

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-2020

TERRY GOODEN,

Plaintiff - Appellant,

v.

U.S. NAVY/U.S. MARINE CORPS; ROBERT B. NELLER, U.S. Marine Corps,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, Senior District Judge. (2:19-cv-00188-RBS-RJK)

Submitted: January 23, 2020

Decided: January 27, 2020

Before WYNN, DIAZ, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Terry Gooden, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Terry Gooden appeals the district court's order dismissing his civil action with prejudice pursuant to 28 U.S.C. § 1915(e)(2) (2018). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Gooden v. U. S. Navy/U.S. Marine Corps*, No. 2:19-cv-00188-RBS-RJK (E.D. Va. July 24, 2019). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

TERRY GOODEN,

v. Plaintiff

Civil No. 4:19cv44

U.S. NAVY/U.S. MARINE CORPS, *et al.*,

Defendant.

JUDGMENT IN A CIVIL CASE

Decision by the Court. This action came for decision before the Court. The issues have been considered and a decision has been rendered.

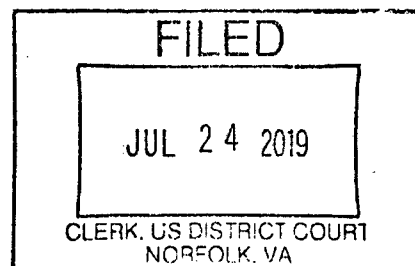
IT IS ORDERED AND ADJUDGED that the court hereby dismisses this action pursuant to 28 U.S.C. § 1915(e)(2) with prejudice.

DATED: 7/24/2019

FERNANDO GALINDO, Clerk

By /s/
E. Price, Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



TERRY GOODEN,

Plaintiff,

v.

ACTION NO. 2:19cv188

U.S. NAVY/U.S. MARINE CORPS, et al.,

Defendants.

DISMISSAL ORDER

On January 23, 2019, Plaintiff Terry Gooden ("Plaintiff"), appearing pro se, submitted an application to proceed in forma pauperis ("IFP Application") and a proposed Complaint to the Richmond Division of this court. IFP Appl., ECF No. 1. On April 12, 2019, Plaintiff's case was transferred from the Richmond Division to the Norfolk Division of this court, and assigned to the undersigned. Order, ECF No. 3. On April 29, 2019, the court granted Plaintiff's IFP Application, and directed the Clerk to file Plaintiff's Complaint. Order Show Cause at 1, ECF No. 4. However, the court explained to Plaintiff that his Complaint "suffer[ed] from defects that must be addressed before this action can proceed." Id. at 2.

Plaintiff's Complaint was difficult to decipher. On page four of his Complaint, Plaintiff stated: "USMC admitted to fraudulently changing my identity to another person['s] name causing me to suffer homelessness, pain & suffering, sickness, heart attacks, and strokes

after a staff sgt. broke my jaw with a pugil stick during basic training in Parris Island, S.C. in 1978." Compl. at 4, ECF No. 5.

Plaintiff also referred to an "attached statement and demand letter."

Id. The body of the Complaint contained no other factual allegations, and did not reference any specific cause of action that Plaintiff intended to assert. Id. at 1-5.

Plaintiff attached 84 pages of documents to his Complaint. Id., Attach. 1 at 1-84. The documents included, among other things: (i) correspondence regarding the denial of an administrative claim brought by Plaintiff under the Federal Tort Claims Act in connection with personal injuries allegedly sustained by Plaintiff in boot camp in 1978; (ii) a request from Plaintiff to be "properly discharged from the United States Marine Corps," and to be granted "retired status;" (iii) allegations that Plaintiff's mother fraudulently "switched the names" of Plaintiff and his twin brother, who died days after he was born, "in order to receive compensation from the United States Marine Corps;" (iv) requests for medical records; (v) copies of medical-related documents; (vi) correspondence to and from the Department of Veterans Affairs regarding Plaintiff's health conditions; (vii) statements from individuals who served with Plaintiff in the United States Marines regarding the injuries Plaintiff allegedly suffered in 1978; and (viii) military records indicating that Plaintiff was discharged in 1978 as a result of a "[d]efective [a]ttitude." Id.

In an Order to Show Cause dated April 29, 2019, the court explained that "[a]lthough Plaintiff's submission [was] voluminous, it [did] not adequately identify the claims that Plaintiff intend[ed] to assert against Defendants, or the factual basis for such claims." Order Show Cause at 3, ECF No. 4. The court further explained:

Pursuant to 28 U.S.C. § 1915(e)(2), the court "shall dismiss the case at any time if the court determines that . . . the action . . . fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2). A pro se complaint should survive only when a plaintiff has set forth "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

Because, as noted above, Plaintiff's Complaint does not adequately identify the claims upon which Plaintiff's lawsuit is based, it necessarily follows that Plaintiff has not sufficiently stated a claim on which relief may be granted.

Id. The court recognized that it "must liberally construe the pleadings of a pro se litigant," but determined that it "would be crossing the line into improper advocacy" if it "were to sift through Plaintiff's voluminous submission to identify and develop claims that Plaintiff has not attempted to assert." Id. at 3-4 n.2.

Cognizant of Goode v. Central Virginia Legal Aid Society, Inc., 807 F.3d 619, 623 (4th Cir. 2015), and its progeny, and in deference to Plaintiff's pro se status, the court provided Plaintiff with an opportunity to file an Amended Complaint. Id. at 3-4. The court stated:

Plaintiff is ORDERED to SHOW CAUSE why this action should not be dismissed by filing an Amended Complaint within thirty days of the date of entry of this Order to Show Cause. The Amended Complaint must clearly identify all claims that Plaintiff intends to assert against each Defendant, identify a valid basis for the court's jurisdiction over such claims, and set forth all factual allegations upon which Plaintiff's claims are based. The Amended Complaint must explain who took what action, when the actions were taken, and why the actions were wrongful.

Id. at 4.

On May 14, 2019, Plaintiff filed a ninety-two-page submission ("Submission") with the court. Submission, ECF No. 6. The first page of Plaintiff's Submission referenced a "Motion to Amend Case No. 2:19-cv-188 to State a Claim." Id. at 1. The remaining ninety-one pages of Plaintiff's Submission were nearly identical to the materials that Plaintiff submitted as his initial Complaint in this action. Id. at 2-92.

The purpose of Plaintiff's Submission was unclear to the court.

In an Order dated June 6, 2019, the court stated:

To the extent Plaintiff intended his Submission to serve as a request to file an Amended Complaint, such a request is unnecessary because the court's April 29, 2019 Order to Show Cause ordered Plaintiff to file an Amended Complaint. See Order Show Cause at 4. Further, because Plaintiff's Submission contains information that is nearly identical to Plaintiff's initial Complaint, it does not appear that Plaintiff intended his Submission to serve as his Amended Complaint.

Order at 2-3, ECF No. 7.

Out of an abundance of caution, and in deference to Plaintiff's pro se status, the court provided Plaintiff with another opportunity to file an Amended Complaint that cured the defects noted in the court's April 29, 2019 Order to Show Cause. The court stated:

Plaintiff is ORDERED to file the Amended Complaint within thirty days of the date of entry of this Order. Plaintiff is ADVISED that his Amended Complaint will supersede his initial Complaint and will become the operative complaint in this action. As such, Plaintiff's Amended Complaint must: (i) be clearly labeled as an "Amended Complaint;" (ii) clearly identify all claims that Plaintiff intends to assert against each Defendant; (iii) identify a valid basis for the court's jurisdiction over such claims; and (iv) clearly identify all of the factual allegations upon which all of Plaintiff's claims are based. The Amended Complaint must explain who took what action, when the actions were taken, and why the actions were wrongful.

Id. at 3 (emphasis in original).

On July 8, 2019, Plaintiff filed an Amended Complaint. Am. Compl., ECF No. 8. The factual allegations asserted in Plaintiff's Amended Complaint largely mirror those asserted in Plaintiff's initial Complaint.¹ Id. at 4. For example, in the "Statement of Claim" section of his Amended Complaint, Plaintiff states:

USMC admitted to fraudulently changing my identity to another person['s] name, causing me to suffer homelessness, pain, suffering, sickness, heart attacks and st[r]okes after a staff serge[a]nt broke my jaw and busted by eye drum with a pugil stick, and head trauma during

¹ Plaintiff did not attach any exhibits to his Amended Complaint. See Am. Compl., ECF No. 8.

basic training in Par[r]is Island, South Carolina from Jan. 3rd to March 17, 1978.

Id. at 4. In the "Relief" section of his Amended Complaint, Plaintiff states:

Due to my injuries that I received, I was wrongfully discharge[d] from the U.S. Marine Corps, and due to my identity be[ing] stolen[,] it has caused me to be hom[e]less for over 40 years of my life. I am seeking to be properly discharged from the United States Marine Corps after advancement of appropriate rank commensurate with that of my peers had I remained in active service, that I be granted Marine Corps retired status. I ask[] for the \$40,000,000.00 to be granted for my pain and suffering that U.S. Marine Corps cause[d] me.

Id.

Plaintiff's Amended Complaint, like his initial Complaint, does not adequately identify the claims that Plaintiff intends to assert against Defendants, or the factual basis for such claims.² As such,

² The court notes that to the extent Plaintiff intended to bring a tort claim against Defendants pursuant to the Federal Tort Claims Act, it is clear that such claim is untimely. Under the Federal Tort Claims Act, "[a] tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues." 28 U.S.C. § 2401(b). Here, Plaintiff's alleged injuries occurred in 1978; however, according to documents previously filed by Plaintiff in this action, Plaintiff did not present a tort claim based on these alleged injuries until September 11, 2018, approximately forty years later. See Am. Compl. at 4, ECF No. 8; see also Submission at 3-6, ECF No. 6. Further, to the extent Plaintiff intended to ask this court to review or alter his military records, Plaintiff's Amended Complaint does not contain allegations sufficient to state a claim for such relief. See Herka v. Maybus, No. CV-14-2355, 2017 U.S. Dist. LEXIS 855, at *7-8 (D. Ariz. Jan. 4, 2017) (discussing the "administrative system" in place under 10 U.S.C. § 1552 et seq. "to correct military

Plaintiff has again failed to sufficiently state a claim on which relief may be granted, and dismissal of this action is warranted under 28 U.S.C. § 1915(e)(2).

When a district court dismisses an action pursuant to 28 U.S.C. § 1915, and "the district court has already afforded [the plaintiff] an opportunity to amend," the United States Court of Appeals for the Fourth Circuit has found that "the district court has the discretion to afford [the plaintiff] another opportunity to amend[,] or [it] can 'dismiss the complaint with prejudice, thereby rendering the dismissal order a final, appealable order.'" Smith v. Forrester, No. 4:18cv3317, 2019 U.S. Dist. LEXIS 35042, at *5 (D.S.C. Feb. 6, 2019) (recommending the dismissal of a pro se action under 28 U.S.C. § 1915 after the plaintiff, despite receiving an opportunity to amend, failed to state a claim upon which relief could be granted) (citing Workman v. Morrison Healthcare, 724 F. App'x. 280 (4th Cir. 2018); Knox v. Plowden, 724 F. App'x. 263 (4th Cir. 2018); Mitchell v. Unknown, 730 F. App'x 171 (4th Cir. 2018)), adopted by, 2019 U.S. Dist. LEXIS 33852 (D.S.C. Mar. 4, 2019). Here, the court has provided Plaintiff with multiple opportunities to amend his complaint. Despite these opportunities, Plaintiff has not adequately stated a claim upon which relief may be granted. Thus,

records and review military discharges and dismissals," and the "applicable federal regulations" set forth in 32 C.F.R. § 723).

the court hereby dismisses this action pursuant to 28 U.S.C. § 1915(e)(2) with prejudice.

Plaintiff may appeal this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court, Norfolk Division, 600 Granby Street, Norfolk, Virginia 23510. The written notice must be received by the Clerk within sixty days from the date of entry of this Dismissal Order.

The Clerk is DIRECTED to send a copy of this Dismissal Order to Plaintiff.

IT IS SO ORDERED.

/s/ -RBS
Rebecca Beach Smith
United States District Judge

July 24 , 2019