

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

GARY ALLEN ROSS,)
)
 Plaintiff,)
)
 v.)
)
 PENTAIR, et al.,)
)
 Defendants.)

Case No. 18-2631-CM-JPO

MEMORANDUM AND ORDER

Pro se plaintiff Gary Allen Ross brings this employment-discrimination action against his employer and union. He moved to proceed with this action in forma pauperis. (Doc. 3.) The court denied that motion on December 19, 2018 and directed plaintiff make three monthly installments on the filing fee on or before January 2, 2019; February 1, 2019; and March 1, 2019. The court further advised plaintiff, “If plaintiff misses the first payment or any subsequent payments, his complaint will be subject to dismissal.” (Doc. 7.)

Plaintiff failed to make payments on either the first or second due dates. The court therefore ordered plaintiff to show cause in writing, on or before February 19, 2019, why this case should not be dismissed without prejudice for failure to prosecute. The court warned plaintiff, “If the court receives no response from plaintiff (or a response that fails to demonstrate why the court should not dismiss the case), the court will likely dismiss the case without further notice.” (Doc. 8.) As of February 25, 2019, the court believed that plaintiff had failed to respond in any manner to the court’s order.

Plaintiff did not, in fact, file a written response to the court’s order. But plaintiff did make a payment to the clerk’s office on February 19. The court was not aware of this payment, however,

when it dismissed the case. Yesterday, plaintiff paid the remainder of his filing fee—two days before the original deadline the court gave him.

In light of these circumstances, the court believes that it is appropriate to sua sponte vacate its order dismissing plaintiff's case for lack of prosecution. The Memorandum and Order dated February 25, 2019 is vacated, and the Clerk of the Court is directed to reopen this case.

IT IS THEREFORE ORDERED that because plaintiff has now paid the full filing fee, the court's Memorandum and Order dated February 25 (Doc. 9) is vacated. The Clerk of the Court is directed to reopen this case.

Dated this 28th day of February, 2019, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge