IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Jeffrey Ransom,	:	
Plaintiff,	:	Case No. 2:14-cv-1845
v.	:	JUDGE JAMES L. GRAHAM
Owens-Illinois, Inc.,	:	Magistrate Judge Kemp
Defendant.	:	

REPORT AND RECOMMENDATION

Plaintiff, Jeffrey Ransom, a resident of Chandlersville, Ohio (which is in Muskingum County), filed this action against his former employer, Owens-Illinois, Inc. He has moved for leave to proceed *in forma pauperis*. That motion (Doc. 1) is granted. For the following reasons, however, it will be recommended that this case be dismissed.

I. The *In Forma Pauperis* Statute

28 U.S.C. §1915(e)(2) provides that in proceedings in forma pauperis, "[t]he court shall dismiss the case if ... (B) the action ... is frivolous or malicious [or] fails to state a claim on which relief can be granted...." The purpose of this statutory section is to prevent suits which are a waste of judicial resources and which a paying litigant would not initiate because of the costs involved. See Neitzke v. Williams, 490 U.S. 319 (1989). A complaint may be dismissed as frivolous only when the plaintiff fails to present a claim with an arguable or rational basis in law or fact. See id. at 325. Claims which lack such a basis include those for which the defendants are clearly entitled to immunity and claims of infringement of a legal interest which does not exist, see id. at 327-28, and "claims describing fantastic or delusional scenarios, claims with

which federal district judges are all too familiar." Id. at 328; see also Denton v. Hernandez, 504 U.S. 25 (1992). A complaint may not be dismissed for failure to state a claim upon which relief can be granted if the complaint contains "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). Claims against defendants who are immune from suits for money damages, such as judges or prosecutors acting in their judicial or prosecutorial capacity, are also within the ambit of §1915A. Pro se complaints are to be construed liberally in favor of the pro se party. See Haines v. Kerner, 404 U.S. 519 (1972). Ms. Dotson's complaint will be reviewed under these legal standards.

II. The Facts

The facts of the case, taken from the complaint, can be stated as follows. Mr. Ransom worked for Owens-Brockway (whose relationship to Owens-Illinois is not described in the complaint) and, in 2012, was injured on the job. He had surgery and returned to work in 2013. He was given a light duty job. As a result of an incident which occurred on May 31, 2013, he was asked to submit to a drug test. When he refused, he was fired. His grievance was denied, but he was offered retirement at the third step of the grievance process. He claims that he was unfairly treated and his employer was "negligent" in its handling of the matter. He seeks damages in the amount of $3,000,000.00.

III. Legal Analysis

Federal courts are courts of limited jurisdiction, meaning that they can only exercise jurisdiction over cases to the extent authorized by Article III of the United States Constitution and by Act of Congress. The two most common bases of federal court jurisdiction are "diversity jurisdiction" - that is, the plaintiff and defendant are citizens of different States, and the case involves at least $75,000.00 - and "federal question"

jurisdiction, meaning that the case arises under the Constitution or laws of the United States. If neither of these describes the case, the Court has no power to hear or decide it.

In his complaint, Mr. Ransom checked a box indicating that the jurisdictional basis of his suit is 28 U.S.C. §442. However, there is no such statute. His complaint about discrimination based on a workplace injury is not a federally-based claim. Any claim for retaliation for filing a workers' compensation claim arises under Ohio Rev. Code §4123.90, not under federal law. Carey v. ODW Logistics Inc., 2010 WL 596503, *5 (S.D. Ohio Feb. 16, 2010)(noting that the plaintiff's "worker's compensation retaliation claim ... [is a] state law claim[] ... governed by the law of Ohio"). He may be attempting to assert that he was either treated improperly or discharged in violation of a collective bargaining agreement. That is a federal law claim which arises under section 301 of the Labor-Management Relations Act, 29 U.S.C. §185; however, the employer cannot be sued for breach of the collective bargaining agreement in a stand-alone suit. In order to bring that type of claim (known as a "hybrid §301 action"), the union must also be joined as a party, and the complaint must allege a breach by the union of its duty of fair representation. See Chauffeurs, Teamsters and Helpers, Local 391 v. Terry, 494 U.S. 558, 564 (1990). Further, any such suit must be brought within six months of the events about which the plaintiff complains. DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983). That did not happen here. Consequently, if the Court were to construe the case as having been brought under §301, the complaint does not state a proper claim and it is barred by the six-month statute of limitations.

The Court notes that the complaint does not identify the citizenship of Owens-Illinois. It appears that Owens-Illinois has its principal place of business in Toledo, Ohio, and is

therefore a citizen of Ohio for purposes of the statute which gives this Court jurisdiction over suits between citizens of different states. See 28 U.S.C. §1332(c)(1) ("a corporation shall be deemed to be a citizen of ... the State ... where it has its principal place of business ..."). Mr. Ransom is also an Ohio citizen. Consequently, the Court cannot exercise jurisdiction over this case under that statute.

IV. Recommendation

For all of the reasons set forth above, it is recommended that this case be dismissed under 28 U.S.C. §§1915(e)(2) either because the Court lacks jurisdiction or because the complaint fails to state a claim under federal law. Should this recommendation be adopted, the Clerk should be directed to mail a copy of the complaint, this Report and Recommendation, and any dismissal order to the defendant.

V. Procedure on Objections

Any party may, within fourteen days after this Order is filed, file and serve on the opposing party a motion for reconsideration by a District Judge. 28 U.S.C. §636(b)(1)(A), Rule 72(a), Fed. R. Civ. P.; Eastern Division Order No. 14-01, pt. IV(C)(3)(a). The motion must specifically designate the order or part in question and the basis for any objection. Responses to objections are due fourteen days after objections are filed and replies by the objecting party are due seven days thereafter. The District Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law.

This order is in full force and effect even if a motion for reconsideration has been filed unless it is stayed by either the Magistrate Judge or District Judge. S.D. Ohio L.R. 72.4.

/s/ Terence P. Kemp
United States Magistrate Judge