

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

King v. Dudek

King v. Dudek · No. 25CV1148-BLM · Decided May 7, 2025

SUMMARY

The United States District Court for the Southern District of California denied Edward King’s application to proceed without prepaying fees or costs in an action seeking review of the denial of Social Security Disability Insurance benefits. The court found that King’s monthly VA disability income exceeded his expenses and that his available cash or account balances and other assets showed he could pay the \$405 filing fee without impairing his ability to meet life’s necessities.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Barbara L. Major
JURISDICTION	United States District Court for the Southern District of California
DECIDED	May 7, 2025
DOCKET	25CV1148-BLM
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff sought review of the Commissioner of Social Security's denial of his application for Title II Social Security Disability Insurance benefits and simultaneously applied to proceed in forma pauperis. The district court denied the application to proceed without prepaying fees or costs.
STANDARD OF REVIEW	The determination of indigency under 28 U.S.C. § 1915(a) is committed to the district court's discretion.
PRECEDENTIAL VALUE	Unpublished district court order; precedential status is unknown and no reporter citation appears.
PARTIES	Edward King v. Leland Dudek, Commissioner of Social Security

TOPICS

- civil procedure
- administrative law
- judicial review of agency action

PRACTICE AREAS

civil procedure

Social Security

in forma pauperis proceedings

QUESTIONS PRESENTED

1. Whether Plaintiff demonstrated under 28 U.S.C. § 1915(a) that he was unable to pay the \$405 filing fee without sacrificing the necessities of life.

HOLDINGS

1. Plaintiff was not entitled to proceed in forma pauperis because he failed to establish that he could not pay the \$405 filing fee without impairing his ability to pay for life's necessities.

KEY QUOTATIONS

“Plaintiff has not established that he is unable to pay the \$405 filing fee without impairing his ability to pay for life’s necessities.” (at 3)

“To satisfy the requirements of 28 U.S.C. § 1915(a), “an affidavit [of poverty] is sufficient which states that one cannot because of his poverty pay or give security for costs ... and still be able to provide for himself and dependents with the necessities of life.”” (at 1-2)

FACTUAL BACKGROUND

Plaintiff was unemployed but received \$4,767 per month in Veterans Affairs disability benefits. He reported having \$4,000 to \$6,000 in cash or bank accounts, owning a 2017 Dodge Caravan, and having no dependents. His reported monthly expenses totaled approximately \$2,098, substantially less than his monthly income.

PROCEDURAL HISTORY

Plaintiff filed the complaint and application to proceed without prepaying fees or costs on May 6, 2025. The court determined that Plaintiff had not shown that payment of the \$405 filing fee would impair his ability to provide for life's necessities, denied the application, and ordered him to pay the fee by May 28, 2025, warning that failure to do so would result in dismissal of the complaint and closure of the case.

DISPOSITION

other

CASES CITED

- California Men's Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991), reversed on other grounds by, 506 U.S. 194 (1993)
- Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339-40 (1948)
- Temple v. Ellerthorpe, 586 F. Supp. 848, 850 (D.R.I. 1984)
- Allen v. Kelley, 1995 WL 396860, at *2 (N.D. Cal. 1995)
- Ali v. Cuyler, 547 F. Supp. 129, 130 (E.D. Pa. 1982)

- United States v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981)

OPINION

1 2 3 4 5 UNITED STATES DISTRICT COURT 6 SOUTHERN DISTRICT OF CALIFORNIA 7
Case No.: 25CV1148-BLM 8 EDWARD KING, 9 Plaintiff, ORDER DENYING PLAINTIFF’S
APPLICATION TO PROCEED IN 10 v. DISTRICT COURT WITHOUT PREPAYING OF FEES
OR COSTS 11 LELAND DUDEK, COMMISSIONER OF SOCIAL SECURITY, 12 [ECF NO. 2]
Defendant. 13 14 15 The instant matter was initiated on May 6, 2025 when Plaintiff filed a
complaint seeking 16 review of the Commissioner’s decision to deny Plaintiff’s application for
Title II Social Security 17 Disability Insurance benefits for lack of disability.

ECF No. 1 at 1. That same day, Plaintiff filed 18 an Application To Proceed In District Court
Without Prepaying Fees or Costs. ECF No. 19 2. Plaintiff has not established that he is unable to
pay the \$405 filing fee without impairing 20 his ability to pay for life’s necessities.

Accordingly, Plaintiff’s Application to Proceed in District 21 Court without Prepaying Fees or
Costs is DENIED. 22 Application to Proceed in District Court without Prepaying Fees or Costs 23
All parties instituting any civil action, suit, or proceeding in a district court of the United 24 States,
except an application for a writ of habeas corpus, must pay a filing fee.

28 U.S.C. 25 § 1915(a). An action may proceed despite a plaintiff’s failure to prepay the entire fee
only if 26 she is granted leave to proceed pursuant to 28 U.S.C. § 1915(a), which states: 27 [A]ny
court of the United States may authorize the commencement, prosecution or defense of any suit,
action or proceeding... without prepayment of fees or 1 security therefor, by a person who submits
an affidavit that includes a statement of all assets such [person] possesses that the person is unable
to pay such fees or 2 give security therefor.

3 The determination of indigency falls within the district court’s discretion. California Men’s 4
Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991), reversed on other grounds by, 506 U.S. 5
194 (1993) (“Section 1915 typically requires the reviewing court to exercise its sound discretion 6
in determining whether the affiant has satisfied the statute’s requirement of indigency.”).

It is 7 well-settled that a party need not be completely destitute to proceed IFP. Adkins v. E.I.
DuPont 8 de Nemours & Co., 335 U.S. 331, 339-40 (1948). To satisfy the requirements of 28
U.S.C. § 9 1915(a), “an affidavit [of poverty] is sufficient which states that one cannot because of
his 10 poverty pay or give security for costs... and still be able to provide for himself and
dependents 11 with the necessities of life.” Id. at 339.

At the same time, “the same even-handed care must 12 be employed to assure that federal funds
are not squandered to underwrite, at public expense, 13... the remonstrances of a suitor who is
financially able, in whole or in material part, to pull his 14 own oar.” Temple v. Ellerthorpe, 586 F.

Supp. 848, 850 (D.R.I. 1984). District courts tend to 15 reject IFP applications where the applicant can pay the filing fee with acceptable sacrifice to 16 other expenses.

See, e.g., *Allen v. Kelley*, 1995 WL 396860, at *2 (N.D. Cal. 1995) (Plaintiff 17 initially permitted to proceed IFP, later required to pay \$ 120 filing fee out of \$ 900 settlement 18 proceeds); *Ali v. Cuyler*, 547 F. Supp. 129, 130 (E.D. Pa. 1982) (IFP application denied because 19 the plaintiff possessed savings of \$ 450 and that was more than sufficient to pay the \$60 filing 20 fee).

Moreover, the facts as to the affiant's poverty must be stated “with some particularity, 21 definiteness, and certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981). 22 Plaintiff has not satisfied his burden of demonstrating that he is entitled to IFP status. 23 According to his affidavit in support of application, Plaintiff is not employed but receives \$4,767 24 per month in VA disability benefits.

ECF No. 2 at 1. Plaintiff has \$4000-\$6000 in cash or in a 25 checking or savings account and owns a 2017 Dodge Caravan. Id. at 2. Plaintiff has no 26 dependents who rely on him for support. Id. at 2. Plaintiff spends approximately \$800 per 27 month on rent, \$298 per month in car payments, and \$1000 per month on living expenses. Id. at 1-2. Plaintiff’s monthly expenses total \$2098.

Id. 1 Although Plaintiff is not employed, he owns a vehicle, has \$4000-\$6000 in cash or banking 2 || accounts, and his monthly income exceeds his monthly spending. Id. Based upon the foregoing, 3 Court finds that Plaintiff has not established that he is unable to pay the \$405 filing fee 4 || without impairing his ability to pay for life’s necessities. 5 CONCLUSION 6 Plaintiff’s Application to Proceed in District Court without Prepaying Fees or 7 Costs is DENIED.

No later than May 28, 2025, Plaintiff must pay the \$405 filing fee. If Plaintiff 8 || fails to do so, the Court will dismiss the Complaint and close the case. 9 IT IS SO ORDERED. 10 Dated: 5/7/2025
iy,, be He we 11 Hon. Barbara L. Major United States Maqistrate Judde 13 14 15 16 17 18 19 20
21 22 23 24 25 26 27 28