

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

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SAMUEL MYLES,

ORDER

Plaintiff,

14-cv-661-bbc

v.

RAVI GUPTA and UNITED STATES,

Defendants.

- - - - -

On April 22, 2016, judgment was entered in this case, granting defendants' motions for summary judgment and dismissing this case. Now plaintiff Samuel Myles has filed a notice of appeal. Because plaintiff has not paid the fee for filing an appeal, I construe his notice to include a request for leave to proceed in forma pauperis on appeal. That request will be denied because plaintiff has struck out under § 1915(g).

The court has previously found that plaintiff has on at least five occasions filed lawsuits that were dismissed because they were frivolous or failed to state a claim upon which relief could be granted. (Myles v. United States of America, 00-cv-3298 (D. Kan.); Myles v. Barber, 06-cv-00097 (N.D. W.Va.; Myles v. Henson, 06-cv-02281 (C.D. Cal.); Myles v. Henson, 06-cv-05836 (C.D. Cal.); and Myles v. Wallace, 07-cv-00043 (N.D. W.Va.). When a prisoner has struck out under § 1915(g), he cannot proceed in forma pauperis on appeal unless he is in imminent danger of serious physical injury. This exception

does not apply here. Plaintiff's claim relates to an isolated injury he sustained in fall of 2012. Therefore, if plaintiff wishes to pursue his appeal, he will have to pay the \$505 filing fee in full.

Plaintiff may delay his payment if he challenges this court's decision to deny his request for leave to proceed in forma pauperis on appeal because of his § 1915(g) status. Fed. R. App. P. 24(a)(5). Such a challenge must be filed within 30 days of this order. If the court of appeals decides that it was improper to apply the three-strikes bar against plaintiff in this case, then the matter will be remanded to this court for a determination whether plaintiff's appeal is taken in good faith. If the court of appeals determines that this court was correct in finding that § 1915(g) bars him from taking his appeal in forma pauperis, the \$505 filing fee payment will be due in full immediately. Whatever the scenario, plaintiff is responsible for insuring that the required sum is remitted to the court at the appropriate time.

ORDER

IT IS ORDERED that plaintiff Samuel Myles's request for leave to proceed in forma pauperis on appeal is DENIED because, as a prisoner who has struck out under 28 U.S.C. § 1915(g), plaintiff is not eligible to proceed in forma pauperis on appeal. The clerk of court is requested to insure that plaintiff's obligation to pay the \$505 is reflected in this court's

financial records.

Entered this 6th day of May, 2016.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge