

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN O. GREENE : CIVIL ACTION
 :
 v. :
 :
 ROBERT E. RUBIN, Secretary of the :
 Treasury, in his official capacity, :
 GERALD WOODRUFF and FRANK RUSH : NO. 95-2415

MEMORANDUM AND ORDER

HUTTON, J.

January 14, 1998

Presently before this Court is the Petition of Plaintiff John O. Greene for Issuance of Special Injunction (Docket No. 51). For the reasons stated below, the plaintiff's Petition is **DENIED**.

I. BACKGROUND

In May, 1988, the plaintiff, John O. Greene, began working as a federal police officer at the United States Mint in Philadelphia, Pennsylvania. The plaintiff alleges that during his employment, defendants Gerald Woodruff and Frank Rush discriminated against the plaintiff on the basis of his race and violated his First Amendment rights. On April 24, 1995, the plaintiff filed suit seeking redress for race-based discrimination and retaliation for activity protected by the First Amendment and the Equal Employment Opportunity Act, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §

2000e, et seq., and for violations of state law. Rather than answer the complaint, defendants Woodruff and Rush filed a motion urging the Court to substitute the United States as the defendant. This Court denied that request on July 30, 1997. After this Court denied the defendants' Motion for Reconsideration, the defendants appealed to the United States Court of Appeals for the Third Circuit. That appeal is still pending.\¹

On October 16, 1997, the plaintiff was terminated from his employment. He alleges that he was fired in an attempt by the defendants' agents and employees to "force [the plaintiff] to terminate [his] underlying legal action because [the plaintiff] will not be able to afford counsel fees and costs." Greene Aff. at 1. On December 10, 1997, the plaintiff filed the instant Petition for Issuance of a Special Injunction. The plaintiff requests that this Court issue an injunction: 1) reinstating the plaintiff to his position, or placing the plaintiff on paid leave, pending the outcome of the case; 2) ordering the defendants and other employees to stop harassing the plaintiff; and 3) awarding the plaintiff attorney fees and costs associated with this action.

1. Although this case is currently on appeal, this Court has jurisdiction over the instant matter under Rule 8(a) of the Federal Rules of Appellate Procedure.

II. DISCUSSION

In deciding whether to grant an injunction, "the court must balance 1) the plaintiff's likelihood of success on the merits, 2) whether plaintiff will suffer irreparable harm absent an injunction, 3) whether other parties will be harmed if an injunction is granted and 4) the public's interests." Rogers v. Pennsylvania, No.CIV.A.97-6627, 1997 WL 793585, at * 4 (E.D. Pa. Dec. 9, 1997). In the instant case, this Court must deny the plaintiff's request because the plaintiff has failed to prove that he would suffer irreparable harm absent an injunction.

The "Third Circuit has continually noted that where the claimed injury actually constitutes a loss of money, the loss is capable of recoupment in an action at law." Naccarati v. Wilkins Township, 846 F. Supp. 405, 409 (W.D. Pa. 1993). Accordingly, loss of income alone does not constitute irreparable harm. See Morton v. Beyer, 822 F.2d 364, 372 (3d Cir. 1987) ("[a]lthough we are not insensitive to the financial distress suffered by employees whose wages have been terminated, we do not believe that loss of income alone constitutes irreparable harm."); Rogers, 1997 WL 793585, at * 4 ("Even though she is faced with foreclosure of her house as a result of her lack of income, irreparable injury is not present.") (citations omitted). As the United States Supreme Court stated in Sampson v. Murray, 415 U.S. 61 (1974):

We recognize that cases may arise in which the circumstances surrounding an employee's discharge, together with the resultant effect on the employee, may so far depart from the normal situation that irreparable injury might be found. Such extraordinary cases are hard to define in advance of their occurrence. We have held that an insufficiency of savings or difficulties in immediately obtaining other employment - external factors common to most discharged employees and not attributable to any unusual actions relating to the discharge itself - will not support a finding of irreparable injury, however severely they may affect a particular individual.

Id. at 92 n. 68.

The plaintiff argues that the loss of income resulting from his discharge does constitute irreparable harm. More specifically, the plaintiff states that his loss of income will prevent him from paying the costs and fees associated with the instant case. Thus, the plaintiff asserts that his discharge may prevent him from pursuing his legal rights.

Although courts have refused to find irreparable harm based on mere economic loss, courts have recognized irreparable harm stemming from a plaintiff's failure to proceed with the litigation absent injunctive relief. See De Novellis v. Shalala, 947 F. Supp. 557, 562 (D. Mass. 1996) (enjoining alleged retaliatory transfer to San Francisco in part because of plaintiff's inability to pursue EEOC complaint filed in Boston); Marxe v. Jackson, 833 F.2d 1121, 1125-26 (3d Cir. 1987) ("deprivation of the ability of a Title VII plaintiff to prove

his or her case can constitute irreparable injury," where witnesses would be chilled by employer's retaliatory discharge of plaintiff). However, this Court finds that the plaintiff will not be prohibited from pursuing this litigation absent the requested injunctive relief.

Title VII provides that:

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

42 U.S.C. § 2000e-5(k). Moreover, as the United States Court of Appeals for the Third Circuit recently stated, in a Title VII case:

Prevailing plaintiffs "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." [Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 416-17 (1978)] (internal quotations omitted). The rationale for this rule is twofold. First, "the plaintiff is the chosen instrument of Congress to vindicate 'a policy that Congress considered of the highest priority.'" Id. at 418. Second, "when a district court awards counsel fees to a prevailing plaintiff, it is awarding them against a violator of federal law." Id.

EEOC v. L.B. Foster Co., 123 F.3d 746, 750-51 (3d Cir. 1997)

(discussing 42 U.S.C. § 2000e-5(k)). Accordingly, the plaintiff's inability to pay for the costs and fees associated

with this action is mitigated by the statutory recovery provided under Title VII.

Instead, the harm resulting to the plaintiff in the absence of an injunction is equatable to the "external factors common to most discharged employees and not attributable to any unusual actions relating to the discharge itself." Sampson, 415 U.S. at 92 n. 68. Moreover, this "will not support a finding of irreparable injury, however severely they may affect a particular individual." Id.

The "applicable Federal Rule does not make a hearing a prerequisite for ruling on a preliminary injunction . . . when the movant has not presented a colorable factual basis to support . . . the contention of irreparable harm." Bradley v. Pittsburgh Bd. of Educ., 910 F.2d 1172, 1175-76 (3d Cir. 1990). In the instant case, the plaintiff clearly cannot show irreparable harm. Accordingly, the plaintiff's request is denied without a hearing.

An appropriate Order follows.

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O R D E R

AND NOW, this 14th day of January, 1998, upon
consideration of the Petition of Plaintiff John O. Greene for
Issuance of Special Injunction (Docket No. 51), IT IS HEREBY
ORDERED that Plaintiff's Petition is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.