

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

JOHN BURTON,

Plaintiff,

v.

Case No. 8:24-cv-2678-WFJ-LSG

USA,

Defendant.

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REPORT AND RECOMMENDATION

The *pro se* plaintiff John Burton moves, Doc. 1, to proceed *in forma pauperis* but files no complaint. I took his motion under advisement and ordered him to file a complaint by December 16, 2024, so that I can evaluate whether he qualifies to proceed *in forma pauperis* under 28 U.S.C. § 1915(e)(2)(B). Doc. 2. That time has passed, and Burton files nothing.¹

This case appears related to Burton's prior lawsuit against the United States, case number 8:23-cv-01372-CEH-SPF. In that case, Burton sued the United States and the Department of Veteran Affairs to challenge their denial of Burton's application to participate in the Veteran Rapid Retraining Assistance Program, and he moved to proceed *in forma pauperis*. 8:23-cv-01372, Docs. 1, 2, 22, 23, 24, 30. The magistrate judge issued two reports denying Burton's motions to proceed *in forma*

¹ The docket notes that the clerk mailed the order but that the order was returned marked as "return to sender." Doc. 3. Burton filed no change of address with the Court. Doc. 3.

pauperis and recommending dismissal of the case for lack of subject matter jurisdiction. 8:23-cv-01372, Docs. 6, 31. Burton objected to the magistrate judge's reports, but the district court judge overruled the objections, adopted the reports, and dismissed the case. 8:23-cv-01372, Docs. 7-12, 34, 37.

Burton has appealed the district court's order adopting the reports and dismissing his case. 8:23-cv-01372, Doc. 39. However, the Eleventh Circuit Court of Appeals dismissed Burton's appeal on November 21, 2024, for failure to prosecute because Burton failed either to pay the filing fee or to move to proceed *in forma pauperis*. 8:23-cv-01372, Doc. 41. Burton's November 18, 2024, motion to proceed *in forma pauperis* in the present case appears to be his attempt to file a motion to proceed *in forma pauperis* in his appeal of case number 8:23-cv-01372-CEH-SPF. Compare Doc. 1, with 8:23-cv-01372, Doc. 41. Nonetheless, Burton's failure to comply with the order and failure to notify the Court of any change in address warrants dismissal for failure to prosecute. *Owens v. Pinellas Cnty. Sheriff's Dep't*, 331 F. App'x 654, 656 (11th Cir. 2009) ("Pursuant to Fed.R.Civ.P. 41(b), a district court may *sua sponte* dismiss a plaintiff's action for failure to comply with the rules or any order of the court."); Local Rule 3.10.

Thus, I recommend (1) denying the plaintiff's motion to proceed *in forma pauperis*, Doc. 1, (2) dismissing this case for failure to prosecute, and (3) directing the Clerk to close the case.

REPORTED in Tampa, Florida, on this 20th day of December 2024.



LINDSAY S. GRIFFIN
United States Magistrate Judge