

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 10-12064-RGS

JOHN B. DEMPSEY,  
PLAINTIFF,

v.

MOUNT AUBURN HOSPITAL,  
DEFENDANT.ORDER

December 2, 2010

STEARNS, D.J.

BACKGROUND

On November 26, 2010, plaintiff John B. Dempsey (“Dempsey”), a resident of Somerville, Massachusetts,<sup>1</sup> filed a Complaint, along with various exhibits in support. He alleges, *inter alia*, employment discrimination by defendant Mount Auburn Hospital based on race (Burmese/Chinese) and disability.<sup>2</sup> Dempsey asserts that he was retaliated against because he filed a “labor management complaint” regarding co-workers’ racially discriminatory statements. This took the form of being placed by the defendant on administrative leave on the grounds that he was “unfit.” Thereafter, on March 25, 2010, Dempsey resigned his position at the hospital, because he felt he was threatened with non-medicinal medication treatment, and/or he did not agree with the requirement that he meet

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<sup>1</sup>Dempsey is a frequent filer in this Court, having filed in excess of 20 cases spanning over two decades.

<sup>2</sup>Dempsey suffered extensive 3<sup>rd</sup> degree burns in a fire when he was a child, requiring skin grafts.

with a doctor for a medication evaluation. He also stopped treatment with Mount Auburn outpatient psychiatry.

Dempsey alleges that the defendant failed to provide reasonable accommodation to him as a handicapped adult and challenges the defendant's actions in placing him on "unfit" administrative leave, contending that he is sane and competent.<sup>3</sup> Further, Dempsey alleges the defendant's medical staff committed "handicap assault" and "gross medical abuse" in prescribing certain non-medicinal medications to him.

Dempsey filed a discrimination complaint with the Equal Employment Opportunity Commission, and later received a "right to sue" letter. In this action, he seeks damages in excess of \$100,000.00 for lost wages, loss of future earnings, and reimbursement of medical costs. He also seeks an expungement of his records from his participation in the defendant's Employee Assistance Program.

Along with the Complaint, Dempsey filed a Motion for Leave to Proceed *in forma pauperis* (Docket No. 2) and a Motion for Proceed in the District Court Without Prepaying Fees or Costs (Docket No. 3).

Thereafter, on December 1, 2010, he filed a Motion for Summary Judgment and Injunctive Relief (Docket No. 5), along with an Affidavit in support (Docket No. 6).

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<sup>3</sup>Dempsey alleges that the Massachusetts Appeals Court declared him to be "sane and competent" [in connection with a criminal case], citing Commonwealth v. Dempsey, 30 Mass. App. Ct. 1102 (1991) (subsequent history omitted). He also asserts that the United States Court of Appeals for the First Circuit found him to have "no signs of mental illness." Dempsey v. F.B.I., 873 F.2d 1434 (1st Cir. 1989) cert. denied 439 U.S. 870 (1989).

## DISCUSSION

### I. The Motions for Leave to Proceed *In Forma Pauperis*

After review of Dempsey's financial disclosures, the court finds that he has demonstrated sufficiently that he lacks funds to pay the \$350.00 filing fee for this action. Accordingly, his Motion for Leave to Proceed *in forma pauperis* (Docket No. 2) and his Motion for Proceed in the District Court Without Prepaying Fees or Costs (Docket No. 3) are ALLOWED.

### II. Preliminary Screening of the Complaint

Because Dempsey is proceeding *in forma pauperis*, his Complaint is subject to screening under 28 U.S.C. § 1915(e)(2). This statute authorizes federal courts to dismiss actions in which a plaintiff seeks to proceed without prepayment of fees if the action is malicious, frivolous, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2); Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Neitzke v. Williams, 490 U.S. 319, 325 (1989). For purposes of preliminary screening, the Court liberally construe Dempsey's Complaint because he is proceeding *pro se*. See Hughes v. Rowe, 449 U.S. 5, 9 (1980); Haines v. Kerner, 404 U.S. 519, 520 (1972); Instituto de Educacion Universal Corp. v. U.S. Dept. of Education, 209 F.3d 18, 23 (1st Cir. 2000).

Based on a liberal construction, this court will permit this action to proceed at this time, notwithstanding that the Complaint does not comport with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure, and contains extraneous matters. Nevertheless, there is sufficient information to cull out a plausible claim of employment

discrimination and/or retaliation. Rather than requiring Dempsey to file an Amended Complaint curing the pleading deficiencies, this action will proceed and the defendant may file a Motion for a More Definite Statement pursuant to Rule 12(e) or some other motion, if appropriate.

Accordingly, the court will direct the Clerk to issue a summons and for service to be effected by the United States Marshal Service as directed by Dempsey.

### III. The Motion for Summary Judgment and for Injunctive Relief

Notwithstanding that this action is proceeding, this court cannot find, based on the record submitted by Dempsey, that he is entitled to summary judgment under Rule 56 of the Federal Rules of Civil Procedure, and/or injunctive relief under Rule 65 of the Federal Rules of Civil Procedure, on an *ex parte* basis at this time. Dempsey presents issues of fact and/or law that may be disputed, and therefore, this court requires that the defendant be given an opportunity to respond to the allegations contained in Dempsey's pleadings before the grant of relief of this kind can be considered.

Accordingly, Dempsey's Motion for Summary Judgment and Injunctive Relief (Docket No. 5) is DENIED without prejudice to renew after the defendant has filed a responsive pleading, upon a renewed motion with good cause shown in compliance with the Federal Rules of Civil Procedure and this Court's Local Rules regarding motion practice.

### CONCLUSION

Based on the foregoing, it is hereby Ordered that:

1. Plaintiff's Motion for Leave to Proceed *in forma pauperis* (Docket No. 2) and the Motion for Proceed in the District Court Without Prepaying Fees or Costs (Docket

No. 3) are ALLOWED;

2. The Clerk shall issue a summons as to defendant Mount Auburn Hospital;
3. The Clerk shall send the summonses, Complaint, and this Order to the plaintiff, who must thereafter serve the defendant in accordance with Federal Rule of Civil Procedure 4(m). The plaintiff may elect to have service made by the United States Marshal Service. If directed by the plaintiff to do so, the United States Marshal Service shall serve the summons(es), Complaint, and this Order upon the defendant, in the manner directed by the plaintiff, with all costs of service to be advanced by the United States Marshal Service. Notwithstanding Fed. R. Civ. P. 4(m) and Local Rule 4.1, the plaintiff shall have 120 days from the date of this Order to complete service; and
4. Plaintiff's Motion for Summary Judgment and Injunctive Relief (Docket No. 5) is DENIED without prejudice to renew after a responsive pleading is filed.

SO ORDERED.

/s/ Richard G. Stearns  
UNITED STATES DISTRICT JUDGE