

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

DERRICK R. SMITH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:16-CV-223 ACL
	)	
KIMBERLY BIRCH, et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court on plaintiff’s motion for reconsideration of the dismissal of this action.

Plaintiff, a prisoner, has filed at least three previous cases that were dismissed as frivolous, malicious, or for failure to state a claim.<sup>1</sup> Under 28 U.S.C. § 1915(g), therefore, the Court may not grant the motion unless plaintiff “is under imminent danger of serious physical injury.”<sup>2</sup>

Additionally, plaintiff’s allegations in this case are duplicative of his allegations in another case currently pending in this Court. *See Smith v. Wallace*, 1:14CV146 SNLJ. He claims that he has an ongoing dispute with the medical personnel at the prison over whether or not he is entitled to use a wheelchair. Plaintiff claims he has been issued discipline as a result of refusing to walk when asked to do so, and he asserts he has been placed in Administrative Segregation as retaliation for requesting use of a wheelchair for his “bad” back. These claims are duplicative of

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<sup>1</sup>*See Smith v. Crawford*, No. 09-6068-CV-SJ-HFS-P (W.D.Mo. 2009); *Smith v. Phillips*, No. 1:14CV186 ACL (E.D.Mo. 2015); *Smith v. Beggs*, No. 1:16CV89 SNLJ (E.D.Mo. 2016).

<sup>2</sup>Plaintiff argues that *Smith v. Phillips*, No. 1:14CV186 ACL (E.D.Mo. 2015) should not be counted as a “strike” because it was dismissed “without prejudice.” Although the case was dismissed without prejudice, it was dismissed as legally frivolous, pursuant to 28 U.S.C. § 1915(e)(2)(B). Such a case is counted as a “strike” under 28 U.S.C. 1915(g).

his ongoing claims in his open case before this Court and currently do not indicate that he is in imminent danger of current physical injury.

As a result, the Court will deny the motion for reconsideration.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion for reconsideration of the dismissal of the complaint [Doc. #9] is **DENIED**.

Dated this 13<sup>th</sup> day of October, 2016.

  
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STEPHEN N. LIMBAUGH, JR.  
UNITED STATES DISTRICT JUDGE