

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JERRI LYNN MILLER : CIVIL ACTION
 :
 v. :
 :
 UNUM LIE INSURANCE COMPANY : NO. 05-177
 OF AMERICA, et al. :

OPINION AND ORDER

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE

DATE: October 19, 2006

On September 21, 2005, the Honorable Bruce W. Kauffman referred this case, involving a claim for disability insurance benefits, to the undersigned for the purpose of conducting a settlement conference. By Order dated October 21, 2005, I directed the attorneys, and their clients, to appear in chambers on November 29. On that date, counsel for defendant, together with his client who had flown down from Portland, Maine, appeared as scheduled. Neither plaintiff, nor her counsel, ever arrived.

Upon inquiry, I learned that plaintiff's counsel had simply forgotten about the conference. Therefore, I permitted him to appear, with his client, at a later date, without requiring the defendants to participate. I told both sides that if a future joint conference was scheduled, I would not require the defendant to appear in person again.

The meeting between the court and counsel for the plaintiff, together with his client, took place on December 22, 2005. Unfortunately, it did not appear to the court that settlement was possible at that time, and several follow up telephone conferences likewise failed to produce a settlement. As a result, the Court considered the matter closed.

Eight months later, on August 24, 2006, our chambers received a call from plaintiff's counsel, requesting that we hold another joint settlement conference. We advised counsel that September 20 was an open date, and that we would send out a Order scheduling the conference. On that same date, plaintiff's counsel faxed a letter to defendant's counsel, with a copy to chambers, confirming the September 20th date. Our Order, also confirming that date, was separately mailed on August 30, 2006.

Inexplicably, neither plaintiff nor her counsel showed up on September 20. When my deputy contacted counsel's office, she was told that he was, at that moment, on trial in another matter. Prior to that time, neither this office, nor defendant, had received a request from plaintiff's counsel to adjourn the September 20 settlement conference.

On September 27, 2006 defendants filed a Motion for Sanctions, seeking an award of \$1,657.50 against plaintiff. This sum represents 4.1 hours spent by counsel on September 20, 2006 traveling from Reading to Philadelphia, and back, together with an additional 2.4 hours drafting the motion for sanctions and accompanying brief. As of today, October 19, 2006, no opposition to the motion has been filed by plaintiff.

For the following reasons, Defendant's motion shall be granted. However, sanctions will be imposed only upon counsel, since it does not appear that plaintiff, herself, was in any way at fault.

Rule 16(f) of the Federal Rules of Civil Procedure gives the court broad powers to

impose sanctions against a party, counsel, or both, who fails to appear at any scheduling or pre-trial conference. This rule also covers the failure of a party to appear at a settlement conference, which is, after all, just another form of pre-trial conference. Ayers v. City of Richmond, 895 F.2d 1267, 1270 (9th Cir. 1990) (affirming award of sanctions against counsel under Rule 16(f) for failing to appear at settlement conference).

If ever there was an appropriate case for the award of sanctions against counsel for his failure to attend a conference, it is this one. Not only was this the second time that counsel failed to appear, the conference at issue here was actually requested by plaintiff and confirmed in writing by counsel the same day. We realize, of course, that counsel is in a small – and apparently very busy – law office, so we do not believe that there was any bad faith on his part. Nevertheless, his negligence here in failing to appear for a conference that he both requested and confirmed is indefensible. Perhaps that is why no defense was offered.

We note, finally, that defense counsel's request for 6.5 hours at \$255.00 is eminently reasonable, given the distance he had to travel, and his years at the bar.

An appropriate Order follows.

ORDER

AND NOW, the 19th day of October, 2006, upon consideration of Defendant's unopposed Motion For Sanctions Pursuant To Fed. R. Civ. P. 16(f), filed in this matter as Document 16, it is hereby ORDERED that

Plaintiff's counsel shall personally shall pay to Defendants a sanction in the amount of \$1,657.50

BY THE COURT:

/s/Jacob P. Hart

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE