

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION**

DAVID M. GARNER,)	
)	
Plaintiff,)	
)	
v.)	No. 2:10CV00023 AGF
)	
DEAN MINOR, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of plaintiff (registration no. 157398), an inmate at Missouri Eastern Correctional Center, for leave to commence this action without payment of the required filing fee [Doc. #2]. For the reasons stated below, the Court finds that plaintiff does not have sufficient funds to pay the entire filing fee and will assess an initial partial filing fee of \$27.40. See 28 U.S.C. § 1915(b)(1). Furthermore, after reviewing the complaint, the Court will order the Clerk to issue process or cause process to be issued on the complaint.

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the

greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Plaintiff has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. A review of plaintiff's account indicates an average monthly deposit of \$157.00, and an average monthly balance of \$77.15. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$27.40, which is 20 percent of plaintiff's average monthly deposit.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis in either law or in fact." Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon

which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint

Plaintiff, an inmate at Missouri Eastern Correctional Center, brings this action pursuant to 42 U.S.C. § 1983 alleging violations of his civil rights during his incarceration at Moberly Correctional Center. Named as defendants are: Dean Minor (Warden, Moberly Correctional Center); Theresa Thornburg (Assistant Warden, Moberly Correctional Center); Tim Brammer (Activity Coordinator, Moberly Correctional Center); and Joe Sunderland (Job Coordinator/Supervisor, Moberly Correctional Center).

Plaintiff alleges that during his incarceration at Moberly Correctional Center he was working in an institutional job in the Electrical Maintenance Department. He claims that while attempting to install an electrical junction box, he was seriously

injured when he fell more than twenty (20) feet from the top of a ladder. Plaintiff states that as a result of the fall, he suffered two broken ankles, “shattered heels,” and two broken/compressed vertebrae in his lumbar spine. Plaintiff claims that he was not provided proper medical care for his injuries, and he asserts that his immediate supervisors, Brammer and Sunderland, failed to ensure his safety while engaging in work in the Electrical Maintenance Department, even though they knew of the inherent dangers in the work. Additionally, plaintiff asserts that defendants Minor and Thornburg failed adequately TO supervise Brammer and Sunderland to ensure they were following the proper customs and procedures with regard to electrical work by inmates. Plaintiff seeks monetary and injunctive relief for his injuries.

Plaintiff’s claims survive initial review under 28 U.S.C. § 1915. As such, the Court will order the Clerk to serve process on defendants Minor, Thornburg, Brammer and Sunderland.

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$27.40 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it:

(1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that if plaintiff fails to pay the initial partial filing fee within thirty (30) days of the date of this Order, then this case will be dismissed without prejudice.

IT IS FURTHER ORDERED that the Clerk shall issue process or cause process to issue upon the complaint.

IT IS FURTHER ORDERED that, pursuant to 42 U.S.C. § 1997e(g)(2), defendants shall reply to plaintiff's claims within the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that this case is assigned to Track 5B: Prisoner Standard.

Dated this 5th day of April, 2010.



AUDREY G. FLEISSIG
UNITED STATES MAGISTRATE JUDGE