Plaintiff”) against CSX Transportation (“Defendant”), is United States Magistrate Judge Andrew T. Baxter’s Report-Recommendation recommending that this action be *sua sponte* dismissed pursuant to 28 U.S.C. §§ 1915(a)(1) and 1915(e)(2)(B) unless, within thirty (30) days of the date of a Decision and Order adopting the Report-Recommendation, Plaintiff files (1) a completed *in forma pauperis* (“IFP”) application, and (2) an Amended Complaint that corrects the pleading defects identified in the Report-Recommendation. (Dkt. No. 5.) Plaintiff has not filed an objection to the Report-Recommendation, and the deadline in which to do so has expired. (*See generally* Docket Sheet.).

After carefully reviewing the relevant papers herein, including Magistrate Judge Baxter's thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation.¹ Magistrate Judge Baxter employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein, and this action shall be dismissed unless, within thirty (30) days of the date of this Decision and Order, Plaintiff files (1) a completed IFP application, and (2) an Amended Complaint that corrects the pleading defects identified in the Report-Recommendation.

ACCORDINGLY, it is

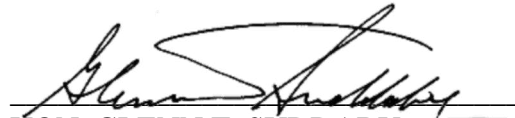
ORDERED that Magistrate Judge Baxter's Report-Recommendation (Dkt. No. 5) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that this action shall be *sua sponte* **DISMISSED** pursuant to 28 U.S.C. §§ 1915(a)(1) and 1915(e)(2)(B) unless, within **THIRTY (30) DAYS** of the date of this Decision and Order, Plaintiff files (1) a completed IFP application, and (2) an Amended Complaint that corrects the pleading defects identified in the Report-Recommendation (including, but not limited to, the inclusion of a copy of any right-to-sue letter from the Equal Employment Opportunity Commission); and it is further

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

ORDERED that, if Plaintiff files a completed IFP application and an Amended Complaint within the referenced thirty-day period, then the completed IFP application and the Amended Complaint shall be referred to Magistrate Judge Baxter for his review; if, however, Plaintiff fails to file either a completed IFP form or an Amended Complaint within the referenced thirty-day period, then this action shall be dismissed without further Order of the Court.

Dated: August 29, 2017
Syracuse, New York


HON. GLENN T. SUDDABY
Chief United States District Judge