

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

KERRY BEGAY, JR.,

Plaintiff,

vs.

No. CV 21-00933 WJ/GJF

SAN JUAN COUNTY ADULT DETENTION CENTER,
OFFICER COURTNEY, OFFICER FISHER, and
SERGEANT JACUB,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court under Fed. R. Civ. P. 41(b) on the Complaint for Violation of Civil Rights filed by Plaintiff Kerry Begay, Jr. (Doc. 1). The Court will dismiss this case without prejudice for failure to comply with Court orders, failure to comply with statutes and rules, and failure to prosecute.

Plaintiff Kerry Begay, Jr., is an incarcerated prisoner. He filed a Complaint for Violation of Civil Rights September 22, 2021. (Doc. 1). Plaintiff Begay also submitted an application to proceed under § 1915 on September 22, 2021. (Doc. 2). The Court granted the application to proceed *in forma pauperis* on January 28, 2022. (Doc. 4). The Court also required Plaintiff Begay to make an initial partial payment of \$9.50 or show cause why he should not be required to make the payment within 30 days of entry of the Order. (Doc. 4 at 1). Begay responded to the Order by claiming that he should be excused from making the payment due to a Restricted Housing Disciplinary Action. (Doc. 5). The Restricted Housing Disciplinary Action makes no reference to any inability to pay the initial partial payment and contains no information regarding Plaintiff's financial status. (Doc. 5).

On March 31, 2022, the Court entered an Order to Show Cause directing Plaintiff Begay to show cause within 30 days why the case should not be dismissed for failure to comply with the Court's January 28, 2022 Order to make an initial partial payment. (Doc. 6). In the Order, the Court concluded that the Restricted Housing Disciplinary Action did not excuse Begay from making the initial partial payment. (Doc. 6 at 1). The Order to Show Cause notified Plaintiff Begay that, if he did not respond and show cause within 30 days, the Court could dismiss the case without further notice. (Doc. 6 at 2). More than 30 days have passed, and Plaintiff Begay has not shown cause, responded to the March 31, 2022 Order, or communicated with the Court.

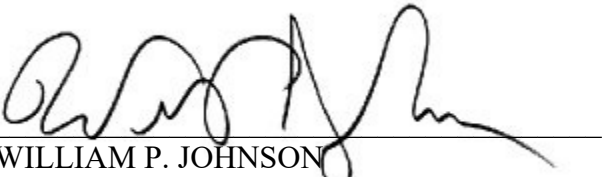
When a prisoner is granted leave to proceed *in forma pauperis*, § 1915 provides:

“The court *shall* assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of (A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.”

28 U.S.C. § 1915(b)(1) (emphasis added). The inmate account statement submitted by Begay shows that Begay had an account balance sufficient to pay the initial partial payment ordered by the Court but spent his money on commissary purchases and media purchases. (Doc. 2 at 3-7). *See Shabazz v. Parsons*, 127 F.3d 1246, 1248-49 (10th Cir. 1997). “[W]hen a prisoner has the means to pay an initial partial filing fee and instead spends his money on amenities at the prison canteen or commissary, he should not be excused for failing to pay the initial partial filing fee.” *Baker v. Suthers*, 9 F. App'x 947, 949 (10th Cir. 2001). Plaintiff Begay was ordered to make the required partial payment under § 1915(b)(1) or show cause why the payment should be excused but failed to comply with the Court's January 28, 2022 Order. (Doc. 6 at 1). Begay has also failed to comply with the Court's March 31, 2022 Order to Show Cause. (Doc. 6).

The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n.3 (10th Cir. 2003). Plaintiff Begay has failed to comply with the Court's January 28, 2022 and March 31, 2022 Orders, has failed to comply with the requirements of 28 U.S.C. §§ 1914 and 1915, and has failed to prosecute this case.

IT IS ORDERED that the Complaint for violation of Civil Rights filed by Plaintiff Kerry Begay (Doc. 1) is **DISMISSED without prejudice** under Fed. R. Civ. P. 41(b) for failure to comply with Court orders, failure to comply with statutes, and failure to prosecute.



WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE