

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

Bill M. Wayman,

Plaintiff,

v.

Case No. 04-2347-JWL

A Z Automotive Corporation,

Defendant.

MEMORANDUM & ORDER

Plaintiff, proceeding pro se, filed suit against defendant, his former employer, alleging that defendant failed to promote plaintiff and thereafter terminated his employment on the basis of his age. On July 27, 2005, the court granted defendant's motion for summary judgment and dismissed plaintiff's complaint in its entirety. This matter is presently before the court on plaintiff's motion for leave to file an appeal (doc. 93) and his motion for leave to appeal in forma pauperis (doc. 94). Both motions were filed on August 2, 2005. The court construes plaintiff's motion for leave to file an appeal as his notice of appeal to the Tenth Circuit Court of Appeals in which he asserts his intent to appeal any and all adverse rulings made in the district court. *See* Fed. R. App. P. 3(a) & (c).

Plaintiff's motion for leave to proceed with his appeal in forma pauperis is denied without prejudice because plaintiff has failed to comply with the applicable statute and federal rule relating to proceeding in forma pauperis. Specifically, 28 U.S.C. § 1915(a)(1) requires plaintiff to submit an affidavit "that includes a statement of all assets such [person] possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action,

defense or appeal and affiant's belief that the person is entitled to redress." *See Lister v. Dep't of Treasury*, 408 F. 3d 1309, 1312 (10th Cir. 2005) ("Section 1915(a) applies to all persons applying for IFP status, and not just to prisoners."). In addition, Federal Rule of Appellate Procedure 24(a)(1) requires that the affidavit show not only plaintiff's inability to pay and his claim of entitlement to redress but also "the issues that the party intends to present on appeal." *See Fed. R. App. P. 24(a)(1)*. Plaintiff, then, may refile his motion for leave to proceed with his appeal in forma pauperis at the time he submits an affidavit in compliance with these rules.

IT IS SO ORDERED this 8th day of August, 2005.

s/ John W. Lungstrum _____

John W. Lungstrum

United States District Judge