

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

MICHAEL HILL,

Plaintiff,

v.

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

Defendants.

ORDER

04-C-732-C

In an order dated November 22, 2004, I granted plaintiff Michael Hill leave to proceed in forma pauperis 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 plaintiff for filing a grievance. Plaintiff has filed a motion to amend his complaint, indicating that he wishes to sue defendants in their official capacities, and add a demand for injunctive relief.

Ordinarily, it is this court's practice to require that a proposed amended pleading

replace the original complaint. This is to avoid the confusion that arises when there is an original pleading and then secondary documents adding to, subtracting from, and changing the original complaint submitted at different times located throughout the file. In this case, plaintiff has filed a motion to amend his complaint but not an amended complaint that could replace the original. Nonetheless, I will make an exception to the general rule here because plaintiff's changes are directed at his request for relief and do not affect the substantive allegations of the complaint in any way. It is unlikely that the simple appendages plaintiff proposes will cause confusion. (Defendants do not need to file a supplement to their answer because an additional demand for relief is not an "averment[] on which the adverse party relies." Fed. R. Civ. P. 8(b).)

Plaintiff's claims arise under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) and 42 U.S.C. §1985(3). Injunctive relief may be appropriate under either. Bunn v. Conley, 309 F.3d 1002, 1009 (7th Cir. 2002) (Bivens) (citing Farmer v. Brennan, 511 U.S. 835, 851 (1994)); People by Abrams v. Terry, 45 F.3d 17, 22 (2d Cir. 1995) (§ 1985(3)). Accordingly, I will allow plaintiff to append a demand for injunctive relief to his complaint. However, neither Bivens nor § 1985 permit claims against federal officials in their official rather than individual capacity. Bunn, 309 F.3d at 1009 (Bivens); Davis v. United States Dept. of Justice, 204 F.3d 723, 726 (7th Cir. 2000) (§ 1985 (3)). Thus, I will deny plaintiff's request to sue defendants in their official

capacities.

IT IS ORDERED that plaintiff Michael Hill's motion to amend his complaint is GRANTED with respect to his request to add a demand for injunctive relief and DENIED with respect to his request to sue defendants in their official capacities.

Entered this 15th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge