

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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KEVIN BERNARD DURHAM,

Petitioner,

v.

LINDUS CONSTRUCTION/MIDWEST  
LEAFGUARD, INC.,

Respondent.

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ORDER

09-cv-4-slc

This is a civil action in which petitioner, a resident of Baldwin, Wisconsin, alleges that respondent discriminated against him because of his race by overlooking him for installation and sales jobs, and by terminating his employment for actions that resulted in a promotion for another employee. Petitioner has asked for leave to proceed *in forma pauperis* and has supported his request with an affidavit of indigency.

The standard for determining whether petitioner qualifies for indigent status is the following:

- From petitioner's annual gross income, the court subtracts \$3400 for each dependent excluding the petitioner.
- If the balance is less than \$15,000, the petitioner may proceed without any prepayment of fees and costs.
- If the balance is greater than \$15,000 but less than \$28,000, the petitioner must prepay half the fees and costs.
- If the balance is greater than \$28,000, the petitioner must prepay all fees and costs.
- Substantial assets or debts require individual consideration.

Applying this formula, I find that petitioner does not qualify for indigent status. Petitioner's monthly income is \$800, which makes his annual income \$9600. Although his

annual salary falls below the threshold for proceeding without any prepayment of the filing fee, he lists a “401k cashout” in the amount of \$19,000 as a substantial asset, and he has no dependants or unusual debts. Given the existence of this substantial asset I conclude he is disqualified from proceeding *in forma pauperis*. If petitioner wishes to proceed with this action, he will have to pay the \$350 filing fee.

#### ORDER

IT IS ORDERED that petitioner’s request for leave to proceed *in forma pauperis* in this action is DENIED because petitioner does not qualify for indigent status.

Further, IT IS ORDERED that petitioner may have until January 28, 2009, in which to pay the \$350 fee for filing his lawsuit. If, by January 28, 2009, petitioner fails to respond to this order, he will be held to have withdrawn this action voluntarily. In that event, the clerk of court is directed to close this file without prejudice to petitioner’s filing his case at a later date.

Entered this 7<sup>th</sup> day of January, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge