

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 24-cv-03390-RTG

JOSHUA ABRAMS,

Plaintiff,

v.

DIVISION OF UNEMPLOYMENT INSURANCE,

Defendant.

ORDER GRANTING LEAVE TO PROCEED PURSUANT TO 28 U.S.C. § 1915
AND DIRECTING PLAINTIFF TO FILE AN AMENDED COMPLAINT

Plaintiff Joshua Abrams resides in Westminster, Colorado. Mr. Abrams has filed *pro se* a Complaint (ECF No. 1) and an Application to Proceed in District Court Without Prepayment of Fees or Costs (Long Form) ("IFP Application") (ECF No. 2). Upon review of the IFP Application, the Court will grant Mr. Abrams leave to proceed pursuant to 28 U.S.C. § 1915 solely on the basis of his inability to prepay fees or give security therefor.

The Court conducts an initial review of the Complaint pursuant to § 1915(e)(2)(B) and D.C.COLO.LCivR 8.1(a). Under § 1915(e)(2)(B), the Court must dismiss summarily a claim that is (i) frivolous, or (iii) seeks monetary relief against a Defendant who is immune from such relief.

The Court must construe the Complaint liberally because Mr. Abrams is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v.*

Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be an advocate for a *pro se* litigant. See *Hall*, 935 F.2d at 1110. For the reasons discussed below, Mr. Abrams will be directed to file an amended pleading on the court-approved general Complaint form. Pursuant to Rule 5.1(c) of the Local Rules of Practice of the United States District Court for the District of Colorado – Civil, “[i]f not filed electronically, an unrepresented prisoner or party shall use the procedures, forms, and instructions posted on the court’s website.”

I. The Complaint

In the Complaint, Mr. Abrams asserts claims pursuant to 42 U.S.C. § 1983, alleging that he was denied unemployment insurance benefits to which he is entitled under state and federal law, pursuant to defective state administrative procedures, in violation of his Fourteenth Amendment due process rights. (ECF No. 1 at 2-8). He further claims that the Defendant discriminated against him on the basis of a disability, in violation of Title II of the ADA, 42 U.S.C. § 12131, *et seq.* (*Id.* at 8-10). Mr. Abrams also asserts a pendent state law claim of negligence. (*Id.* at 10-12). For relief, he requests compensatory damages. (*Id.* at 15).

II. Discussion

The Eleventh Amendment to the United States Constitution provides: “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S. CONST. amend.

XI. The Eleventh Amendment bars a suit by a citizen against the citizen's own state in federal court, regardless of the form of relief sought, absent a waiver of the state's immunity. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98 (1984); *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989). The immunity conferred by the Eleventh Amendment extends to a state and its instrumentalities, including state agencies. *N. Ins. Co. of N.Y. v. Chatham Cnty., Ga.*, 547 U.S. 189, 193 (2006); *Steadfast Ins. Co. v. Agricultural Ins. Co.*, 507 F.3d 1250, 1256 (10th Cir. 2007) (recognizing that agency of the state is entitled to Eleventh Amendment immunity). The State of Colorado has not waived its Eleventh Amendment immunity. See *Griess v. Colorado*, 841 F.2d 1042, 1044-45 (10th Cir. 1988). Furthermore, congressional enactment of § 1983 did not abrogate Eleventh Amendment immunity. See *Quern v. Jordan*, 440 U.S. 332, 340-345 (1979).

The Division of Unemployment Insurance is a division of the Colorado Department of Labor and Employment. See Colo. Rev. Stat. § 24-1-121(3)(g) (2024). Colorado law defines the term “agency” to include divisions. See Colo. Rev. Stat. § 24-3-101 (2024). Therefore, the Division of Unemployment is a state agency entitled to Eleventh Amendment immunity. Mr. Abrams’ § 1983 claims asserted against the Defendant are subject to dismissal for lack of jurisdiction under § 1915(e)(2)(B)(iii).

The Eleventh Amendment does not bar a suit against a state official sued in his or her capacity for prospective injunctive relief to remedy on an ongoing violation of federal law. See *Verizon Maryland v. Public Service Commission of Maryland*, 535 U.S.

635, 645 (2002) (quoting *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 296 (1997)); *Hill v. Kemp*, 478 F.3d 1236 (10th Cir. 2007); see also *Ex parte Young*, 209 U.S. 123, 159-60 (1908). However, Mr. Abrams does not name a state official as a Defendant in this action, and he seeks only monetary relief.

III. Conclusion

Mr. Abrams will be directed to file an amended Complaint, on the court-approved general Complaint form, that addresses the jurisdictional deficiency as to his § 1983 claims.

Mr. Abrams may choose to contact the Federal Pro Se Clinic at (303) 824-5395 or <https://www.cobar.org/cofederalproseclinic> for possible assistance in this matter. Accordingly, it is

ORDERED that the Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (ECF No. 2) is GRANTED. It is

FURTHER ORDERED that Mr. Abrams shall file, **within thirty (30) days from the date of this order**, an amended Complaint, on the court-approved general Complaint form, that complies with this order. It is

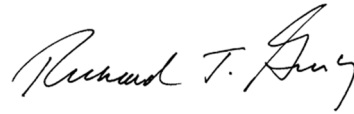
FURTHER ORDERED that Mr. Abrams shall obtain a copy of the court-approved general Complaint form, along with the applicable instructions, from the Court's website at www.cod.uscourts.gov. It is

FURTHER ORDERED that if Mr. Abrams fails to file an amended Complaint within the time allowed, the § 1983 claims asserted in this action will be dismissed for

lack of jurisdiction.

DATED December 9, 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Richard T. Gurley". The signature is written in a cursive, flowing style.

Richard T. Gurley
United States Magistrate Judge