

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-02573-BNB

DAVID LEE COLLINS,

Plaintiff,

v.

[NO NAMED DEFENDANT],

Defendant.

ORDER OF DISMISSAL

Plaintiff, David Lee Collins, is a prisoner in the custody of the Colorado Department of Corrections who is incarcerated at the Arkansas Valley Correctional Facility in Ordway, Colorado. He submitted *pro se* two documents titled "Writ - Violation of Federal Labor Law (Retirement Age) (ECF No. 1) and "Writ Violation of Federal Labor Law and Fair Labor Standards Act" (ECF No. 3).

The Court reviewed the documents and determined they were deficient. Therefore, on October 10, 2013, Magistrate Judge Boyd N. Boland entered an order (ECF No. 4) directing Mr. Collins to cure certain enumerated deficiencies in the case within thirty days if he wished to pursue his claims.

The October 10 order pointed out that Mr. Collins failed to submit either the \$400.00 filing fee or a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on the proper, Court-approved form. The October 10 order also pointed out that Mr. Collins failed to submit a Prisoner Complaint on the proper, Court-

approved form. The order directed him to obtain, with the assistance of his case manager or the facility's legal assistant, the Court-approved forms for filing a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and a Prisoner Complaint. The October 10 order warned Mr. Collins that if he failed to cure the designated deficiencies within thirty days, the action would be dismissed without prejudice and without further notice.

On November 5, 2013, Mr. Collins submitted a motion to strike (ECF No. 8) and a motion to prosecute (ECF No. 9). Mr. Collins has failed to cure the designated deficiencies within the time allowed. Therefore, the action will be dismissed without prejudice for Mr. Collins' failure to cure the designated deficiencies as directed within the time allowed.

Finally, the Court certifies pursuant to § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Mr. Collins files a notice of appeal he also must pay the full \$455.00 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24.

Accordingly, it is

ORDERED that the action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, David Lee Collins, to cure the deficiencies designated in the order to cure of October 10, 2013, within the time allowed. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied. It is

FURTHER ORDERED that any pending motions are denied as moot.

DATED at Denver, Colorado, this 20th day of November, 2013.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK
Senior Judge, United States District Court