

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

17-1191

Eunice Husband v. Warden Lewisburg USP, et al

3-16-cv-02255

ORDER

Pursuant to Fed. R. App. P. 3(a) and 3rd Cir. LAR 3.3 and Misc. 107.1(a), it is ORDERED that the above-captioned case is hereby dismissed for failure to timely prosecute insofar as appellant failed to pay the requisite fee as directed. It is

FURTHER ORDERED that a certified copy of this order be issued in lieu of a formal mandate.

For the Court,

*Marcia M. Waldron*

Marcia M. Waldron, Clerk

Date: September 28, 2017

CJG/cc: Eunice Husband  
Mr. Peter J. Welsh



A True Copy

*Marcia M. Waldron*

Marcia M. Waldron, Clerk

Certified order issued in lieu of mandate.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

August 9, 2017

BCO-112

No. 17-1191

EUNICE HUSBAND,  
Appellant

v.

WARDEN LEWISBURG USP; B. TAGGERT, Captain, USP – Lewisburg;  
D. KNAPP, S.I.S Lieutenant, USP – Lewisburg;  
TROUTMAN, Lieutenant, USP – Lewisburg;  
J. DILTZ, Counselor, USP – Lewisburg;  
J. DRESSLER, Unit Manager, USP – Lewisburg;  
K. PIGOS, Clinical Director, USP – Lewisbug;  
S. BROWN, Health Service Administrator, USP – Lewisburg;  
J. KONKLE, Deputy Captain, USP - Lewisburg

(M.D. Pa. No. 3-16-cv-02255)

Present: AMBRO, GREENAWAY, JR. and SCIRICA, Circuit Judges

1. Motion by Appellant for Reconsideration of the Court's July 21, 2017  
Order Denying Motion to Proceed In Forma Pauperis

Respectfully,  
Clerk/cjg

ORDER

The foregoing motion for reconsideration of the Court's July 21, 2017 order is denied.

By the Court,

s/Anthony J. Scirica  
Circuit Judge

Dated: September 15, 2017  
sb/cc: All Counsel of Record  
Eunice Husband

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

C.A. No. 17-1191

EUNICE HUSBAND, Appellant

VS.

WARDEN LEWISBURG USP, ET AL.

(M.D. Pa. Civ. No. 3:16-cv-02255)

Present: GREENAWAY, JR, Circuit Judge

Submitted are:

- (1) Appellant's motion to proceed in forma pauperis; and
- (2) Appellant's motion demonstrating imminent danger  
in the above-captioned case.

Respectfully,

Clerk

MMW/BNB/sfh/cjg

ORDER

Appellant's motion to proceed in forma pauperis ("IFP") and his accompanying "Motion Demonstrating Imminent Danger of Serious Physical Injury" are denied. Because Appellant has at least three strikes against him under 28 U.S.C. § 1915(g), he can proceed IFP in this appeal only if he "is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g); see Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir. 2001) (en banc). Appellant has not made this showing. See Abdul-Akbar, 239 F.3d at 315 (stating that imminent dangers "are those dangers which are about to occur at any moment or are impending"); Ball v. Famiglio, 726 F.3d 448, 468 (3d Cir. 2013) (stating that conclusory or vague allegations are insufficient to show threat of imminent danger).

Accordingly, if Appellant wishes to proceed with this appeal, he must pay the full applicable filing and docketing fees in the amount of \$505 to the Clerk of the United States District Court for the Middle District of Pennsylvania within 14 days of the date of this order. No extensions of time to pay the fees will be granted. Failure to pay the filing and docketing fees within that time will result in dismissal of the appeal without further notice. See 3d Cir. LAR Misc. 107.1(a).

By the Court,

s/Joseph A. Greenaway, Jr.  
Circuit Judge

Dated: July 21, 2017  
CJG/cc: Eunice Husband

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EUNICE HUSBAND,

Plaintiff

v.

DAVID J. EBBERT, *et al.*,

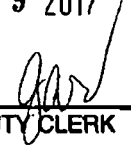
Defendants

Civil No.: 3:16-cv-2255

(Judge Mariani)

**FILED  
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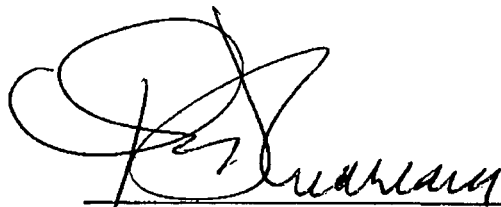
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Per   
DEPUTY CLERK

**ORDER**

AND NOW, this 9th day of January, 2017, upon consideration of this Court's Order (Doc. 10) denying Plaintiff *in forma pauperis* status, and directing payment of the full filing fee within a specified time period, and upon further consideration of Plaintiff's failure to comply with that Order and failure to pay the requisite filing fee, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's complaint (Doc. 1) is **DISMISSED** without prejudice, pursuant to 28 U.S.C. § 1915(g).
2. The Clerk of Court is directed to **CLOSE** this case.
3. Any appeal from this Order is **DEEMED** frivolous and not in good faith. See 28 U.S.C. § 1915(a)(3).



Robert D. Mariani  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EUNICE HUSBAND,

Plaintiff

v.

DAVID J. EBBERT, *et al.*,

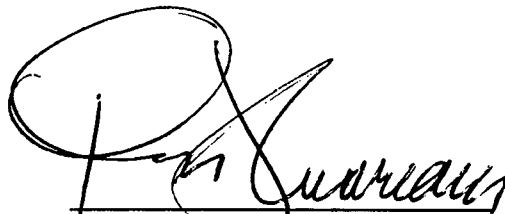
Defendants

Civil No.: 3:16-cv-2255

(Judge Mariani)

**ORDER**

AND NOW, this 6th day of January, 2017, in accordance with the  
Memorandum issued this date, **IT IS HEREBY ORDERED THAT** Plaintiff's motion for  
reconsideration, (Doc. 11), is **DENIED**.

A handwritten signature in black ink, appearing to read 'R. Mariani', is written over a horizontal line.

Robert D. Mariani  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

|                                  |   |                         |
|----------------------------------|---|-------------------------|
| EUNICE HUSBAND,                  | : | Civil No.: 3:16-cv-2255 |
|                                  | : |                         |
| Plaintiff                        | : | (Judge Mariani)         |
|                                  | : |                         |
| v.                               | : |                         |
|                                  | : |                         |
| DAVID J. EBBERT, <i>et al.</i> , | : |                         |
|                                  | : |                         |
| Defendants                       | : |                         |

**MEMORANDUM**

**I. Background**

Plaintiff Eunice Husband ("Husband"), a federal inmate incarcerated at the United States Penitentiary at Lewisburg ("USP-Lewisburg"), Pennsylvania, initiated this *Bivens*<sup>1</sup> action on November 2, 2016, seeking to proceed *in forma pauperis*. (Doc. 1). Husband is a prolific filer who is subject to the three strikes provision set forth in 28 U.S.C. § 1915(g). Previously by Memorandum and Order dated December 6, 2016, the Court determined that Husband failed to sufficiently allege that he is in imminent danger of serious bodily harm, and denied his application to proceed *in forma pauperis*. (Docs. 9, 10). The Court granted Husband thirty (30) days to pay the full filing fee if he wished to pursue the claims in the instant action. (*Id.*).

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<sup>1</sup> *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971) (holding that there exists an implied private action for damages against federal officers alleged to have violated a citizen's constitutional rights).

Pending before the Court is Husband's motion for reconsideration (Doc. 11) of this Court's December 6, 2016 Order. For the reasons set forth below, the motion for reconsideration will be denied.

## **II. Motion for Reconsideration Standard of Review**

A motion for reconsideration is a device of limited utility. It may be used only to seek remediation for manifest errors of law or fact or to present newly discovered evidence which, if discovered previously, might have affected the court's decision. *Harsco Corp. v. Zlotnicki*, 779 F.2d 906 (3d Cir. 1985), *cert. denied*, 476 U.S. 1171 (1986). Accordingly, a party seeking reconsideration must demonstrate at least one of the following grounds prior to the court altering, or amending, a standing judgment: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice. *Max's Seafood Café v. Quineros*, 176 F.3d 669, 677 (3d Cir. 1999), *citing North River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995).

A motion for reconsideration is appropriate in instances where the court has "...misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension." *Rohrbach v. AT & T Nassau Metals Corp.*, 902 F. Supp. 523, 527 (M.D. Pa. 1995), *vacated in part on other grounds on reconsideration* 915 F. Supp. 712 (M.D. Pa. 1996), *quoting*

*Above the Belt, Inc. v. Mel Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983). It may not be used as a means to reargue unsuccessful theories, or argue new facts or issues that were not presented to the court in the context of the matter previously decided.

*Drysdale v. Woerth*, 153 F. Supp. 2d 678, 682 (E.D. Pa. 2001). "Because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly." *Continental Casualty Co. v. Diversified Indus. Inc.*, 884 F. Supp. 937, 943 (E.D. Pa. 1995).

### III. Discussion

Presently, Husband requests that the Court reverse its Order denying his application for leave to proceed *in forma pauperis*. (Doc. 11). The Court determines that Husband fails to establish any grounds warranting reconsideration of the December 6, 2016 Memorandum and Order. Rather, Husband simply restates the allegations of the complaint, and again requests that the Court allow him to proceed *in forma pauperis* based on the same reasons set forth in the complaint.

In the motion for reconsideration, Husband claims that, at the time he filed his complaint, he was in imminent danger of serious bodily injury or harm because he was celled with another inmate, his jaw was injured, and there was a possibility that his jaw could be reinjured if he was assaulted. (*Id.* at p. 1). Additionally, Husband asserts "a pattern of staff misconduct" due to his placement in cells and recreation areas with inmates

from adverse “geographical groups.” (*Id.*).

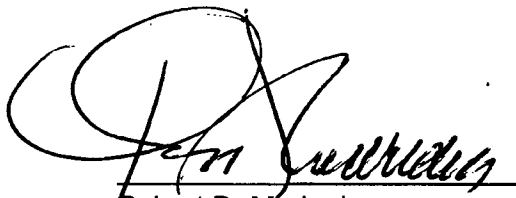
In the complaint, Husband alleged that his jaw was broken on July 7, 2016 during an altercation with two fellow inmates, and based on his purported weak jaw, he sought assignment to a single cell to avoid the possibility of reinjuring his jaw. (Doc. 1, p. 5). This Court previously determined that there were no specific allegations that any inmates threatened Husband, and his bare allegation that he may engage in a fight with other inmates, which may cause injury to his jaw, was insufficient to invoke the imminent danger exception to the three strikes rule. (Doc. 9, p. 4); *Ball v. Hummel*, 2012 WL 3618702, at \*11 (M.D. Pa. 2012), *adopted by*, 2012 WL 3624045 (M.D. Pa. 2012), *affirmed*, 577 F. App'x 96 (3d Cir. 2014) (finding that the inmate could not save her “otherwise inadequate pleadings by alleging in vague and conclusory terms that she feels constantly under threat of some sort of harm. Quite the contrary, it is well-settled that: ‘this type of general assertion: is insufficient to invoke the exception to § 1915(g) absent specific fact allegations of ongoing serious physical injury, or of a pattern of misconduct evidencing the likelihood of imminent serious physical injury’”) (citations omitted); *Brown v. Lyons*, 2013 WL 5629774, at \*4 (E.D. Pa. 2013) (“even if an alleged harm may in fact be ‘impending,’ it does not satisfy this exception if it does not threaten to cause ‘serious physical injury’”) (citing 28 U.S.C. § 1915(g)).

Husband has not demonstrated a need to reconsider the December 6, 2016

Memorandum and Order. He fails to advance an intervening change in controlling law, to present newly found evidence, or to establish that a clear error of law or fact exists. Nor does he establish that the Court came to its conclusions by way of some gross misunderstanding of the facts or law of this case. Consequently, the motion for reconsideration will be denied.

An appropriate Order shall issue.

Date: January 6, 2017



Robert D. Mariani  
United States District Judge

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