IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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MICHAEL HILL,

ORDER

Plaintiff,

04-C-732-C

v.

GARY THALACKER, GREGORY GOODHUE, MICHAEL BARTKNECHT, TERRY CARD and JOHN SHOOK,

Defendants.

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Plaintiff is proceeding in this action on his claims that defendants Gary Thalacker, Terry Card and John Shook denied him a pay grade promotion because of his race, that defendants Thalacker, Card and Shook, Gregory Goodhue and Michael Barknecht retaliated against him for filing an administrative grievance about the allegedly discriminatory promotional practices and that all defendants conspired to retaliate against him for filing a grievance. A preliminary pretrial conference was held on April 5, 2005. Dispositive motions are due to be filed no later than September 2, 2005.

Earlier on in this lawsuit, plaintiff moved for appointment of counsel. The motion was denied because it was too early to assess whether, given the complexity of the case,

plaintiff was competent to prosecute his action on his own and if not, whether having a lawyer would make a difference in the outcome of his case. Now plaintiff has filed a second motion for appointment of counsel.

In deciding whether to appoint counsel, I must first find that plaintiff made a reasonable effort to find a lawyer on his own and was unsuccessful or that he was prevented from making such an effort. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Plaintiff has submitted letters from more than three lawyers that he asked to represent him in this case who turned him down. From these letters, I conclude that plaintiff has made a reasonable effort to find a lawyer on his own and that he has been unsuccessful.

Next, the court must consider whether plaintiff is able to represent himself given the legal difficulty of the case, and if he is not, whether having a lawyer would make a difference in the outcome of his lawsuit. Zarnes v. Rhodes, 64 F.3d 285 (7th Cir. 1995) (citing Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993)).

In support of his motion, plaintiff states that he has a low IQ and has been exempted from participating in the prison's education program because even after 2195 hours (274 days) of schooling, he has been unable to obtain his GED. Plaintiff notes that he has received inmate assistance in the past, but that on occasion the assistance is given simply for "financial gain." Plaintiff states also that before he was incarcerated, he was found eligible for Social Security benefits because of his low level of mental competency.

Nevertheless, plaintiff admits that he has received the assistance of other inmates, even if on occasion that assistance is given purely for financial gain. Indeed, this court's records reveal that since 2000, plaintiff has filed a total of four lawsuits in this court. In this case, he has filed motions to amend his complaint, to proceed in forma pauperis for the purpose of serving his complaint on the defendants and two motions for a preliminary injunction in addition to his two motions for appointment of counsel. In addition, he has filed a copy of his first request for production of documents. He does not appear to be confused about how to prosecute his action.

Moreover, plaintiff's case is not legally complex. The issues to be decided are whether defendants discriminated against plaintiff because of his race by denying him a pay grade promotion, retaliated against him for filing an administrative grievance about the allegedly discriminatory promotional practices and conspired to retaliate against him for filing a grievance. It will not be necessary for plaintiff to do extensive legal research to develop his legal theory. The law is clear that state officials may not retaliate or conspire to retaliate against a prisoner for exercising his right of access to the courts and may not discriminate against a prisoner because of his race.

No doubt it will be difficult for plaintiff to prove the factual bases for his claims, but in this regard a lawyer is not likely to make a difference in the outcome of the case. Plaintiff was allowed to proceed on his claims on his bald assertion that defendants' actions were

discriminatory or retaliatory. If defendants move for summary judgment by the September 2 deadline set at the preliminary pretrial conference, they will likely submit evidence to show that the decision to deny plaintiff a pay grade promotion was based on considerations other than his race (such as, perhaps, his admitted learning disability), and that none of the actions they took were retaliatory in nature. If plaintiff complied with Fed. R. Civ. P. 11 when he signed his complaint, he has represented to the court that to the best of his knowledge, information and belief formed after an inquiry reasonable under the circumstances, he has evidence to support his allegations or is likely to have such evidence after he has a reasonable opportunity for further investigation or discovery. Plaintiff does not suggest that he is incapable of following the Federal Rules of Civil Procedure to conduct discovery or of organizing and submitting whatever evidence he already has to support his claim. Indeed, as noted above, the record reveals that he has already begun discovery.

Because I am convinced that plaintiff is capable of representing himself in this case and that a lawyer is not likely to make a difference in the outcome of the case, I will deny plaintiff's second motion for appointment of counsel.

ORDER

IT IS ORDERED that plaintiff's second motion for appointment of counsel is DENIED.

Entered this 2nd day of August, 2005.

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