

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Michael Collins Iheme,

Civil No. 12-2270 (DWF/JJK)

Plaintiff,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Warden Michelle Smith, Stillwater
Prison, Minnesota; and Tony Forchas,
Minncor Director,

Defendants.

This matter is before the Court upon Plaintiff Michael Collins Iheme's ("Plaintiff") objections (Doc. No. 15) to Magistrate Judge Jeffrey J. Keyes's November 5, 2012 Report and Recommendation (Doc. No. 5) insofar as it recommends that: (1) Plaintiff's motion to be excused from paying an initial partial filing fee be granted; (2) Plaintiff's application for leave to proceed *in forma pauperis* be denied; (3) this action be summarily dismissed pursuant to 28 U.S.C. § 1915A(b)(1); (4) Plaintiff be required to pay the unpaid balance of the Court filing fee, namely the full \$350, in accordance with 28 U.S.C. § 1915(b)(2); and (5) the dismissal of this action be counted as a "strike" against Plaintiff for purposes of 28 U.S.C. § 1915(g).

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of the parties, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and

precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Plaintiff's objections.

Having carefully reviewed the record, the Court concludes that Plaintiff's objections offer no basis for departure from the Report and Recommendation. Plaintiff appears to dispute the dismissal of his claims on the merits pursuant to 28 U.S.C. § 1915A(b)(1). The Court finds, as did Magistrate Judge Keyes, that Plaintiff cannot plead an actionable Title VII claim based on alleged discrimination at a prison job. *See Battle v. Minn. Dept. of Corrections*, 40 Fed. Appx. 308, 310 (8th Cir. 2002) (concluding that inmate was not an employee for purposes of Title VII). Dismissal of his claims is therefore proper.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Plaintiff Michael Collins Iheme's objections (Doc. No. [15]) to Magistrate Judge Jeffrey J. Keyes's November 5, 2013 Report and Recommendation are

OVERRULED.

2. Magistrate Judge Jeffrey J. Keyes's November 5, 2012 Report and Recommendation (Doc. No. [5]) is **ADOPTED.**

3. Plaintiff Michael Collins Iheme's motion to be excused from paying an initial partial filing fee (Doc. No. [4]) is **GRANTED.**

4. Plaintiff Michael Collins Itheme's application for leave to proceed *in forma pauperis* (Doc. No. [2]) is **DENIED**.

5. This action is summarily **DISMISSED** pursuant to 28 U.S.C. § 1915A(b)(1).

6. Plaintiff Michael Collins Itheme is required to pay the unpaid balance of the Court filing fee, namely the full \$350, in accordance with 28 U.S.C. § 1915(b)(2).

7. The dismissal of this action is counted as a strike against Plaintiff Michael Collins Itheme for purposes of 28 U.S.C. § 1915(g).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: May 6, 2013

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge