

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-02442-WYD-MJW

JOEL HUGHES,

Plaintiff(s),

v.

DENVER POLICE OFFICER WESLEY KVASNICKA; and  
THE CITY AND COUNTY OF DENVER, Jointly and Severally,

Defendant(s).

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MINUTE ORDER

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Entered by Magistrate Judge Michael J. Watanabe

It is hereby ORDERED that Defendants' Motion for Discovery Sanctions for Plaintiff's Failure to Appear at the Independent Medical Examination and Failure to Supplement Discovery Responses (docket no. 46) is GRANTED as follows.

Plaintiff has confessed the portion of the subject motion requesting that this court Order Plaintiff to pay Dr. Bazaz the sum of \$687.50 for Plaintiff's failure to appear for his IME exam. See paragraph 2 in Plaintiff's Response (docket no. 49).

Plaintiff has provided supplemental discovery responses as outlined in Plaintiff's Response (docket no. 49). The discovery cut off date, however, was October 19, 2012. The Final Pretrial Conference is currently set for January 24, 2013, at 9:30 a.m. The dispositive motions deadline was November 21, 2012.

Pursuant to Fed. R. Civ. P. 16(f) and 37(b)(2)(A)(i) through (vii) and (b)(2)(C), I find that the appropriate sanction for Plaintiff's non-compliance (1) by not attending the IME examination with Dr. Bazaz as agreed to by the parties, (2) by not providing, in the past, timely medical releases as previously Ordered by this court, and (3) by Plaintiff's other refusals to comply with the discovery rules, is to strike Plaintiff's personal injuries and damages related thereto from consideration by the trier of fact. Plaintiff is not permitted to seek and argue for personal injuries and damages related thereto at trial. I do not find complete dismissal of this action is merited at this time as requested by Defendants.

As a further sanction, Plaintiff shall pay the reasonable and necessary attorney fees and costs incurred by Defendants in having to file the subject motion (docket no. 46). The parties are to forthwith meet and confer to see if they can agree upon the amount of attorney fees and costs for the subject motion (docket no. 46). If the parties can agree, then they shall file with the court their written Stipulation as to the amount of attorney fees and costs by December 21, 2012. If the parties cannot agree, then Defendants shall file their itemized affidavit for attorney fees and costs for the subject motion (docket no. 46) on or before December 21, 2012. Response by Plaintiff to Defendants' itemized affidavit for attorney fees and costs shall be filed with the court on or before December 31, 2012. If a Response is filed, then Defendants shall have up to and including January 10, 2013, to file any Reply to Plaintiff's Response.

Date: December 12, 2012

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