

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TONY A. VERONEE,)
)
 Plaintiff,)
)
 v.)
)
 K & B TRANSPORTATION, K & B)
 EMPLOYEE ROSS, K & B)
 EMPLOYEE (DISPATCHER) JOE, K)
 & B EMPLOYEE (NIGHT)
 DISPATCHER) CHRIS, and K & B)
 EMPLOYEE (NIGHT DISPATCHER))
 JUSTIN,)
)
 Defendants.)

7:10CV5016

**MEMORANDUM
AND ORDER**

Plaintiff filed his Complaint in this matter on December 13, 2010. (Filing No. [1](#).) Plaintiff has previously been given leave to proceed in forma pauperis. (Filing No. [7](#).) The court now conducts an initial review of Plaintiff’s claims to determine whether summary dismissal is appropriate under [28 U.S.C. § 1915\(e\)\(2\)](#).

I. SUMMARY OF COMPLAINT

Plaintiff filed his Complaint in this matter against his previous employer K&B Transportation (“K&B”) and four K&B employees. (Filing No. [1](#) at CM/ECF p. 1.) Condensed and summarized, Plaintiff alleges that Defendants offended his religious beliefs by using “foul language” in the workplace and by calling Plaintiff derogatory names. (*Id.* at CM/ECF pp. 2-3.) Plaintiff alleges these acts have damaged his “mental stability” and affected him physically. (*Id.* at CM/ECF pp. 3-4.) Plaintiff has not presented his claims to any state or federal government agency. (*Id.* at CM/ECF p. 6.) Plaintiff seeks monetary damages in the amount of \$175,000.00. (*Id.*)

II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW

The court is required to review in forma pauperis complaints to determine whether summary dismissal is appropriate. See [28 U.S.C. § 1915\(e\)\(2\)](#). The court must dismiss a

complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#).

A pro se plaintiff must set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible,” or “their complaint must be dismissed” for failing to state a claim upon which relief can be granted. [Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 569-70 \(2007\)](#); *see also* [Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 \(2009\)](#) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. *See* [Martin v. Sargent, 780 F.2d 1334, 1337 \(8th Cir. 1985\)](#). However, a pro se plaintiff’s allegations must be construed liberally. [Burke v. North Dakota Dep’t of Corr. & Rehab., 294 F.3d 1043, 1043-44 \(8th Cir. 2002\)](#) (citations omitted).

III. DISCUSSION OF CLAIMS

Liberally construed, Plaintiff’s claims are brought pursuant to Title VII of the Civil Rights Act. Title VII states that it is unlawful for an employer “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to her compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” [42 U.S.C. § 2000e-2\(a\)\(1\)](#).

Prior to filing a suit in federal court under Title VII, a plaintiff is required to exhaust his administrative remedies by first seeking relief through the Equal Opportunity Employment Commission (“EEOC”) or the Nebraska Equal Opportunity Employment Commission (“NEOC”). The EEOC/NEOC will then investigate the charge and determine whether to file suit on behalf of the charging party or make a determination of no reasonable cause. If the EEOC/NEOC determines that there is no reasonable cause, the agency will then issue the charging party a right-to-sue notice. [42 U.S.C.A. § 2000e-5\(f\)\(1\)](#); *see also* [Hanenburg v. Principal Mut. Life Ins. Co., 118 F.3d 570 \(8th Cir. 1997\)](#). The charging party has 90 days from the receipt of the right-to-sue notice to file a civil complaint based on his charge. [42 U.S.C.A. § 2000e-5\(f\)\(1\)](#). The civil complaint may only encompass issues that

are reasonably related to the substance of charges timely brought before the EEOC/NEOC. [Williams v. Little Rock Mun. Water Works, 21 F.3d 218, 222 \(8th Cir. 1994\).](#)

Here, Plaintiff clearly alleges that he has not presented his claims to any state or federal government agency. (Filing No. [1](#) at CM/ECF p. 6.) Consequently, Plaintiff has failed to exhaust his administrative remedies and his Complaint fails to state a claim upon which relief may be granted. The court will therefore dismiss Plaintiff's Complaint without prejudice to reassertion after Plaintiff exhausts his administrative remedies.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Complaint (filing no. [1](#)) is dismissed without prejudice.
2. Plaintiff's Motion for Venue (filing no. [6](#)) is denied as moot.
3. A separate Judgment will be entered in accordance with this Memorandum and Order.

DATED this 10th day of March, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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