

JOHN P. HEHMAN
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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CINCINNATI, OHIO 45202

File

December 11, 1981

Mr. Lawrence R. Webster
Mr. Bruce A. Levy
Mr. E. Calvin Golumbix

Re: Our Case No. 81-5507
Victor Sword vs. C.W. Davis, et al
78-148

Dear Counsel:

Enclosed is a copy of an order which was entered today in the above-styled case.

Very truly yours,

John P. Hehman, Clerk

By Barbara J. Burns
(Mrs.) Barbara J. Burns
Deputy Clerk

Enclosure

Informational copies of the order sent to the district court judge and clerk.

NO. 81-5507

FILED

UNITED STATES COURT OF APPEALS

DEC 11 1981

FOR THE SIXTH CIRCUIT

JOHN P. HEHMAN, Clerk

VICTOR SWORD,

Plaintiff-Appellant,

O R D E R

v.

C.W. DAVIS; PAUL R. DEAN; JULIUS
MULLINS, Constituting the Board
of Trustees of the United Mine
Workers of America Health and
Retirement Fund,

Defendant-Appellees.

BEFORE: WEICK, LIVELY and JONES, Circuit Judges

Defendants have moved to dismiss plaintiff's appeal.

The record reflects that on June 2, 1981, a Magistrate issued a report recommending that defendants' motion for summary judgment be granted and expressly advising the plaintiff that, unless objections to the Report and Recommendation were filed within ten days of the date of service thereof, further appeal would be waived pursuant to the rule announced by this Court in United States v. Walters, 638 F.2d 947 (6th Cir. 1981). Plaintiff failed to file a pleading which stated his objections to the Magistrate's report; rather he filed a notice of appeal from the district court's entry of final judgment.

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Upon consideration, it appears that defendants' motion to dismiss is well-taken. United States v. Walters, supra.

Accordingly, it is ORDERED that the present motion be and hereby is granted and the final judgment of the district court be and hereby is affirmed. Rule 9(d)3, Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

John A. Klumpp
Clerk