

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RUDY STANKO, Individually)
and on behalf of similarly)
situated citizens,)
)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA,)
c/o Attorney General of)
United States,)
)
Defendant.)
_____)

8:11CV245

MEMORANDUM OPINION

This matter is before the Court on its own motion. On July 22, 2011, the Court required plaintiff to show cause why he is entitled to proceed in forma pauperis ("IFP") pursuant to the provisions of [28 U.S.C. §1915\(g\)](#) ("§ 1915(g)") (Filing No. [6](#)). Plaintiff did not file a response to the Court's Memorandum and Order and, as set forth below, this matter will be dismissed.

I. BACKGROUND

On July 11, 2011, while incarcerated, plaintiff filed a complaint (Filing No. [1](#)) and a motion for leave to proceed IFP (Filing No. [2](#)). On July 22, 2011, the Court ordered plaintiff to either show cause why he is entitled to proceed IFP or pay the full \$350 filing fee, or his case would be dismissed (Filing No. [6](#)). The Court's previous Memorandum and Order was based on its finding that plaintiff brought the following three cases while incarcerated, which were dismissed because they failed to state a

claim upon which relief may be granted or because they were frivolous:

- [Stanko v. Federal Bureau of Prisons, No. 09-CV-035-HRW \(E.D. Ky. April 21, 2009\)](#), dismissed for failure to state a claim upon which relief may be granted on April 21, 2009.
- [Stanko v. Bataillon, No. 8:06CV607, 2007 WL 685663 \(D. Neb. Feb. 28, 2007\)](#), dismissed as frivolous and for failure to state a claim upon which relief may be granted, and affirmed on October 23, 2007.
- *Stanko v. United States*, No. 8:10CV151 (D. Neb.), dismissed as frivolous on November 18, 2010, and affirmed on April 8, 2011. (Case No. 8:10CV151, Filing Nos. [15](#), [16](#) and [25](#).)

Plaintiff did not file a response to the July 22, 2011, Memorandum and Order, and has taken no other action in this matter. (See Docket Sheet.)

II. ANALYSIS

A prisoner may not bring a civil action or proceed IFP if the prisoner has, on three or more occasions, while incarcerated, brought an action or appeal in federal court that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted.

[§ 1915\(g\)](#). An exception is made for prisoners who are under imminent danger of serious physical injury. *Id.*

In its previous Memorandum and Order, the Court ordered plaintiff to show cause why his case should not be dismissed pursuant to [§ 1915\(g\)](#) (Filing No. [6](#)). The Court listed three

cases brought by plaintiff that were dismissed as frivolous or because they failed to state a claim upon which relief may be granted. (Id. at CM/ECF pp. 1-2.) For plaintiff to proceed IFP, he needed to show the Court that any or all of the three dismissed cases do not meet the criteria set forth in § 1915(g) or, alternatively, that he faces imminent danger of serious physical injury.

Plaintiff did not respond to the Court's July 22, 2011, Memorandum and Order. (See Docket Sheet.) Thus, plaintiff has not shown that he faces any imminent danger of physical injury. In light of this, plaintiff is not entitled to proceed IFP, nor has he paid the full \$350 filing fee. For these reasons, this matter will be dismissed. A separate order will be entered in accordance with this memorandum opinion.

DATED this 26th day of August, 2011.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court

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