

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 14, 2024
KELLY L. STEPHENS, Clerk

No. 24-3353

ANTHONY CUNNINGHAM,

Plaintiff-Appellant,

v.

UNITED STATES POSTAL SERVICE, et al.,

Defendants-Appellees.

Before: NORRIS, KETHLEDGE, and LARSEN, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.

THIS CAUSE was heard on the record from the district court and was submitted on the
briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court
is AFFIRMED.

ENTERED BY ORDER OF THE COURT


Kelly L. Stephens, Clerk

NOT RECOMMENDED FOR PUBLICATION

No. 24-3353

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Nov 14, 2024

KELLY L. STEPHENS, Clerk

ANTHONY CUNNINGHAM,)
Plaintiff-Appellant,)
v.)
UNITED STATES POSTAL SERVICE, et al.,) ON APPEAL FROM THE UNITED
Defendants-Appellees.) STATES DISTRICT COURT FOR
) THE NORTHERN DISTRICT OF
) OHIO

ORDER

Before: NORRIS, KETHLEDGE, and LARSEN, Circuit Judges.

Pro se Ohio plaintiff Anthony Cunningham appeals the district court's judgment sua sponte dismissing his amended complaint for failure to state a claim. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See Fed. R. App. P. 34(a).* We affirm.

Cunningham apparently is or was an employee of the United States Postal Service. In June 2023, Cunningham paid the district court filing fee and filed a complaint against the Postal Service and Postal Service managers Ronald Smith, Edward Hanks, Gary Bush, and Paggie Matlock. Cunningham claimed that the managers (1) denied him promotions in interviews that took place between 2011 and 2019, (2) stated that he "was less than a man," and (3) in 2013, fraudulently changed his sick leave to leave without pay. Cunningham attached to his complaint copies of his interview score sheets, his disciplinary record, and an Equal Employment Opportunity Commission right-to-sue letter.

The district court reviewed the complaint and concluded that Cunningham appeared to be asserting a federal employment-discrimination claim. The court found, however, that Cunningham

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had not identified “the basis for the alleged discrimination or the conduct that resulted in the alleged discrimination.” Accordingly, the court concluded that Cunningham had not stated a claim and ordered him to file an amended complaint that set forth a cognizable claim for relief.

Cunningham then filed an amended complaint, claiming that, between 2015 and 2021, the defendant managers conducted “illegal interviews” that “blocked him from upward mobility” and forced him into bankruptcy. Cunningham attached a copy of the bankruptcy court’s 2021 discharge order to this complaint.

Approximately one month later, Cunningham moved for a default judgment against the defendants because they failed to file an answer or otherwise defend the complaint. In opposition, the defendants argued that Cunningham had not completed proper service of the summons and complaint. Cunningham filed a reply and two more motions for a default judgment, claiming that the Postal Service had intentionally delayed the mail, in violation of 18 U.S.C. § 1703, and that he effected service on the defendants in December 2023.

The district court concluded that Cunningham still had not sufficiently pleaded a federal employment-discrimination claim and dismissed the amended complaint with prejudice and without further leave to amend. The court denied Cunningham’s default-judgment motions as moot.

On appeal, Cunningham argues that the district court erred in denying his default-judgment motions. He also appears to argue that the defendants discriminatorily denied him a promotion between 2011 and 2019.

On de novo review, *see Doe v. Oberlin Coll.*, 60 F.4th 345, 351-52 (6th Cir. 2023), we conclude that neither of Cunningham’s complaints contained facts plausibly demonstrating that the defendants denied him a promotion for any reason prohibited by Title VII of the Civil Rights Act of 1964, the Rehabilitation Act, or the Age Discrimination in Employment Act, *see Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Keys v. Humana, Inc.*, 684 F.3d 605, 608 (6th Cir. 2012). And because Cunningham failed to state a plausible claim for relief against the defendants, the district court did not err in denying his default-judgment motions. *See Fed. R. Civ. P. 55(d)*

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(“A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.”).

For these reasons, we **AFFIRM** the district court’s judgment.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens

Kelly L. Stephens, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 11/14/2024.

Case Name: Anthony Cunningham v. USPS, et al
Case Number: 24-3353

Docket Text:

ORDER filed. We AFFIRM the district court's judgment., pursuant to FRAP 34(a)(2)(C), decision not for publication. Mandate to issue. Alan E. Norris, Raymond M. Kethledge and Joan L. Larsen, Circuit Judges.

The following documents(s) are associated with this transaction:

Document Description: Order

Notice will be sent to:

Mr. Anthony Cunningham
15018 Krems Avenue
Maple Heights, OH 44137

A copy of this notice will be issued to:

Ms. Renee Arlene Bacchus
Ms. Sandy Opacich

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ANTHONY CUNNINGHAM,)	CASE NO. 1:23-cv-1302
Plaintiff,)	JUDGE CHARLES E. FLEMING
v.)	
USPS, <i>et al.</i> ,)	JUDGMENT ENTRY
Defendants.)	

For the reasons set forth in the contemporaneously filed Memorandum Opinion and Order, Plaintiff's amended complaint (ECF No. 7) is **DISMISSED WITH PREJUDICE AND WITHOUT LEAVE TO AMEND** pursuant to Fed. R. Civ. P. 12(b)(6). Pursuant to 28 U.S.C. §1915(a)(3), the Court **CERTIFIES** that an appeal of this matter could not be taken in good faith.

This case is closed.

IT IS SO ORDERED.

Date: April 9, 2024



CHARLES E. FLEMING
U.S. DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ANTHONY CUNNINGHAM,)	CASE NO. 1:23-cv-1302
)	
Plaintiff,)	JUDGE CHARLES E. FLEMING
v.)	
)	
)	
USPS, <i>et al.</i> ,)	MEMORANDUM OPINION
)	AND ORDER
Defendants.)	

I. BACKGROUND

On June 30, 2023, *pro se* plaintiff Anthony Cunningham filed a complaint against the United States Postal Service and four of its managers: Ronald Smith, Gary Bush, Edward Hanks, and Paggie Matlock. (ECF No. 1). On October 18, 2023, the Court *sua sponte* dismissed the complaint for failure to state a claim. (ECF No. 6). The Court found that the complaint failed to meet the basic pleading requirements because: (i) the complaint consisted largely of unexplained exhibits; (ii) the few statements in the complaint were disjointed, incoherent, and failed to provide a clear picture of the facts underlying Plaintiff's cause of action; and (iii) the complaint failed to identify the basis for the alleged discrimination or the underlying conduct related to that discrimination. (*Id.* at PageID #94). The Court provided Plaintiff with 30 days to amend his complaint to set forth a cognizable claim and warned him that a failure to file a legally sufficient amended complaint would result in dismissal of this action. (*Id.* at PageID # 95).

On October 23, 2023, Plaintiff filed an amended complaint. (ECF No. 7). The amended complaint was two pages in length and only cited Fed. R. Civ. P. 8(a)(2), Fed. R. Evid. 902, and a Chapter 13 Bankruptcy case as authority and support for this action. (*Id.* at PageID # 96-97). The amended complaint alleged the facts of the case and the cause of action in a single sentence, stating:

"The USPS, Ronald Smith, Edward Hanks, Gary Bush, [and] Paggie Matlock conducted illegal interviews to block Plaintiff Anthony Cunningham from upper mobility [and] thus cause[d] horrendous financial distress [and] force[d] [him] into a Chapter 13 Bankruptcy from Dec[,] 2015 to June 2021." (*Id.* at PageID #97). The amended complaint had two exhibits which related to a Chapter 13 Bankruptcy proceeding involving Plaintiff that was initiated in 2015. (ECF Nos. 7-1, 7-2).

II. DISCUSSION

Pro se pleadings are liberally construed and held to less stringent standards than formal pleadings drafted by lawyers. *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011); *El Bey v. Roop*, 530 F.3d 407, 417 (6th Cir. 2008). This lenient treatment generally accorded *pro se* pleadings, however, "has limits." *Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996). The complaint must contain more than bare assertions of legal conclusions; it must give the defendants fair notice of what the plaintiff's legal claims are and the factual grounds upon which they rest. *Lillard v. Shelby County Bd. of Educ.*, 76 F.3d 716, 726-27 (6th Cir. 1996); *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 437 (6th Cir. 2008). "And the complaint's factual allegations, taken as true, 'must be enough to raise a right to relief above the speculative level.' That means the complaint must allege facts supporting an inference that the defendant's liability is plausible, rather than just possible." *Hardwick v. 3M Co. (In re E.I. du Pont de Nemours)*, 87 F.4th 315, 320 (6th Cir. 2023) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S 444, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)).

The courts are not required to conjure unpledged facts or construct claims against defendants on behalf of a *pro se* plaintiff. See *Grinter v. Knight*, 532 F.3d 567, 577 (6th Cir. 2008) (citation omitted); *Payne v. Sec'y of the Treasury*, 73 F. App'x 836, 837 (6th Cir. 2003); *Beaudett*

v. *City of Hampton*, 775 F.2d 1274, 1277-78 (4th Cir. 1985) (determining that district courts are not required to conjure questions never squarely presented to them or to construct claims from sentence fragments). To do so would require “[the] courts to explore exhaustively all potential claims of a *pro se* plaintiff . . . [and] would . . . transform the district court from its legitimate advisory role to the improper role of an advocate seeking out the strongest arguments and most successful strategies for a party.” *Beaudett*, 775 F.2d at 1278 (citation omitted).

Plaintiff’s amended complaint suffers from the same pleading deficiencies that led to the dismissal of the original complaint. The amended complaint fails to set forth the specific claim that Plaintiff wishes to assert against Defendants. Although the civil cover sheet indicates that Plaintiff is suing for discrimination under Title VII, the pleadings fail to provide sufficient facts to support the discrimination claim, identify the precise underlying conduct, and give Defendants the requisite fair warning of the claim against them. The single sentence provided in the amended complaint is patently insufficient and there is no explanation as to how the attached exhibits concerning Plaintiff’s past bankruptcy are relevant to the instant case. Moreover, the amended complaint contains no request for relief.

The Court finds that leave to amend is unwarranted in this instance. The Supreme Court has held, “repeated failure to cure deficiencies by amendments previously allowed . . . and futility of amendment” are sufficient reasons for a district court to deny leave. *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962). Plaintiff already had an opportunity to amend his complaint and he was unable to cure the deficiencies identified in the Court’s previous order nor did he otherwise bring the pleadings closer to the realm of sufficiency. See *Wysong Corp. v. APN, Inc.*, 889 F.3d 267, 273 (6th Cir. 2018) (holding that a district court did not abuse its discretion in

denying leave to amend where the plaintiff failed to take advantage of the opportunity “to add facts and context that might nudge its complaints across the plausibility threshold, . . .”).

III. CONCLUSION

For the foregoing reasons, Plaintiff Anthony Cunningham’s amended complaint (ECF No. 7) is **DISMISSED WITH PREJUDICE AND WITHOUT LEAVE TO AMEND**. All pending motions are **DENIED AS MOOT** and this action is closed.¹ Pursuant to 28 U.S.C. §1915(a)(3), the Court **CERTIFIES** that an appeal of this matter could not be taken in good faith.

IT IS SO ORDERED.

Dated: April 9, 2024



CHARLES E. FLEMING
U.S. DISTRICT COURT JUDGE

¹ After filing the amended complaint, Plaintiff filed seven different motions for default judgment against the various defendants. (ECF Nos. 8–12, 19, 21). Even if these motions were not rendered moot by the dismissal of this action, they would otherwise have been denied because: (i) it is unclear from the record whether most of the defendants were properly served; and (ii) the motions were otherwise procedurally improper, as Plaintiff failed to first request an entry of default from the Clerk of Courts. *See Ruff v. Autovest, L.L.C.*, No. 2:22-CV-03362, 2023 U.S. Dist. LEXIS 97945, at *1-3 (S.D. Ohio June 5, 2023) (“First, a plaintiff must request an entry of default from the Clerk of Courts. Fed. R. Civ. P. 55(a). Only then may the plaintiff motion the court for default judgment. Fed. R. Civ. P. 55(b).”); *Hulec v. J.H. Bennett & Co.*, No. 1:14-CV-00492, 2014 U.S. Dist. LEXIS 87100, at *2-3 (N.D. Ohio June 25, 2014) (same).

**Additional material
from this filing is
available in the
Clerk's Office.**