

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

DENNIS L. MAXBERRY,

Plaintiff,

v.

THE VETERANS ADMINISTRATION AND
VETERANS AFFAIRS, COMPREHENSIVE &
COMPENSATIVE WORK THERAPY
and UNIVERSITY OF WISCONSIN SYSTEMS
UNIVERSITY OF WISCONSIN-MILWAUKEE,

Defendants.

ORDER

13-cv-835-bbc

On January 27, 2014, I denied plaintiff Dennis L. Maxberry leave to proceed on this case because the venue was improper. Now plaintiff has filed a notice of appeal along with a motion to proceed in forma pauperis on appeal.

A district court has authority to deny a request for leave to proceed in forma pauperis under 28 U.S.C. § 1915 for one or more of the following reasons: the litigant wishing to take an appeal has not established indigence, the appeal is taken in bad faith or the litigant is a prisoner and has three strikes. § 1915(a)(1),(3) and (g). Sperow v. Melvin, 153 F.3d 780, 781 (7th Cir. 1998). Plaintiff's request for leave to proceed in forma pauperis on appeal will be denied, because I am certifying that his appeal is not taken in good faith.

In Lucien v. Roegner, 682 F.2d 625, 626 (7th Cir. 1982), the court of appeals

instructed district courts to find bad faith in cases in which a plaintiff is appealing the same claims the court found to be without legal merit. Lee v. Clinton, 209 F.3d 1025, 1027 (7th Cir. 2000). Plaintiff is trying to appeal his claims that I have already determined should not be brought in this court, but rather should be addressed to the Eastern District of Wisconsin notwithstanding the filing bar he currently faces there. Because there is no legally meritorious basis for plaintiff's appeal, I must certify that the appeal is not taken in good faith.

Because I am certifying plaintiff's appeal as not having been taken in good faith, he cannot proceed with his appeal without prepaying the \$505 filing fee unless the court of appeals gives him permission to do so. Under Fed. R. App. P. 24, he has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. With his motion, he must include an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), with a statement of issues he intends to argue on appeal. Also, he must send along a copy of this order. Plaintiff should be aware that he must file these documents in addition to the notice of appeal he has filed previously. If he does not file a motion requesting review of this order, the court of appeals may choose not to address the denial of leave to proceed in forma pauperis on appeal. Instead, it may require him to pay the entire \$505 filing fee before it considers his appeal. If he does not pay the fee within the deadline set, it is possible that the court of appeals will dismiss the appeal.

ORDER

IT IS ORDERED that Plaintiff Dennis L. Maxberry's motion for leave to proceed in forma pauperis on appeal, dkt. #11, is DENIED. I certify that his appeal is not taken in good faith. The clerk of court is directed to insure that plaintiff's obligation to pay the \$505 fee for filing his appeal is reflected in the court's financial records.

Entered this 11th day of February, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge