

**United States Bankruptcy Court  
Western District of Wisconsin**

Cite as: [Unpublished]

**In re Terrence Willmore Boe, Debtor**  
Bankruptcy Case No. 86-00337-7

United States Bankruptcy Court  
W.D. Wisconsin, Eau Claire Division

May 15, 1987

Daniel R. Freund, for the debtor.

Thomas S. Utschig, United States Bankruptcy Judge.

**MEMORANDUM OPINION, FINDINGS OF FACT,  
AND CONCLUSIONS OF LAW**

The debtor, by Daniel R. Freund, who appears for Oltman, Jurgensen, Thorie & Webster, Ltd., requests that this bankruptcy case be dismissed and that discharge be revoked. The debtor has provided legal memoranda to the court in support of his motion. It is the opinion of the court, upon review of the file, the memoranda, the relevant case law, and the equities in this case that the motion should be denied.

The debtor filed a petition for relief under Chapter 7 of the Bankruptcy Code on February 12, 1986. A no-asset report was filed by the trustee on April 1, 1986. An order of discharge pursuant to § 727 of the Bankruptcy Code was issued on June 9, 1986. The debtor filed a motion to dismiss this bankruptcy case and for revocation of discharge on November 5, 1986. The motion states:

1. In January, 1986, movant filed for relief under Chapter 7 of the Bankruptcy Code.
2. Movant has no non-exempt assets.
3. Movant has no non-exempt income.
4. Following the filing of the Petition, Movant incurred substantial indebtedness from unexpected medical needs.
5. Movant does not [intend] to file a new Chapter 7 Petition in the foreseeable future.
6. There is cause to dismiss the above-referenced bankruptcy case.

The debtor, at the request of the court, has submitted legal memoranda in support of his motion.

"Under 11 U.S.C. § 707 [a court] may grant a motion for voluntary dismissal only 'for cause.' Cause is not defined in § 707. The determination of cause rests within the sound discretion of the courts." In re Heatley, 51 B.R. 518, 519 (Bankr. E.D. Pa. 1985). The debtor has not convinced the court that cause exists for the dismissal of this bankruptcy case. The fact that the debtor has incurred substantial post-petition medical indebtedness does not constitute "cause" within the meaning of § 707.

A debtor, of course, is free to choose if and when to file a petition under Chapter 7 of the Code. Once it is filed, however, the petition can not be voluntarily dismissed except by court order and then only for cause.

The Debtor's timing of the filing of his petition was unfortunate. However, the Congress has mandated that a debtor is entitled to a "fresh start" only once in six years under the Bankruptcy Code. 11 U.S.C. § 727(a)(8). To dismiss this pending case and permit the Debtor to file another petition and obtain a discharge of debts incurred since its filing would circumvent the Code and establish a dangerous precedent which could lead to abuses. An important function of the Bankruptcy Court is to prevent possible abuses of this important legislation.

The status of the Debtor and his creditors is established as of the date of the filing of his Chapter 7 petition. Creditors who extended credit or performed services subsequent to the filing of the petition may have done so in reliance upon the Debtor's "fresh start."

In re Reynolds, 4 B.R. 703, 704 (Bankr. D. Me. 1980).

The debtor voluntarily chose the date of filing his bankruptcy petition and should not be allowed to now alter that date absent a compelling showing of cause. In re Crenshaw, 65 B.R. 90 (Bankr. W.D. Ky. 1986). The debtor's discharge has already been granted and there does not appear to be cause for revocation of the discharge or dismissal of this bankruptcy case. The debtor's motion should be denied.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.