

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

FLORA JEAN HEREFORD,

Plaintiff,

v.

PUTNAM CO. INC., EMPLOYER, and
SOCIAL SECURITY ADMINISTRATION,

Defendants.

ORDER

02-C-600-C

Petitioner Flora Jean Hereford requests leave to proceed in forma pauperis in this civil action for money damages. Petitioner alleges that her former employer was negligent in failing to provide her immediate medical attention when she was injured at work. However, because this court lacks jurisdiction to hear her claims, petitioner's request for leave to proceed in forma pauperis will be denied and her case will be dismissed.

Federal courts are courts of limited jurisdiction. They can hear only those cases that Congress empowers them to hear. Unlike state courts, federal courts generally have the power to hear two types of cases: federal question cases in which the petitioner alleges a violation of her constitutional rights or rights established under federal law, and diversity

cases in which the petitioner, a citizen of one state, alleges that a citizen of another state violated her state law rights. Petitioner's negligence claim does not fit into either category. Negligence claims are governed by state law, not federal law. It does not appear that diversity jurisdiction exists because plaintiff is a resident of Wisconsin and she identifies her employer, respondent Putnam Co., Inc., as situated in Wisconsin as well. In the absence of a federal question or diverse citizenship, this court lacks jurisdiction over petitioner's negligence claim against respondent Putnam Co., Inc.

In addition to her former employer, petitioner names the Social Security Administration as a respondent. The only mention of this respondent comes in a single sentence at the end of petitioner's complaint, when she notes that she was "informed that [she] met the disability insured status requirements of the Act on May 12, 1997, but yet [she has] not received any payments from Social Security." Plaintiff does not allege that she has applied for Social Security benefits or that she has been denied such benefits by a final decision of respondent Social Security Administration. Federal courts are without jurisdiction to review complaints for social security benefits in the absence of an allegation that a petitioner has sought and received a final decision from the Social Security Administration denying such benefits. See Weinberger v. Salfi, 422 U.S. 749, 764 (1975) ("[T]he complaint is deficient in that it contains no allegation that [the plaintiff class members] have even filed an application [for benefits] with the Secretary, much less that he

has rendered any decision, final or otherwise, review of which is sought.”); see also Sims v. Apfel, 530 U.S. 103, 106-107 (2000); Perez v. Wisconsin Department of Corrections, 182 F.3d 532, 536 (7th Cir. 1999). Accordingly, this court lacks jurisdiction to hear petitioner’s claim against respondent Social Security Administration.

IT IS ORDERED that petitioner Flora Jean Hereford’s petition for leave to proceed in forma pauperis is DENIED and her case is DISMISSED for lack of subject matter jurisdiction.

Entered this 9th day of December, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge