

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Brad Bigalke,

Plaintiff,

v.

Civil No. 10-212 (JNE/LIB)
ORDER

State of Minnesota, Department of Veterans
Affairs; and AFSCME 5, AFL-CIO,

Defendants.

Brad Bigalke brought this action for breach of the duty of fair representation; violations of the Americans with Disabilities Act; disability discrimination under the Minnesota Human Rights Act; breach of contract; and intentional infliction of emotional distress. Adopting a Report and Recommendation, the Court dismissed this action on September 13, 2010, for failure to state a claim on which relief may be granted. Judgment was entered the same day. Bigalke appealed and now seeks permission to proceed on appeal in forma pauperis.

To qualify for in forma pauperis status on appeal, a litigant who appeals from a judgment in a civil action must submit information that demonstrates the litigant's inability to pay, or give security for, the appellate filing fees. 28 U.S.C. § 1915(a)(1) (2006). Even if the litigant is financially eligible to proceed in forma pauperis on appeal, the litigant may not appeal in forma pauperis if the district court "certifies in writing that [the appeal] is not taken in good faith." *Id.* § 1915(a)(3). Good faith in this context is judged by an objective standard rather than the subjective beliefs of the appellant. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). To determine whether an appeal is taken in good faith, the Court must decide whether the claims to be decided on appeal are factually or legally frivolous. *Id.* An appeal is frivolous, and therefore

cannot be taken in good faith, “where it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

In this case, the information submitted by Plaintiff indicates that he is financially eligible for in forma pauperis status on appeal. Although the Court remains satisfied that Plaintiff’s claims were properly addressed, the Court declines to certify that Plaintiff’s appeal is not taken in good faith. Accordingly, the Court grants Plaintiff’s application to proceed in forma pauperis on appeal.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Bigalke’s motion to proceed on appeal in forma pauperis [Docket No. 48] is GRANTED.

Dated: November 3, 2010

s/ Joan N. Ericksen

JOAN N. ERICKSEN
United States District Judge