

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

EUGENE A. URBAN : CIVIL ACTION
 :
 v. :
 :
 WILLIAM J. HENDERSON, :
 POSTMASTER GENERAL, UNITED :
 STATES POSTAL SERVICE : NO. 99-4244

MEMORANDUM AND ORDER

BECHTLE, J.

AUGUST , 1999

Presently before the court is plaintiff Eugene A. Urban's ("Urban") motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a)(1) and motion for appointment of counsel under 42 U.S.C. § 2000e-5. For the reasons set forth below, the court will deny the motions.

I. DISCUSSION

A. In Forma Pauperis

The decision whether to grant or deny a motion requesting to proceed in forma pauperis under 28 U.S.C. § 1915 rests in the discretion of the district court. Jones v. Zimmerman, 752 F.2d 76, 78 (3d Cir. 1985). The purpose of § 1915 "is to provide an entre, not a barrier, to the indigent seeking relief in the federal court." Souder v. McGuire, 516 F.2d 820, 823 (3d Cir. 1975). Factors to apply in making the determination include whether the plaintiff owns any real property, whether he or she is employed, whether he or she is the recipient of a pension and

the number of dependents that rely on him or her for support. In re Koren, 176 B.R. 740, 743 (E.D. Pa. 1995).

As required under § 1915(a)(1), Urban submitted to the court a sworn affidavit that included a statement of all the assets he possesses and his general financial position. In his affidavit, Urban states that he is currently employed and earning a net income of \$3,270.00 per month. Urban also states that he does not have any cash on hand or any money in checking or savings accounts. Additionally, Urban states that he owns an automobile and a house. Last, he avers that his wife and three children are dependent upon him for support. The court finds that Urban's affidavit demonstrates that the payment of the \$150.00 filing fee normally required to commence an action in the district court would not impose a hardship upon his financial situation. Therefore, the court will deny his motion to proceed in forma pauperis.

B. Appointment of Counsel

There is no constitutional or statutory right to the appointment of counsel in a civil action. Parham v. Johnson, 126 F.3d 454, 456-57 (3d Cir. 1997). However, in cases brought under Title VII of the Civil Rights Act of 1964,¹ "in such circumstances as the court may deem just, the court may appoint an attorney." 42 U.S.C. § 2000e-5(f)(1). While Title VII gives plaintiffs the opportunity to request representation, it does not

1. 42 U.S.C. § 2000e, et seq.

create a statutory right to the appointment of counsel.

Poindexter v. Federal Bureau of Investigation, 737 F.2d 1173, 1179 (D.C. Cir. 1984). In acting on such requests, this court recognizes that the appointment of an attorney may be essential for a plaintiff to fulfill "the role of a private attorney general, vindicating a policy of the highest priority." Id. at 1183 (citations omitted).

The court should consider four factors when evaluating motions for appointment of counsel in Title VII cases: (1) plaintiff's ability to afford counsel; (2) plaintiff's diligence in searching for counsel; (3) the merits of plaintiff's case; and (4) the plaintiff's capacity to present his or her case without the assistance of counsel. See Castner v. Colorado Springs Cablevision, 979 F.2d 1417, 1420-21 (10th Cir. 1992); Spanos v. Penn Cent. Transp. Co., 470 F.2d 806, 807 (3d Cir. 1972); Akselrad v. City of Philadelphia, No. 96-5192, 1997 WL 34698, at *2 (E.D. Pa. Jan. 29, 1997).

1. Plaintiff's Ability to Afford Counsel

Urban's affidavit indicates that he can afford the filing fee to institute a civil action. Based on that same information, the court additionally finds that he can afford counsel. This initial factor weighs against appointing counsel.

2. Plaintiff's Diligence in Searching for Counsel

Before a court may appoint counsel under Title VII, "the Plaintiff must make a reasonably diligent effort under the circumstances to obtain counsel." Akselrad, 1997 WL 34698, at

*2. Urban's affidavit indicates that he has made no effort to employ an attorney. According to his affidavit, Urban has not contacted any private attorneys, legal aid organizations or lawyer referral services. Under the circumstances, the court finds that Urban has not made a diligent effort in searching for counsel. This factor weighs against appointment of counsel.

3. The Merits of Plaintiff's Case

In evaluating the merits of a plaintiff's case to determine whether to appoint counsel in an action brought under Title VII, the court should first "analyze whether or not [the complaint] raises issues under a recognized legal theory." Akselrad, 1997 WL 34698, at *3 (citing Tatum v. Community Bank, 866 F. Supp. 988, 995 (E.D. Tex. 1994)). If the allegations "are not clearly baseless, and if proven would support a recognized theory of recovery" the plaintiff should have a "full opportunity to pursue the action." Id.

Based on his affidavit and Complaint, Urban brings a number of claims against his superiors at the United States Postal Service for retaliation for his "lawsuit against the United States Postal Service and Neil Heller, [Manager of] Post Office Operations." (Req. for Apptmt. of Atty. ¶ 4.) Reading the allegations and other submissions to the court together in the light most favorable to the plaintiff, these claims "rise above the standard of frivolousness" and, if proven, would support a recovery under Title VII. Akselrad, 1997 WL 34698, at *3. However, an attorney is not always required in order for a

plaintiff to receive a "full opportunity" to present his or her claims. Id. at *3-4 (denying appointment of counsel while finding plaintiff stated potentially meritorious claims). The stating of potentially meritorious claims is not itself determinative. Id.

4. Plaintiff's Capacity to Present Case Without the Assistance of Counsel

The court must also evaluate whether "it appears that a plaintiff has a meritorious claim that he cannot adequately pursue pro se." Akselrad, 1997 WL 34698, at *4 (citing Spanos v. Penn Cent. Transp. Co., 470 F.2d 806 (3d Cir. 1972)). Based on his affidavit and other submissions to the court, Urban appears capable of expressing himself in a clear manner. Additionally, the case does not appear to be so complex that Urban cannot adequately present his case without assistance of counsel. Further, the court does not foresee "the need for expert testimony or extensive or complex discovery." Washington v. Embassy Suites, No. 94-1748, 1994 WL 161378, at *3 (E.D. Pa. April 29, 1994). Based on the submissions presently before the court, it appears that Urban can adequately pursue his Title VII claims without counsel. This factor weighs against appointment of counsel at this time.

5. Balancing the Factors

In addition to the factors set forth above, the court must be cautious in appointing counsel because "volunteer lawyer time is a precious commodity." Tabron v. Grace, 6 F.3d 147, 157 (3d

Cir. 1993)(quoting Cooper v. Sargenti Co., 877 F.2d 170, 172 (2d Cir. 1989)). Based on the balancing of the above discussed factors as applied to this case, the court will not appoint counsel for Urban because he is able to afford his own counsel, he has not made a diligent effort to search for counsel and it appears that he can adequately pursue his claims pro se.

II. CONCLUSION

For the foregoing reasons, the court will deny Urban's motion to proceed in forma pauperis and will deny his motion for appointment of counsel.

An appropriate Order follows.

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WILLIAM J. HENDERSON,	:	
POSTMASTER GENERAL, UNITED	:	
STATES POSTAL SERVICE	:	NO. 99-4244

ORDER

AND NOW, TO WIT, this day of August, 1999, upon
consideration of plaintiff Eugene A. Urban's motion to proceed in
forma pauperis and motion for appointment of counsel, IT IS
ORDERED that said motions are DENIED.

LOUIS C. BECHTLE, J.