

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

AVI SCHEINBERG,)
)
 Plaintiff,)
)
 v.)
)
 DEPARTMENT OF VETERANS)
 AFFAIRS,)
)
 Defendant.)

No. 4:07CV1392 HEA

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff’s motion to proceed in forma pauperis. Upon review of the financial information provided with the complaint, the Court finds plaintiff does not have sufficient funds to pay the filing fee. Consequently, the motion will be granted.

Under 28 U.S.C. § 1915(e), the Court is required to review a complaint filed in forma pauperis and dismiss it if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. Additionally, under Rule 12(h)(3), the Court is required to dismiss an action at any time if it determines that subject matter jurisdiction is lacking. Having reviewed the complaint, the Court finds that plaintiff has failed to establish that the Court has subject matter jurisdiction over this case. However,

because plaintiff is proceeding pro se, the Court will allow plaintiff an opportunity to file an amended complaint.

Plaintiff brings this action against the Department of Veterans Affairs (the “VA”) for alleged medical malpractice. To bring an action in federal court against the VA under the Federal Torts Claims Act, 28 U.S.C. § 1346, a plaintiff must first present his or her claim to the appropriate federal agency pursuant to 28 U.S.C. § 2675(a). Non-compliance with § 2675(a) operates as a jurisdictional bar to proceeding in federal court. McCoy v. United States, 264 F.3d 792, 795 (8th Cir. 2001) (“A litigant may not base any part of his tort action against the United States on claims that were not first presented to the proper administrative agency.”).

The instant complaint does not allege that plaintiff has previously presented his claim to the appropriate federal agency. As a result, plaintiff has failed to establish that the Court has jurisdiction over the subject matter of his allegations.

The Court will allow plaintiff to file an amended complaint within thirty days. Plaintiff is warned that his amended complaint will take the place of his original complaint and will be the only complaint which this Court reviews. As a result, plaintiff must include all of the defendants whom he wishes to sue in the caption of the complaint and set out specific facts against each of them in the complaint. If plaintiff fails to file an amended complaint within 30 days, this case shall be dismissed.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff shall file an amended complaint as set forth in this Order within 30 days.

IT IS FURTHER ORDERED that if plaintiff fails to timely file an amended complaint, this action shall be dismissed.

Dated this 13th day of August, 2007.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE