

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Boswell v. McDonough

Boswell · No. 25-cv-1769-RSH-AHG · Decided August 1, 2025

SUMMARY

The United States District Court for the Southern District of California grants Shequita Boswell’s motion to proceed in forma pauperis. The court dismisses her complaint under 28 U.S.C. § 1915(e)(2) (B) because it does not allege exhaustion of administrative remedies for her Title VII and Rehabilitation Act claims and does not adequately explain her Privacy Act and due process theories. The dismissal is with leave to amend within 30 days.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Robert S. Huie
JURISDICTION	United States District Court for the Southern District of California
DECIDED	August 1, 2025
DOCKET	25-cv-1769-RSH-AHG
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff filed a pro se federal civil action alleging pregnancy discrimination, Title VII retaliation, Rehabilitation Act disability discrimination, Privacy Act violations, and constructive removal due process violations, together with a motion to proceed in forma pauperis. The district court granted IFP status, screened the complaint under 28 U.S.C. § 1915(e)(2)(B), dismissed the complaint for failure to state a claim, and granted leave to amend.
STANDARD OF REVIEW	Under 28 U.S.C. § 1915(e)(2)(B), the court conducted sua sponte screening of an IFP complaint. The standard for failure to state a claim under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard, including the requirement that the complaint contain sufficient factual matter to state a plausible claim for relief.
PRECEDENTIAL VALUE	unpublished district court order; precedential status unknown

PARTIES

Shequita Boswell v. Denis McDonough, Secretary, U.S. Department of Veterans Affairs

TOPICS

title vii pregnancy discrimination ada / disability exhaustion of remedies pleadings

PRACTICE AREAS

civil procedure employment law civil rights federal employment law administrative law

QUESTIONS PRESENTED

1. Whether the complaint could proceed under 28 U.S.C. § 1915(e)(2)(B) when it did not allege compliance with the administrative exhaustion requirements applicable to federal-employee Title VII and Rehabilitation Act claims.
2. Whether the complaint adequately stated Privacy Act and constructive-removal due-process claims when it provided only unelaborated labels without sufficient supporting facts or legal theories.
3. Whether dismissal should be with leave to amend rather than without leave to amend.

HOLDINGS

1. A federal employee must plead compliance with the applicable administrative exhaustion requirements before bringing Title VII discrimination or retaliation claims, or Rehabilitation Act discrimination claims, in federal court. Because Boswell's complaint contained no allegations regarding exhaustion, those claims were subject to dismissal.
2. The complaint failed to state Privacy Act and constructive-removal due-process claims because it offered only unelaborated labels and did not provide adequate factual allegations or legal theories supporting a valid claim.
3. A pro se complaint should not be dismissed without leave to amend unless it is absolutely clear that the deficiencies cannot be cured by amendment; because amendment could potentially cure the identified deficiencies, the court granted leave to amend.

KEY QUOTATIONS

“The ‘standard for determining whether a plaintiff has failed to state a claim upon which relief can be granted under [28 U.S.C.] § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.’” (at 2)

“A federal employee asserting a claim of discrimination under the Rehabilitation Act must exhaust administrative remedies before filing a civil action in district court.” (at 3)

“Not only must a plaintiff exhaust her claims to bring suit, but she must also plead exhaustion.” (at 4)

“A district court should not dismiss a pro se complaint without leave to amend unless ‘it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.’” (at 5)

FACTUAL BACKGROUND

While on approved FMLA leave following childbirth in 2024, Boswell alleged that the Department of Veterans Affairs reassigned her without consent to a cybersecurity internship with the National Credit Union Administration. She alleged that the VA treated her as having left her position, causing loss of income, employment status, and medical benefits, although she never resigned. She also alleged that postpartum complications and sepsis after a C-section prevented her from timely objecting.

PROCEDURAL HISTORY

On July 10, 2025, Boswell filed the complaint and an application to proceed in forma pauperis. The court granted the IFP application, conducted mandatory screening, concluded that the Title VII and Rehabilitation Act claims did not plead administrative exhaustion and that the Privacy Act and constructive-removal due-process claims lacked sufficient factual allegations or legal theories, and dismissed with leave to amend within thirty days.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

Plaintiff may file an amended complaint addressing the identified deficiencies within thirty days of the order. If she does not timely amend, the action will be dismissed.

CASES CITED

- Escobedo v. Applebees, 787 F.3d 1226, 1234 (9th Cir. 2015)
- Venerable v. Meyers, 500 F.2d 1215, 1216 (9th Cir. 1974)
- Calhoun v. Stahl, 254 F.3d 845, 845 (9th Cir. 2001)
- Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Bullock v. Berrien, 688 F.3d 613, 616 (9th Cir. 2012)
- Jasch v. Potter, 302 F.3d 1092, 1096 (9th Cir. 2002)
- Neill v. YMCA of San Diego, No. 23-cv-457-JLS (DEB), 2024 WL 1859950, at *4 (S.D. Cal. Apr. 29, 2024)
- Williams v. Wolf, No. 19-cv-00652-JCS, 2019 WL 6311381, at *6 (N.D. Cal. Nov. 25, 2019)
- Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012)
- Schucker v. Rockwood, 846 F.2d 1202, 1204 (9th Cir. 1988)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 SHEQUITA BOSWELL, Case No.: 25-cv-1769-RSH-AHG 12 Plaintiff,
ORDER GRANTING MOTION TO 13 v. PROCEED IN FORMA PAUPERIS 14 DENIS

McDONOUGH, Secretary, U.S. AND DISMISSING COMPLAINT Department of Veterans Affairs, WITH LEAVE TO AMEND 15 Defendant. 16 [ECF No. 2] 17 18 On July 10, 2025, plaintiff Shequita Boswell, proceeding pro se, filed a civil action 19 against the Secretary of the U.S. Department of Veterans Affairs alleging pregnancy 20 discrimination.

ECF No. 1. Plaintiff also filed a motion to proceed in forma pauperis 21 (“IFP”) pursuant to 28 U.S.C. §1915(a). ECF No. 2. 22 I. MOTION TO PROCEED IFP 23 Generally, all parties instituting a civil action in this court must pay a filing fee. See 24 28 U.S.C. § 1914(a); CivLR 4.5(a).

However, under 28 U.S.C. § 1915(a), the court may 25 authorize the commencement, prosecution, or defense of any suit without payment of fees 26 if the plaintiff submits an affidavit, including a statement of all his or her assets, showing 27 that he or she is unable to pay filing fees or costs. “An affidavit in support of an IFP 28 1 application is sufficient where it alleges that the affiant cannot pay the court costs and still 2 afford the necessities of life.” *Escobedo v. Applebees*, 787 F. 3d 1226, 1234 (9th Cir.

2015). 3 “[A] plaintiff seeking IFP status must allege poverty with some particularity, definiteness 4 and certainty.” *Id.* (internal quotation marks omitted). The granting or denial of leave to 5 proceed IFP in civil cases is within the sound discretion of the district court. *Venerable v. 6 Meyers*, 500 F.2d 1215, 1216 (9th Cir. 1974) (citations omitted). 7 The Court has reviewed Plaintiff’s IFP motion and the supporting affidavit and 8 concludes that Plaintiff qualifies for IFP status.

Accordingly, the Court grants Plaintiff 9 leave to proceed IFP. 10 II. SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2)(B) 11 A. Legal Standard 12 When reviewing an IFP application, the Court must also review the underlying 13 complaint to determine whether it may proceed. A complaint filed by any person seeking 14 to proceed IFP pursuant to 28 U.S.C. § 1915(a) is subject to sua sponte review and 15 dismissal should the Court determine, inter alia, that it is frivolous, malicious, or fails to 16 state a claim upon which relief may be granted.

28 U.S.C. § 1915(e)(2)(B); *Calhoun v. 17 Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) 18 are not limited to prisoners.”). 19 “The standard for determining whether a plaintiff has failed to state a claim upon 20 which relief can be granted under [28 U.S.C.] § 1915(e)(2)(B)(ii) is the same as the Federal 21 Rule of Civil Procedure 12(b) (6) standard for failure to state a claim.” *Watison v. Carter*, 22 668 F.3d 1108, 1112 (9th Cir.

2012). Although detailed factual allegations are not required, 23 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory 24 statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Determining 25 whether a complaint states a

plausible claim for relief [is]... a context-specific task that 26 requires the reviewing court to draw on its judicial experience and common sense.” Id. at 27 679.

The “mere possibility of misconduct” or “unadorned, the defendant-unlawfully- 28 harmed me accusation[s]” fall short of meeting this plausibility standard. Id. at 678–79. 1 Under Rule 12(b) (6), a complaint must “contain sufficient factual matter, accepted as true, 2 to state a claim to relief that is plausible on its face.” Id. at 678. (citation omitted). 3 B. The Complaint 4 The Complaint contains the following factual allegations: 5 In 2024, while on approved FMLA leave due to childbirth, Plaintiff was reassigned by the VA to a cybersecurity internship with the National 6 Credit Union Administration (NCUA) without her consent or any 7 formal resignation.

The VA reported her as having left her position, resulting in a loss of income, employment status, and medical benefits. 8 Plaintiff never resigned and was unaware of the reassignment until after 9 giving birth via C-section. She also experienced postpartum complications and sepsis, making timely objection impossible. 10 11 ECF No. 1 at 2. Without further elaboration of her claims or the underlying factual 12 allegations, the Complaint recites that Plaintiff is suing for: (1) pregnancy discrimination 13 in violation of Title VII, (2) retaliation in violation of Title VII, (3) disability discrimination 14 in violation of the Rehabilitation Act, (4) “Privacy Act Violations,” and (5) “Constructive 15 Removal – Due Process Violation.” Id. Plaintiff seeks reinstatement, back pay, 16 compensatory damages, and injunctive relief.

Id. 17 C. Discussion 18 Title VII of the Civil Rights Act of 1964 provides that it is unlawful “to fail or refuse 19 to hire or to discharge any individual, or otherwise to discriminate against any individual 20 with respect to his compensation, terms, conditions, or privileges of employment, because 21 of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-22 2(a)(1).

The statute also prohibits employers from retaliating against an employee who 23 opposes “an unlawful employment practice” under Title VII. Id. § 2000e-3(a). The 24 Rehabilitation Act applies to federal employees and prohibits discrimination against an 25 otherwise qualified person on the basis of his or her disability. See 29 U.S.C. § 791. 26 Before a federal employee may bring a claim in court under Title VII for 27 discrimination or retaliation, the employee must first seek administrative relief within the 28 agency responsible for the alleged discrimination.

See 42 U.S.C. § 2000e-16(c). Similarly, 1 “[a] federal employee asserting a claim of discrimination under the Rehabilitation Act must 2 exhaust administrative remedies before filing a civil action in district court.” *Bullock v. 3 Berrien*, 688 F.3d 613, 616 (9th Cir. 2012) (citation omitted).

The aggrieved employee 4 must first “initiate contact with a[n EEO] Counselor within 45 days of the date of the matter 5 alleged to be discriminatory or, in the case of personnel action, within 45

days of the 6 effective date of the action.” 29 C.F.R. § 1614.105(a)(1). “If an informal resolution is not 7 achieved, the employee must then file a formal complaint for decision by an ALJ.” Bullock, 8 688 F.3d at 616 (citing 29 C.F.R. §§ 1614.105(d), 1614.106).

After the employee’s agency 9 issues a final agency decision, the employee may appeal the decision to the EEOC within 10 30 days of the final agency decision, 29 C.F.R. § 1614.402(a), or file a federal civil action 11 within 90 days of the final agency decision (or after 180 days from filing of the formal 12 complaint, if the agency has not taken any action after that time).

42 U.S.C. § 2000e-16(c); 13 29 C.F.R. 1614.407(a)-(b); Bullock, 688 F.3d at 616. “Title VII’s exhaustion requirements 14 for suits against federal government agencies were not meant to erect a massive procedural 15 roadblock to access to the courts but rather to give the agency the opportunity to right any 16 wrong it may have committed.” *Jasch v. Potter*, 302 F.3d 1092, 1096 (9th Cir.

2002) 17 (citation and internal quotation marks omitted). 18 The Complaint here contains no allegations regarding compliance with the 19 administrative exhaustion requirements under Title VII or the Rehabilitation Act. These 20 claims are therefore subject to dismissal. See, e.g., *Neill v. YMCA of San Diego*, No. 23- 21 cv-457-JLS (DEB), 2024 WL 1859950, at *4 (S.D.

Cal. Apr. 29, 2024) (“Not only must a 22 plaintiff exhaust her claims to bring suit, but she must also plead exhaustion.”); *Williams 23 v. Wolf*, No. 19-cv-00652-JCS, 2019 WL 6311381, at *6 (N.D. Cal. Nov. 25, 2019) 24 (“Williams must allege compliance with [Title VII’s administrative complaint] 25 requirement (or waiver by the Secretary, which she does not assert) in order to state a claim 26 on which relief may be granted.”).

27 For Plaintiff’s unelaborated assertions of “Privacy Act Violations” and 28 “Constructive Removal – Due Process Violation,” the Court is unable to discern from the 1 ||Complaint adequate factual allegations or legal theories supporting a valid claim. 2 “A district court should not dismiss a pro se complaint without leave to amend unless 3 || ‘it is absolutely clear that the deficiencies of the complaint could not be cured by 4 ||amendment.’” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir.

2012) (quoting *Schucker v. 5 || Rockwood*, 846 F.2d 1202, 1204 (9th Cir.1988)). The Court concludes that leave to amend 6 warranted here. 7 I. CONCLUSION 8 For the foregoing reasons, Plaintiff’s motion to proceed IFP [ECF No. 2] is 9 || GRANTED. Upon determination that the Complaint fails to state a claim, pursuant to 28 10 U.S.C. § 1915(e)(2)(B) the Court DISMISSES the Complaint with leave to amend.

11 Plaintiff may file an amended complaint addressing the deficiencies identified herein 12 || within thirty (30) days from the date of this Order. If Plaintiff does not timely file an 13 ||amended pleading, the Court will dismiss the action. 14 IT IS SO ORDERED. ‘ 15 ||Dated: August 1, 2025

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26 27 28

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