

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

JOSEPH REINWAND,

ORDER

Plaintiff,

14-cv-845-bbc

vs.

NATIONAL ELECTRICAL BENEFIT FUND and
LAWRENCE J. BRADLEY,

Defendants.

In this action, pro se plaintiff Joseph Reinwand is proceeding on claims that his disability benefits were improperly terminated by defendants National Electrical Benefit Fund and Lawrence J. Bradley, a fund trustee. Plaintiff has filed yet another request for assistance in recruiting counsel, which I will again deny.

As I have explained in prior orders in this case, dks. #5, #8, #29, #40, before I will assist plaintiff with recruiting counsel, he must satisfy three requirements. First, plaintiff must demonstrate that he is indigent and unable to afford counsel. 28 U.S.C. § 1915(e)(1). Second, he must demonstrate that he has made a reasonable effort to retain an attorney on his own. Pruitt v. Mote, 503 F.3d 647, 655 (7th Cir. 2007). Third, he must demonstrate that, given the complexity of the issues in the case, he is incapable of continuing to represent himself. Id. In my last order on this issue, I held that plaintiff had satisfied the first two of these three requirements. However, I found that plaintiff had failed to establish that he is

incapable of continuing to represent himself at this early stage of the case. Plaintiff's latest motion, which is actually an affidavit executed by a fellow inmate who has been assisting plaintiff, was filed in an effort to provide further evidence of plaintiff's inability to litigate his claims without the assistance of counsel. None of plaintiff's latest arguments provide grounds for reconsidering my earlier decision to deny plaintiff's request for assistance.

First, in my last order addressing plaintiff's requests for assistance in recruiting counsel I noted that plaintiff suffered from "no apparent physical and mental disabilities." Plaintiff now contends that he does in fact suffer from a disability that prevents him from continuing to represent himself. However, this conclusory statement is not convincing. Plaintiff does not explain how he is disabled or how his purported disability prohibits him from continuing to represent himself.

Second, in my last order, I noted that plaintiff's "writing is clear and well-organized, and his filings throughout this case indicate that he understands the legal issues relevant to his claims." Plaintiff asserts that I erred in judging his abilities on the basis of his filings to date because these filings were prepared with the assistance of a fellow inmate. However, even if I were to accept plaintiff's assertion that his filings were prepared with a fellow inmate's assistance, this does not mean that *plaintiff* is incapable of representing himself. As the Court of Appeals for the Seventh Circuit has instructed, "the fact that an inmate receives assistance from a fellow prisoner should not factor into the decision whether to recruit counsel." Henderson v. Ghosh, 755 F.3d 559, 565 (7th Cir. 2014).

Finally, plaintiff contends that this case is too complex for him to litigate without an

attorney because it relates to the Employee Retirement Income Security Act and it may require an expert witness. However, the fact that the case relates to ERISA does not mean it is complex. Plaintiff is proceeding on a claim under 29 U.S.C. 1132(a)(1)(B), which is akin to a breach of contract claim. Larson v. United Healthcare Ins. Co., 723 F.3d 905, 911 (7th Cir. 2013) (“An ERISA § 502(a)(1)(B) claim is essentially a contract remedy under the terms of the plan.”) (internal quotations omitted). There is nothing particularly complex about such a claim. Moreover, although legal counsel is sometimes necessary to assist pro se litigants with the preparation and presentation of expert testimony, plaintiff has not specified what issues in this case require an expert witness in the first place. I will not assist plaintiff with the recruitment of counsel just because plaintiff raises the mere speculative possibility that the case may evolve in such a way so as to require expert testimony on unspecified topics.

For the reasons discussed above, plaintiff’s motion will be denied. If later in this case, such as after summary judgment, it becomes apparent that the complexity of the case is beyond plaintiff’s abilities, he may renew his motion for assistance with recruiting counsel. However, if plaintiff files such a motion, he should explain what has changed about the complexity of the case or his ability to represent himself that requires the assistance of counsel.

ORDER

IT IS ORDERED that plaintiff Joseph Reinwand's motion for assistance in recruiting counsel, dkt. #49, is DENIED.

Entered this 14th day of December, 2015.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge