

on 3 or more prior occasions, while incarcerated . . . , brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless [he] is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

Section 1915(g) "should be used to deny a prisoner's IFP status only when . . . the district court determines that the [earlier] action was dismissed because it was frivolous, malicious or failed to state a claim." *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005). "[D]ocket records may be sufficient to show that a prior dismissal satisfies at least one of the criteria under § 1915(g)." *Id.* at 1120.

Tia has accrued three "strikes" under § 1915(g), and has been notified of these strikes.¹ Tia may not proceed in a civil action without concurrent payment of

¹See *Tia v. Criminal Investigation*, 1:10-cv-00441 DAE (D. Haw. 2010) (dismissed as frivolous and ftsc); *Tia v. Criminal Investigation*, 1:10-cv-00383 SOM (D. Haw. 2010); and (same); *Tia v. Fujita*, 1:08-cv-00575 HG (D. Haw. 2009) (dismissed for failure to state claim). See PACER Case Locator <http://pacer.psc.uscourts.gov>.

the civil filing fee unless he plausibly alleges that he was in imminent danger of serious physical injury based on Defendants' actions when he filed suit.

II. THE IMMINENT DANGER EXCEPTION

The imminent danger "exception applies if the complaint makes a plausible allegation that the prisoner faced 'imminent danger of serious physical injury' at the time of filing." *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007). This "exception turns on the conditions a prisoner faced at the time the complaint was filed, not some earlier or later time." *Id.* at 1053. Claims of "imminent danger of serious physical injury" cannot be triggered solely by complaints of past abuse. *See Ashley v. Dilworth*, 147 F.3d 715, 717 (8th Cir. 1998); *Luedtke v. Bertrand*, 32 F. Supp. 2d 1074, 1077 (E.D. Wis. 1999).

Tia's allegations do not show that he was in imminent danger of serious physical injury when he commenced this action and he may not proceed without concurrent payment of the civil filing fee. Tia's IFP application is DENIED.

III. CONCLUSION

The IFP application is DENIED and this action is DISMISSED without prejudice to Tia's refiling these claims in a new action with concurrent payment of the civil filing fee. Any pending motions are terminated. The Clerk of Court is DIRECTED to close the case and note this dismissal is pursuant to 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

DATED: HONOLULU, HAWAII, March 8, 2017.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

Tia v. HCF Inmate Grievance Specialist, et al., 1:17-cv-00089 LEK/KSC; 3stk 2017/Tia
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