

APPENDIX

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Appendix A

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5309 September Term, 2023

1:23-cv-02574-UNA

Filed On: May 13, 2024

Martin Akerman,

Appellant

v.

Merit Systems Protection Board, et al.,

Appellees

BEFORE: Rao, Walker, and Garcia, Circuit Judges

O R D E R

Upon consideration of the motion for reconsideration of the court's April 19, 2024 order denying appellant's motion to waive fees, it is

ORDERED that the motion for reconsideration be denied. Appellant has not shown that this case arises under the Uniformed Services Employment and Reemployment Rights Act, regardless of whether he intended to invoke the prohibitions set forth under 38 U.S.C. § 4311(a) or those set forth under § 4311(b). It is

FURTHER ORDERED that, within 30 days of the date of this order, appellant either pay the \$605 appellate docketing and filing fee to the Clerk of the District Court or file a motion in district court for leave to proceed on appeal in forma pauperis. Failure to comply with this order may result in dismissal of the case for lack of prosecution. See D.C. Cir. Rule 38.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

Appendix B

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5309 September Term, 2023

1:23-cv-02574-UNA

Filed On: April 19, 2024

Martin Akerman,

Appellant

v.

Merit Systems Protection Board, et al.,

Appellees

BEFORE: Rao, Walker, and Garcia, Circuit Judges

O R D E R

Upon consideration of the response to the court's February 6, 2024 order, which includes a motion to waive fees, the motion to appoint counsel, the motion to suspend briefing schedule and hold case in abeyance, and the motion to clarify and for a status conference, it is

ORDERED that the motion to waive fees be denied. Appellant has not shown that this case arises under the Uniformed Services Employment and Reemployment Rights Act, which prohibits employment discrimination on the basis of membership in the uniformed services. See 38 U.S.C. § 4311(a). Additionally, appellant's assertion that he was allowed to proceed without paying a filing fee in other cases does not excuse him from the requirement to either pay the fee or file a motion to proceed in forma pauperis with a completed affidavit in this case. See D.C. Cir. Rule 45(e)(1) (providing that fees are charged for “[d]ocketing a case or docketing any other proceeding”); see also 28 U.S.C. § 1915(a)(1) (requiring submission of an affidavit in order to proceed in forma pauperis). It is

FURTHER ORDERED that, within 30 days of the date of this order, appellant either pay the \$605 appellate docketing and filing fees to the Clerk of the District Court, see Fed. R. App. P. 3(e); 28 U.S.C. § 1917, or file a motion in district court for leave to proceed on appeal in forma pauperis, see Fed. R. App. P. 24(a). See Enclosure. In the event the district court denies leave to proceed on appeal in forma pauperis, appellant may renew that request in this court. See Fed. R. App. P. 24(a)(5). It is

FURTHER ORDERED that the motion to suspend briefing schedule and hold case in abeyance be dismissed as moot. Appellant's opening brief and appendix are now due within 30 days of the date of this order. Neither this court's rules nor the Federal Rules of Appellate Procedure provide for "preliminary briefs" subject to supplementation. It is

FURTHER ORDERED that consideration of the motion to appoint counsel be deferred pending further order of the court. This court's usual practice is to defer consideration of a motion for appointment of counsel pending initial consideration of the merits of the appeal, and appellant provides no reason to depart from that practice in this case. It is

FURTHER ORDERED that the motion to clarify and for a status conference be denied. The current procedural posture of this case is that, as ordered above, a new deadline has been established for appellant's opening brief and appendix, and the appeal will not otherwise proceed until appellant either pays the filing fee or files a motion to proceed in forma pauperis. Additionally, the mandamus petition that appellant filed in Akerman v. Doiron, No. 23-5230, was denied; the petition has not been and will not be "transfer[red]" to this appeal.

Failure by appellant to comply with this order may result in dismissal of the appeal for lack of prosecution. See D.C. Cir. Rule 38.

Per Curiam
FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Selena R. Gancasz
Deputy Clerk

Appendix C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARTIN AKERMAN,

Plaintiff,

V. Civil Action No. 23-02574 (UNA)

MERIT SYSTEMS PROTECTION BOARD et al.,

Defendants.

ORDER

Plaintiff, appearing pro se, has filed a Complaint under the Freedom of Information Act and a motion for leave to proceed in forma pauperis (“IFP”). Additionally, Plaintiff has filed an “Emergency Motion for Preliminary Injunction,” in which he seeks to enjoin lead defendant MSPB “from transitioning to its new e-Appeal Online system, as scheduled for October 2, 2023.” ECF No. 5 at 1.

“Because a preliminary injunction may be unlimited in duration, notice to adverse parties is required.” *Laster v. District of Columbia*, 439 F. Supp. 2d 93, 99–100 (D.D.C. 2006); see Fed. R. Civ. P. 65(a); LCvR 65.1(c) (governing preliminary injunctions). Plaintiff has not satisfied the notice requirement, and the motion appears otherwise to be moot.

With respect to the IFP motion, parties instituting a civil action in federal court are required to pay the applicable filing fee, 28 U.S.C. § 1914(a), unless granted IFP status, *id.* § 1915. The statutory filing fee for a civil action is \$350, to which the Judicial Conference has added an administrative fee of \$52. See *id.* § 1914 (Misc. Fee Schedule ¶ 14). The choice to permit or deny an application to proceed IFP is within the sound discretion of the court. See *Prows v. Kastner*, 842 F.2d 138, 140 (5th Cir. 1988), cert. denied, 488 U.S. 941 (1988); *Weller v. Dickson*, 314 F.2d 598, 600 (9th Cir. 1963), cert. denied, 375 U.S. 845 (1963).

An individual need not “be absolutely destitute to enjoy the benefit of the [IFP] statute.” *McKelton v. Bruno*, 428 F.2d 718, 719 (D.C. Cir. 1970) (quoting *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948)). But the movant should demonstrate that, because of poverty, they cannot “pay or give security for the costs . . . and still be able to provide [for] the necessities of life.” *Id.* at 719–20 (internal quotation marks omitted). “[C]ourts will generally look to whether the person is employed, the person’s annual salary, and any other property or assets the person may possess.” *Schneller v. Prospect Park Nursing and Rehab. Ctr.*, No. 06-545, 2006 WL 1030284, *1 (E.D. Pa. Apr. 18, 2006), appeal dismissed, 2006 WL 3038596 (3d Cir. Oct. 26, 2006). To that end, the party seeking IFP status must “submit[] an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1).

Plaintiff has answered none of the questions in the IFP application to enable an assessment of his ability to pay the filing fee.

Accordingly, it is

ORDERED that Plaintiff's emergency motion for a preliminary injunction, ECF No. 5, is DENIED; and it is further

ORDERED that Plaintiff's motion for leave to proceed in forma pauperis, ECF No. 2, is DENIED without prejudice. Within 30 days from the filing date of this order, Plaintiff may (1)

submit a completed IFP motion along with a motion to reconsider this order or (2) pay the \$402 filing fee applicable to civil actions. Plaintiff's failure to comply with this order within the time provided will result in dismissal of the case without prejudice.

_____s/_____

JIA M. COBB
United States District Judge
Date: October 4, 2023

Appendix D

Jun 17 2024.....Application (23A1097) granted by The
Chief Justice extending the time to file until
September 25, 2024.

Appendix E

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5309 September Term, 2023

1:23-cv-02574-UNA

Filed On: July 2, 2024 [2062630]

Martin Akerman,

Appellant

v.

Merit Systems Protection Board, et al.,

Appellees

O R D E R

Upon consideration of appellant's motion to stay proceedings pending petition for writ of certiorari, it is

ORDERED that this case be held in abeyance pending further order of the court.

Appellant is directed to file a motion to govern future proceedings by October 25, 2024.

Failure by appellant to comply with this order may result in dismissal of the appeal for lack of prosecution. See D.C. Cir. Rule 38.

FOR THE COURT:

Mark J. Langer, Clerk