

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JAMAAL A. McNEIL,)	
)	
Plaintiff,)	8:09CV231
)	
v.)	
)	
UNITED STATES OF AMERICA,)	MEMORANDUM OPINION
et al.,)	
)	
Defendants.)	
_____)	

This matter is before the Court on its own motion. On July 17, 2009, plaintiff was ordered to show cause why he is entitled to proceed in forma pauperis ("IFP") pursuant to the provisions of [28 U.S.C. §1915\(g\)](#) (Filing No. 11). Plaintiff filed a response to the Court's order (Filing No. [13](#)). The Court has carefully reviewed the response and finds that this matter should be dismissed.

I. BACKGROUND

Plaintiff, while incarcerated, filed a complaint (Filing No. [1](#)) and a motion for leave to proceed IFP (Filing No. [2](#)) on July 6, 2009. On July 17, 2009, plaintiff was ordered to either show cause why he is entitled to proceed IFP or pay the full \$350 filing fee by August 17, 2009, or his case would be dismissed (Filing No. [11](#)). The Court's order was based on the provisions set forth in [§ 1915\(g\)](#), and also on its finding that plaintiff brought the following three cases while incarcerated,

all of which were dismissed for failure to state a claim upon which relief may be granted:

- *McNeil v. Public Defender Office*, No. 4:06CV3204 (D. Neb.), dismissed on September 5, 2006. (Case No. 4:06CV3204, Filing Nos. [5](#) and [6](#).)
- *McNeil v. City of Omaha, et al.*, No. 8:07CV145 (D. Neb.), dismissed on May 16, 2007. (Case No. 8:07CV145, Filing Nos. [12](#) and [13](#).)
- *McNeil v. City of Omaha, et al.*, No. 8:07CV143 (D. Neb.), dismissed on August 26, 2008. (Case No. 8:07CV143, Filing Nos. [53](#) and [54](#).)

On July 27, 2009, plaintiff filed a response in which he generally objected to the July 17, 2009, order and argued the merits of the three previously-dismissed cases set forth above (Filing No. [13](#)).

II. ANALYSIS

A prisoner may not bring a civil action or proceed IFP if the prisoner has, on three or more occasions, while incarcerated, brought an action or appeal in federal court that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted.

[§ 1915\(g\)](#). An exception is made for prisoners who are under imminent danger of serious physical injury. *Id.*

In its previous order, plaintiff was ordered to show cause why his case should not be dismissed pursuant to [§ 1915\(g\)](#) (Filing No. [11](#)). The Court listed three cases brought by plaintiff that were dismissed because they failed to state a

claim upon which relief may be granted. (Id. at CM/ECF p. 1.) For plaintiff to proceed IFP, he needed to show that any or all of the three dismissed cases do not meet the criteria set forth in § 1915(g) or, alternatively, that he faces imminent danger of serious physical injury.

Plaintiff did not deny that, while incarcerated, he filed three cases that were dismissed because they failed to state a claim upon which relief may be granted. He also did not allege that he faces any danger of physical injury. Instead, he argued the merits of the previously dismissed cases and stated that these three cases "have been overturned." (Filing No. 13.) However, none of these three cases is currently pending on appeal, and the time to appeal these matters expired long ago. Therefore, plaintiff has not shown that he is entitled to proceed IFP, nor has he paid the full \$350 filing fee. For these reasons, this matter will be dismissed. A separate order will be entered in accordance with this memorandum opinion.

DATED this 2nd day of September, 2009.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court