

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 09-2952

Michael W. Harlston, Sr.,

Appellant,

v.

Office of Personnel Management;
Merit Systems Protection Board,

Appellees.

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Appeal from the United States
District Court for the
Eastern District of Missouri.

[UNPUBLISHED]

Submitted: February 9, 2010
Filed: February 22, 2010

Before MURPHY, BENTON, and SHEPHERD, Circuit Judges.

PER CURIAM.

Michael Harlston appeals from the district court's preservice dismissal without prejudice under Federal Rule of Civil Procedure 41(b), for failure to comply with a court order.

When Harlston filed his pro se employment discrimination complaint, he also petitioned the court for permission to proceed in forma pauperis and filed an incomplete financial affidavit. The district court ordered Harlston to file a completed financial affidavit so that the court could determine whether Harlston was financially

unable to pay the filing fee. However, the district court then issued a second order directing Harlston to submit an amended complaint, and in that order granted Harlston in forma pauperis status upon determining that Harlston was financially unable to pay the filing fee. The district court's second order thus obviated the need for Harlston to file a completed financial affidavit, yet it appears the district court inadvertently overlooked that fact when it later dismissed the complaint for noncompliance with the first order, which we conclude was an abuse of discretion. See *Rodgers v. Curators of Univ. of Mo.*, 135 F.3d 1216, 1219 (8th Cir. 1998) (standard of review).

Accordingly, we vacate the district court's order of dismissal and remand the case for further proceedings.
