

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

SAMUEL R. QUEEN,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CIVIL ACTION

No. 05-3341-KHV

ORDER

Samuel Queen, a former inmate at the United States Penitentiary in Leavenworth, Kansas, brings suit under the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq., alleging that he suffered an assault by another inmate because prison staff failed to monitor and supervise a stairwell. On October 31, 2006, because plaintiff had five strikes for purposes of 28 U.S.C. § 1915(g), the Court vacated the order which granted plaintiff leave to proceed *in forma pauperis* in this case and ordered plaintiff to submit the remaining \$150 of his filing fee by November 30, 2006. On November 20, 2006, plaintiff complied with the Court's order. On December 22, 2006, the Court overruled plaintiff's objection to the Court's order which vacated plaintiff's *in forma pauperis* status. See Memorandum And Order (Doc. #81). This matter is before the Court on Plaintiff's Request For An Order To Prison Officials To End Any Collection Or Demand For Payment Of Filing Fees In This Instant Action (Doc. #80) filed December 15, 2006.

Plaintiff asks the Court to (1) acknowledge to prison officials that the filing fee has been satisfied, (2) order prison officials to end all collections and (3) refund all payments in excess of the \$250 filing fee. As to plaintiff's first request, plaintiff has paid the \$250 filing fee in this case in full (\$100 from transfer from payments in Case No. 05-3005-SAC and \$150 from payment on November 20, 2006). As to plaintiff's

second request, the Court does not have jurisdiction to order non-party prison officials to take specific action. As to plaintiff's third request, plaintiff has not made payments in this case in excess of the \$250 filing fee. Plaintiff's payment of \$20 received on December 11, 2006, was applied to Queen v. United States, D. Kan. Case No. 05-3022-SAC, in which plaintiff has not satisfied his outstanding fee obligations.¹

IT IS THEREFORE ORDERED that Plaintiff's Request For An Order To Prison Officials To End Any Collection Or Demand For Payment Of Filing Fees In This Instant Action (Doc. #80) filed

¹ As best the Court can ascertain, prison officials erroneously directed plaintiff to submit the \$20 payment in the instant action, Case No. 05-3341. See Plaintiff's Request For An Order To Prison Officials To End Any Collection Or Demand For Payment Of Filing Fees In This Instant Action (Doc. #80) and attached inmate grievance. In Case No. 05-3022, the Honorable Samuel A. Crow advised plaintiff as follows:

Plaintiff . . . remains obligated to pay the statutory filing fee of \$250.00 in this action upon his satisfaction of the outstanding fee obligations in Case Nos. 05-3005 and 05-3341. The Finance Office of the facility where he is incarcerated will be directed by a copy of this order to collect from plaintiff's account and pay to the clerk of the court twenty percent (20%) of the prior month's income each time the amount in plaintiff's account exceeds ten dollars (\$10.00) until the filing fees have been paid in full. Plaintiff is directed to cooperate fully with his custodian in authorizing disbursements to satisfy the filing fee, including but not limited to providing any written authorization required by the custodian or any future custodian to disburse funds from his account.

Order (Doc. #21) filed March 29, 2006 in Case No. 05-3022-SAC, at 4 n.1. Because plaintiff had fully satisfied his outstanding fee obligation in Case No. 05-3341, the Court's Finance Division, after consultation with plaintiff's case manager at the prison, applied the \$20 payment received on December 11, 2006 to plaintiff's outstanding fee obligation in Case No. 05-3022. Currently, plaintiff has an outstanding fee obligation of \$124.68 in Case No. 05-3022.

Plaintiff is not entitled to a "refund" of the \$20 payment erroneously earmarked for this case. Ordinarily, the prison finance official (not plaintiff) earmarks payments for a particular case. Under 28 U.S.C. § 1915(b)(2) and Judge Crow's order in Case No. 05-3022, however, the prison finance official must submit a certain amount when the balance of plaintiff's prisoner account exceeds \$10 until the filing fees in all of plaintiff's cases have been satisfied. The prison finance official has no authority to refund the excess amount paid in a particular case to plaintiff after he satisfies some, but not all, of his outstanding fee obligations.

December 15, 2006 be and hereby is **SUSTAINED in part**. The Court sustains plaintiff's motion to the extent it seeks verification that the filing fee in this case has been fully paid. Plaintiff's motion is otherwise overruled. The Clerk is directed to forward a copy of this order to the Administrator of Inmate Accounts at USP-Allenwood in White Deer, PA.

Dated this 4th day of January, 2007 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Court