

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-11043
Conference Calendar

BARRY E. JOHNSON,

Plaintiff-Appellant,

versus

TEXAS WORKFORCE COMMISSION,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:99-CV-66

April 12, 2000

Before WIENER, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:*

Barry E. Johnson has filed an application for leave to proceed in forma pauperis ("IFP") on appeal, following the district court's dismissal for failure to state a claim of his lawsuit asserting he was wrongfully denied unemployment benefits by the Texas Workforce Commission and Commissioner Ron Lehman. By moving for IFP, Johnson is challenging the district court's certification that IFP status should not be granted on appeal because his appeal is not taken in good faith. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Johnson's claims are barred by the Eleventh Amendment. See Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 144 (1993); Ysleta Sur Pueblo v. Raney, ___ F.3d ___, 2000 WL 596, *3 (5th Cir. 2000); Daique v. Gulf State Utilities Co., Local Union Number 2286, 794 F.2d 974, 980 (5th Cir. 1986). His appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

Accordingly, we uphold the district court's order certifying that the appeal is not taken in good faith, we DENY the motion for leave to appeal IFP, and we DISMISS Johnson's appeal as frivolous. See Baugh, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2. Johnson's motion for a default judgment is DENIED.

IFP MOTION DENIED; APPEAL DISMISSED; MOTION FOR DEFAULT JUDGMENT DENIED.