

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

RANDY G. SPENCER,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2:07CV00013 ERW
)	
MISSOURI DEPARTMENT OF)	
CORRECTIONS, et al.,)	
)	
Defendants.)	

ORDER

This matter is before the Court upon the application of Randy G. Spencer for leave to commence this action without payment of the required filing fee [doc. #2].

Title 28 U.S.C. § 1915 (g)

Title 28 U.S.C. § 1915(g) provides that a prisoner may not bring a civil action in forma pauperis if “on 3 or more [earlier] occasions, . . . [the prisoner has] 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 the prisoner is under imminent danger of serious physical injury.”

Discussion

Applicant may not seek to bring the instant action in forma pauperis pursuant to 28 U.S.C. § 1915. A review of this Court’s files and those of the United States District Court for the Western District of Missouri indicate that applicant has had three or more actions or appeals dismissed as frivolous. See Spencer v. Treu, No. 96-CV-4180 (W.D. Mo.); Spencer v. Galloway, No. 96-CV-4079 (W.D. Mo.); and Spencer v. Lane, No. 96-CV-4063 (W.D. Mo.). Furthermore, a review of the complaint indicates that applicant is not under “imminent danger of serious physical injury.” Because

applicant has had three or more previous actions or appeals dismissed as frivolous, he must pay the full \$350 filing fee. See In re Tyler, 110 F.3d 528 (8th Cir. 1997).

Additionally, the Court notes that plaintiff challenges the constitutionality of § 1915(g), arguing that it infringes on his right of access to the courts. The United States Court of Appeals has held, however, that § 1915(g) “does not impinge this fundamental right . . .” Higgins v. Carpenter, 258 F.3d 797, 799 (8th Cir. 2001). As a result, the Court rejects plaintiff’s constitutional challenge to § 1915(g).

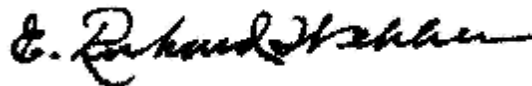
Accordingly,

IT IS HEREBY ORDERED that the applicant is **DENIED** leave to commence this action without payment of the statutory filing fee [doc. #2].

IT IS FURTHER ORDERED that the applicant shall have thirty (30) days from the date of this order to pay the \$350 filing fee.

IT IS FURTHER ORDERED that if applicant fails to pay the filing fee within thirty (30) days, the Court will dismiss this action without the filing of the complaint. See Rule 41(b) of the Federal Rules of Civil Procedure.

So Ordered this 1st Day of March, 2007.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE