

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

BRENTFORD TAYLOR,

Petitioner,

ORDER

v.

02-C-0548-C

PHYILLIS J. DUBE, in her official and individual capacity; JON E. LITSCHER, in his official and individual capacity; BYRON BARTOW, in his official and individual capacity; MARIO CANZIANI, in his official and individual capacity; KELLY ZAREMBR, in her official and individual capacity; MICHELLE COOPER, in her official and individual capacity; DAM SMITHBACK, in his official and individual capacity; and SARAH CORCORAN in her official and individual capacity,

Respondents.

This is a proposed civil action for monetary relief brought pursuant to 42 U.S.C. § 1983. Petitioner Brentford Taylor, an inmate at the Wisconsin Resource Center in Winnebago, Wisconsin, alleges that his civil rights were violated because he worked at a unsafe private facility and, as a result, slipped and fell and was injured.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, the prisoner's complaint must be dismissed if, even under a liberal construction, it is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks money damages from a defendant who is immune from such relief. See 42 U.S.C. § 1915e.

Because this court lacks subject matter jurisdiction, this action will be dismissed and his motions to amend the caption of petitioner's complaint and for judgment in his favor will be denied as moot.

In his complaint and attachments, petitioner makes the following material allegations of fact.

ALLEGATIONS OF FACT

Petitioner is an inmate at the Wisconsin Resource Center in Winnebago, Wisconsin. Respondent Phyillis Dube is Secretary of the Department of Health and Family Services. Respondent Jon E. Litscher is Secretary of the Department of Corrections. At the Wisconsin Resource Center, respondent Byron Bartow is the warden, respondent Mario Canziani is the security director and respondent Kelly Zaremba is the administrative director. Respondents Michelle Cooper, Dan Smithback and Sarah Corcoran are supervisors of the Goodwill Industry Program.

In June 2002, petitioner was hired by Goodwill Industry as part of the Goodwill Industry Program. Goodwill Industry is a privately owned, non-profit organization. Under the contract between Goodwill and the Wisconsin Resource Center, inmates are paid 50 cents an hour and provided with two hours of work a day, five days a week. At Goodwill, petitioner worked in an unsafe and hazardous environment as a machine operator. There are no fire exit signs posted over the doors and no warning signs on the machinery. Unspecified individuals discredited his complaints about his unsafe working environment.

On August 20, 2002, petitioner slipped and fell on some plastic wrap. He landed on the concrete floor and was knocked unconscious. Petitioner suffered a concussion and bruised back.

DISCUSSION

I understand petitioner to allege that his civil rights have been violated because his work environment was unsafe and, as a result, he slipped and fell and was injured. Although petitioner contends that his civil rights have been violated, his allegations do not implicate these rights.

Generally, federal courts have the power to hear two types of cases: (1) cases in which a plaintiff alleges a cognizable violation of his or her constitutional rights or rights established under federal law and (2) cases in which a citizen of one state alleges a violation

of his or her rights established under state law by a citizen of another state and the amount in controversy exceeds \$75,000. See 28 U.S.C. § 1331-32. Petitioner's claim does not fall into either category because it is at most a state law claim (for example, negligence) and the parties are not of diverse citizenship. Because this court lacks subject matter jurisdiction over petitioner's claim, I must deny his request for leave to proceed in form pauperis and dismiss this case.

ORDER

IT IS ORDERED that

1. Petitioner Brentford Taylor's request for leave to proceed in forma pauperis is DENIED and this case is DISMISSED for lack of subject matter jurisdiction;
2. Petitioner's motion to amend the caption of his complaint and motion for judgment in his favor are DENIED as moot;
3. Petitioner will not receive a strike because dismissal for lack of subject matter jurisdiction is not a reason enumerated in 28 U.S.C. § 1915(g) that requires issuing a strike; and

4. The unpaid balance of petitioner's filing fee is \$134.11; petitioner is obligated to pay this amount according to 28 U.S.C. § 1915(b)(2).

Entered this 30th day of October, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge