

1 HONORABLE RICHARD A. JONES  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 MITCH SZCZYGIELSKI,

11 Plaintiff,

12 v.

13 GENERAL DYNAMICS  
14 CORPORATION,

15 Defendant.  
16

CASE NO. 18-CV-594-RAJ

ORDER

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18 This matter comes before the court on Plaintiff Mitch Szczygielski's ("Mr.  
19 Szczygielski" or "Plaintiff") Motion to Appoint Counsel. Dkt. # 7. Generally, a person  
20 has no right to counsel in civil actions. *See Storseth v. Spellman*, 654 F.2d 1349, 1353  
21 (9th Cir. 1981). However, a court may under "exceptional circumstances" appoint  
22 counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1). *Agyeman v. Corrs.*  
23 *Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004).

24 When determining whether "exceptional circumstances" exist, a court must  
25 consider "the likelihood of success on the merits as well as the ability of the petitioner to  
26 articulate his claims *pro se* in light of the complexity of the legal issues involved."  
27 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). A plaintiff must plead facts that

1 show he has an insufficient grasp of his case or the legal issue involved and an inadequate  
2 ability to articulate the factual basis of his claim. *Agyeman*, 390 F.3d at 1103. Although  
3 most parties would benefit from representation by an attorney, that is not the standard for  
4 appointment of counsel in a civil case. *See Rand v. Roland*, 113 F.3d 1520, 1525 (9th  
5 Cir. 1997), *overruled on other grounds*, 154 F. 3d 952 (9th Cir. 1998) (finding that a *pro*  
6 *se* litigant may be better served with the assistance of counsel is not the test). Plaintiff  
7 must show *exceptional* circumstances.

8 This case arises from Defendant General Dynamics Corporation’s (“General  
9 Dynamics” or “Defendant”) alleged denial of benefits under Defendant’s retirement  
10 plans. Plaintiff claims that he worked for Defendant, was injured and filed a workers  
11 compensation claim in 1991, and was terminated the same year. Dkt. # 1-1 at 2-3.  
12 Defendant contends that Plaintiff started work in 1988, was terminated in 1991, and  
13 settled his workers compensation claim in 1993. Dkt. # 13 at 2-3. Defendant claims that  
14 Plaintiff is not entitled to claim benefits under its retirement plan because Plaintiff did not  
15 accrue the five to ten years of service necessary to claim benefits under its retirement  
16 plan and was terminated before the age of 55. Dkt. # 13 at 4.

17 At this preliminary stage, it is difficult for the court to assess Plaintiff’s likelihood  
18 of success on the merits. It appears at this point, however, that Plaintiff has a sufficient  
19 grasp of his claims, the ability to articulate his claims and to represent himself *pro se*.  
20 This does not appear, at the present, to be a case with *exceptional* circumstances.  
21 Moreover, Plaintiff’s Application for Court-Appointed Counsel contains two errors that  
22 need correcting. First, Mr. Szczygielski claims that the Court had not previously granted  
23 him leave to proceed *in forma pauperis*, which this Court did on April 25, 2018. Dkt. #  
24 5. Second, Mr. Szczygielski indicates under “Merits of Claim” that a governmental  
25 agency has “officially determined” that there is “reasonable cause to believe that the  
26 allegations” in his Complaint were true; however, Mr. Szczygielski does identify any  
27 such agency or finding. Dkt. # 7 at 2. Mr. Szczygielski only points to Defendant’s

1 observation that he can file a lawsuit in federal court. *Id.* Defendant is not a  
2 governmental agency and this is not a finding of “reasonable cause.” If an appropriate  
3 governmental agency has evaluated Mr. Szczygielski’s claims and made a finding in his  
4 favor, he must disclose this in his application.

5 Because the court could conceivably envision a scenario in which Mr.  
6 Szczygielski corrects his errors and this case becomes sufficiently complex to warrant  
7 appointment of counsel, Mr. Szczygielski’s motion is **DENIED WITHOUT**  
8 **PREJUDICE.**

9 The court strongly encourages Mr. Szczygielski’s to review the court’s website at  
10 [www.wawd.uscourts.gov](http://www.wawd.uscourts.gov), where he will find resources for *pro se* parties, including the  
11 court’s local rules.

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13 DATED this 30th day of July, 2018.

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17 The Honorable Richard A. Jones  
18 United States District Judge  
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