

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Sharp v. Park

Case No. 25-cv-07431-EKL · No. 25-cv-07431-EKL · Decided November 17, 2025

OPINION

Sharp

PER CURIAM.

1

2 UNITED STATES DISTRICT COURT

3 NORTHERN DISTRICT OF CALIFORNIA

4 5 ANTHONY A. SHARP, Case No. 25-cv-07431-EKL 6 Plaintiff,

ORDER TO SHOW CAUSE

v. 7

8 KYEONG PARK,

Defendant. 9 10 11 Plaintiff, a state prisoner, filed a pro se civil rights complaint under 42 U.S.C.
§ 1983. He 12 has applied to proceed in forma pauperis, but it appears that he is three strikes
barred and cannot 13 proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g), unless he is
under imminent danger of 14 serious physical injury.

15 DISCUSSION

16 Legal Standard 17 Congress forbids a prisoner from bringing a civil action in forma pauperis
under 28 U.S.C. 18 § 1915, if the prisoner has while incarcerated or detained in any facility,
brought an action or appeal in 19 federal court on three or more prior occasions, which was
dismissed “on the grounds that it is 20 frivolous, malicious, or fails to state a claim upon which
relief may be granted, unless the prisoner is 21 under imminent danger of serious physical injury.”
28 U.S.C. § 1915(g). Relying on the statute’s 22 command that “in no event” may such a prisoner
proceed, the Ninth Circuit has explained that this bar 23 is triggered by a prisoner’s history of
filing frivolous litigation rather than by the merits of the current 24 action. *El-Shaddai v. Zamora*,
833 F.3d 1036, 1042 (9th Cir. 2016) (emphasis in original). 25 For purposes of a dismissal that
may be counted under Section 1915(g), the phrase “fails to 26 state a claim on which relief may
be granted” parallels the language of Federal Rule of Civil

27 Procedure 12(b)(6) and carries the same interpretation. *Andrews v. King*, 398 F.3d 1113, 1121

1 having no basis in law or fact,” and the word “malicious” refers to a case “filed with the 2
‘intention or desire to harm another.’” *Id.* (citation omitted). Dismissal of an action under Section
3 1915(g) should only occur when, “after careful evaluation of the order dismissing an [earlier] 4
action, and other relevant information, the district court determines that the action was dismissed 5

because it was frivolous, malicious or failed to state a claim.” *Id.* 6 *Andrews* requires that a prisoner be notified of the potential applicability of Section 7 1915(g), by either the district court or the defendants, but also requires the prisoner to bear the 8 ultimate burden of persuasion that Section 1915(g) does not bar pauper status for him. *Id.* 9 *Andrews* implicitly allows the court to sua sponte raise the Section 1915(g) problem but requires 10 the court to notify the prisoner of the earlier dismissals it considers may support a Section 1915(g) 11 dismissal and allow the prisoner an opportunity to be heard on the matter before dismissing the 12 action. *Id.* at 1120. A dismissal under Section 1915(g) means that a prisoner cannot proceed with 13 his action as a pauper under Section 1915, but he still may pursue his claims if he pays the full 14 filing fee at the outset of the action. 15 Analysis 16 Pursuant to *Andrews*, the Court now gives plaintiff notice that he appears to have amassed 17 at least six Section 1915(g) dismissals: 18 1. *Sharp v. Koenig*, No. 21-cv-6035 RS (N.D. Cal. Sep. 26, 2022) (complaint 19 dismissed with leave to amend for failure to state a claim (ECF No. 9), case dismissed for failure 20 to file an amended complaint (ECF No. 10)); 21 2. *Sharp v. Commissioner John Koskinen*, No. 21-cv-2171 PJH (N.D. Cal. April 8, 22 2021) (case dismissed for failure to state a claim (ECF No. 5)); 23 3. *Sharp v. Mims*, No. 13-cv-0534 AWI BAM (E.D. Cal. July 1, 2014) (case 24 dismissed for failure to state a claim (ECF No. 25)); 25 4. *Sharp v. Mason*, No. 03-cv-1354 EJG DAD (E.D. Cal. Sep. 5, 2003) (case 26 dismissed for failure to state a claim (ECF No. 12)); 27 5. *Sharp v. County of San Diego*, No. 99-cv-1685 AJB (S.D. Cal. May 24, 2000) (case 1 6. *Sharp v. Cal. State Prison Corcoran Medical Staff*, No. 99-cv-5550 OWB DLB 2 (E.D. Cal. March 27, 2000) (complaint dismissed with leave to amend for failure to state a claim 3 (ECF No. 7), case dismissed for failure to file an amended complaint (ECF Nos. 9, 10)). 4 The Court has evaluated each of these cases based on their dismissal orders. See *Andrews*, 5 398 F.3d at 1120. Under precedent from the Ninth Circuit, each dismissal counts as a strike. See 6 *Moore v. Maricopa Cty. Sheriff’s Office*, 657 F.3d 890, 893-94 (9th Cir. 2011) (dismissal for 7 failure to state a claim constitutes a strike); *Harris v. Mangum*, 863 F.3d 1133, 1143 (9th Cir. 8 2017) (where complaint is dismissed with leave to amend, and prisoner fails to amend, the 9 dismissal counts as a strike); *Belanus v. Clark*, 796 F.3d 1021, 1027-30 (9th Cir. 2007) (dismissals 10 for failure to state a claim because claims were time-barred may be counted as strikes pursuant to

11 Section 1915(g)). Plaintiff does not appear entitled to proceed in forma pauperis.

12 Nor does it appear that plaintiff is entitled to proceed under the imminent danger 13 exception. The danger faced by the plaintiff must be “clearly related to [the] initial complaint.” 14 *Williams v. Paramo*, 775 F.3d 1182, 1190 (9th Cir. 2015) (discussing nexus requirement). The 15 plaintiff must allege that he is in imminent danger of serious physical injury at the time the 16 complaint is filed, and the allegation must be “plausible.” *Andrews v. Cervantes*, 493 F.3d 1047, 17 1053 (9th Cir. 2007); see also *id.* at 1057 n.11 (recognizing that “assertions of imminent danger . . . 18 . may be rejected as overly speculative or fanciful, when they are supported by implausible or 19 untrue allegations”). 20 In the complaint, plaintiff alleges that in 2019, prior to the COVID-19

pandemic, 21 defendant Dr. Park treated him for coughing and breathing issues. ECF No. 1 at 5. Defendant 22 provided medicine for allergies, but plaintiff did not improve, and his condition worsened. Id. 23 Defendant treated plaintiff in February 2020 and again diagnosed him with allergies. A week 24 later, plaintiff was hospitalized with COVID-19. Later in 2021 and 2022 plaintiff was again seen 25 by defendant for coughing who said it was a cold, but plaintiff noted that it had been occurring for 26 more than three years. Id. Defendant ordered an x-ray that did not reveal any medical issues, but 27 in 2023 a CT scan revealed that plaintiff had chronic obstructive pulmonary disease. Id. at 5, 8. 1 2022. Id. at 3. Based on the complaint which alleges that defendant failed to properly diagnose 2 || him years earlier, it does not appear that plaintiff was in imminent danger at the time of filing this 3 complaint in 2025.

4 CONCLUSION

5 1. In light of plaintiff's strikes, and because he does not appear plausibly to have been 6 || in imminent danger of physical injury at the time of filing, he is ORDERED TO SHOW CAUSE 7 within twenty-eight days from the date of service of this order why his motion for leave to 8 || proceed in forma pauperis should not be denied and this action should not be dismissed pursuant 9 to 28 U.S.C. § 1915(g). In his response, plaintiff may address how he is in imminent danger by 10 || providing specific allegations. He may also address how the six dismissals above do not 11 constitute strikes under Section 1915(g). 12 2. If plaintiff is so inclined, he may avoid dismissal of his action by paying the 13 \$405.00 filing fee. The Court notes for plaintiffs benefit that this order does not constitute a 14 || screening of his claims pursuant to 28 U.S.C. § 1915A. Even if plaintiff pays the full filing fee for 3 15 || this action, the Court still will be required to conduct an initial review of the pleadings pursuant to a 16 || that statute. See 28 U.S.C. § 1915A(a)-(b). Failure to file a timely response or failure to pay the 3 17 || full filing fee will result in the dismissal of this action. 18 3. It is plaintiffs responsibility to prosecute this case. Plaintiff must keep the Court 19 || informed of any change of address by filing a separate paper with the clerk headed "Notice of 20 || Change of Address," and must comply with the Court's orders in a timely fashion. Failure to 21 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of 22 Civil Procedure 41(b). 23 IT IS SO ORDERED. 24 Dated: November 17, 2025 25 26 umi K. Lee 27 United States District Judge 28