

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

FREDERICK BANKS, *an American*)
Indian,)

Plaintiff,)

v.)

BEN, CHIEF US PROBATION)
OFFICER, US PROBATION OFFICE)
WESTERN DISTRICT OF PA, and)
CIA OFFICE OF SCIENCE)
TECHNOLOGY, USA,)

Defendants.

Civil Action No. 13 – 1582

District Judge Nora Barry Fischer
Chief Magistrate Judge Lisa Pupo Lenihan

MEMORANDUM ORDER

Pending before the Court is a Report and Recommendation issued by Chief Magistrate Judge Lisa Pupo Lenihan on November 5, 2013. (ECF No. 7.) Because Plaintiff has three “strikes” and is barred from bringing a civil action *in forma pauperis*, the magistrate judge recommended that Plaintiff’s Motion for Leave to Proceed *in forma pauperis* be denied in accordance with 28 U.S.C. § 1915(g) and that this action be dismissed without prejudice to Plaintiff’s right to reopen it by paying the full \$400.00 filing fee. Plaintiff was served with the Report and Recommendation and informed that he had until November 22, 2013, to file written objections. Plaintiff filed objections and supplemental objections on November 15, 2013.

As previously noted, the magistrate judge recommended that Plaintiff’s request for *in forma pauperis* status be denied in accordance with 28 U.S.C. § 1915(g) because Plaintiff is a prisoner who has had at least three prior civil actions dismissed that count as “strikes,” or, in

other words, that have been dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. *See* Banks v. Commonwealth of Pennsylvania, Third Circuit No. 10-1597 (Order dated April 8, 2010, and ultimately denying Plaintiff leave to appeal *in forma pauperis* because he has three strikes: Banks v. Hayward, W.D. Pa. Civ. No. 06-cv-509; Banks v. Hayward, W.D. Pa. Civ. No. 06-cv-1572; In Re: Banks, C.A. No. 06-1828)). Therefore, according to the statute, Plaintiff may not bring a civil action *in forma pauperis* unless he is under “imminent danger of serious physical injury.” *See* 28 U.S.C. § 1915(g). Plaintiff objects to this recommendation on the basis that he is not a “prisoner” within the meaning of section 1915(g), but rather a “holdover awaiting a probation violation hearing,” and, therefore, the statute is inapplicable as to him. (ECF No. 8.) Plaintiff is mistaken. Contrary to his assertion, section 1915(g) specifically applies to those “accused of” violating the terms and conditions of their probation or parole. *See* 28 U.S.C. § 1915(h). Therefore, Plaintiff’s objection is without merit.

In Plaintiff’s supplemental objections, he states that he is under imminent danger of serious physical injury because the “electronic harassment technology being employed against him aka microwaves and EMFs causes asthma, cataracts, headaches, memory loss, early Alzheimer’s, bad dreams, depression, fatigue, concentration loss, appetite loss, heart and blood pressure problems, and cancer.” (ECF No. 9.) He believes that he is being targeted for this unlawful harassment because he is a whistleblower and has filed civil suits against government officials. *Id.* It appears as though Plaintiff is attempting to invoke the exception to section 1915(g)’s three strike rule, which allows a prisoner to proceed *in forma pauperis* if he is under “imminent danger of serious physical injury.” However, Plaintiff has made almost identical allegations in other complaints he has brought before this Court, and, of which the Court has found to be frivolous. *See* Banks v. Realty Counseling Company, W.D. Pa. Civ. No. 2:13-1025

(claiming that defendants used “Remote Neural Monitoring” technology to harass and steal from him). These allegations are clearly insufficient to overcome section 1915(g)’s three strike bar.

Therefore, after *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, and the Objections thereto, the following order is entered.

AND NOW, this 25th day of November, 2013,

IT IS HEREBY ORDERED that Plaintiff’s Motion for Leave to Proceed *in forma pauperis* (ECF No. 2) is **DENIED** in accordance with 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that the magistrate judge’s Report and Recommendation (ECF No. 7) dated November 5, 2013, is **ADOPTED** as the Opinion of this Court.

IT IS FURTHER ORDERED that this action is **DISMISSED** without prejudice and that Plaintiff may reopen this action within sixty (60) days by paying the full \$400.00 filing fee.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Petitioner has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

By the Court:

s/Nora Barry Fischer
Nora Barry Fischer
United States District Judge

cc: Frederick Banks
#05711-068
NEOCC
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Youngstown, OH 44505
Via First Class Mail