

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02715-BNB

CAROL A. BURKE,

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, and
GINA MCCARTHY, Administrator,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Carol A. Burke, resides in Watkins, Colorado. Plaintiff filed *pro se* an Application to Proceed in District Court Without Prepaying Fees or Costs (ECF No. 3) and a Title VII Complaint (ECF No. 1). The Court reviewed the documents and determined they were deficient. Therefore, on October 6, 2014, Magistrate Judge Boyd N. Boland entered an order (ECF No. 4) directing Ms. Burke to cure certain enumerated deficiencies in the case and file an amended Title VII Complaint within thirty days if she wished to pursue her claims.

On October 7, 2014, the Court entered a separate order (ECF No. 5) denying Ms. Burke's application to proceed without prepaying fees or costs because she had sufficient funds to pay the \$400.00 filing fee, and allowing her thirty days to pay the filing fee. The October 7 order warned her that if she failed to pay the filing fee as directed within thirty days, the Title VII action would be dismissed without further notice. The October 6 order to cure and file an amended Title VII Complaint pointed out that Ms.

Burke failed to use and complete all pages of the Court's current Title VII Complaint form; failed to sign the Title VII Complaint she submitted; and failed to assert claims, submit her notice-of-right-to-sue letter if available, and submit a copy of the final agency decision referenced in the Title VII Complaint. The October 6 order directed that the amended Title VII Complaint Ms. Burke filed must comply with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure.

Ms. Burke was directed to obtain the Court-approved form for filing a Title VII Complaint and to use that form in curing the designated deficiencies and in filing the amended Title VII Complaint. She was warned that even if the Court dismissed the instant action without prejudice for failure to comply with the October 6 order, the dismissal may bar recovery if she sought to refile in this Court because the ninety-day limitations period for filing a Title VII action may have run on her claims.

Ms. Burke has failed within the time allowed to cure the designated deficiencies, file an amended Title VII Complaint as directed, pay the \$400.00 filing fee, or otherwise communicate with the Court in any way. Therefore, the Title VII Complaint will be denied and the action dismissed without prejudice for Ms. Burke's failure within the time allowed to cure the designated deficiencies, file an amended Title VII Complaint as directed, and pay the \$400.00 filing fee, and for her failure to prosecute.

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 Ms. Burke files a notice of appeal she also must pay the full \$505.00 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 Title VII Complaint (ECF No. 1) and the action are dismissed without prejudice pursuant to Rules 8 and 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, Carol A. Burke, within the time allowed to cure the designated deficiencies, file an amended Title VII Complaint as directed in the order of October 6, 2014, and pay the \$400.00 filing fee, and for her failure to prosecute. 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 18th day of November, 2014.

BY THE COURT:

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