

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-4449

HERBERT MCMILLIAN,
Appellant

v.

TRANS WORLD AIRLINES INC.; MICHAEL J. LICHTY, Plan Administrator

On Appeal from the United States District Court
for the District of Delaware
(D.C. Civil No. 1-08-cv-00777)
District Judge: Honorable Sue L. Robinson

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B)
or Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
April 9, 2009

Before: SLOVITER, FUENTES and JORDAN, Circuit Judges

(Opinion filed: May 20, 2009)

OPINION

PER CURIAM

Herbert McMillian, proceeding pro se, filed a complaint against Trans World Airlines (“TWA”), alleging that he is entitled to monetary relief in excess of \$25,000,000 because he was wrongly terminated in 1979 and denied benefits to which he was

allegedly entitled. The District Court dismissed the complaint as legally frivolous, pursuant to 28 U.S.C. § 1915(e)(2)(B), and McMillian filed a timely appeal.

We have jurisdiction pursuant to 28 U.S.C. § 1291. Because McMillian is proceeding in forma pauperis, we must dismiss the appeal if it is “frivolous.” 28 U.S.C. § 1915(e)(2), i.e., “lacks an arguable basis either in law or fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989).

Under the doctrine of res judicata, “a question of fact or of law distinctly put in issue and directly determined . . . cannot afterwards be disputed between the same parties.” Anselmo v. Hardin, 253 F.2d 165, 168 (3d Cir. 1958) (internal quotation marks and citations omitted). Prior to the instant civil action, McMillian initiated three actions in the District Court.¹ In at least one of these cases, McMillian requested the same relief he seeks now: substantial damages based on his termination and denial of benefits. See Bankr. D. Del. No. 01-bk-00056. In that case, the Bankruptcy Court dismissed McMillian’s case in part because the claims had been previously litigated, and barred him from filing any further pleadings related to his disability benefits claim. See D. Del. Civ. No. 06-cv-00044. Res judicata bars him from relitigating the issues. Accordingly, McMillian’s appeal “lacks an arguable basis [] in law,” Neitzke, 490 U.S. at 325, and we will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Appellant’s “motion for

¹These actions were docketed as D. Del. Civ. Nos. 08-cv-00180; 06-cv-00044; and 02-cv-0010. In February 2009, McMillian filed yet another action in the District Court, seeking criminal charges against the same defendants. See D. Del. Civ. No. 09-cv-00081. That action remains pending.

summary judgment” is denied.