

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

King v. Dudek

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

OPINION

King v. Dudek

PER CURIAM.

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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