

In The United States Court of Federal Claims

No. 10-667C

This Opinion Will Not Be Published in the U.S. Court of Federal Claims Reporter Because It Does Not Add Significantly to the Body of Law.

(Filed: October 7, 2010)

MICHAEL S. ROSS

Plaintiff,

v.

COMMANDER JERRY J. HOLST;
LIEUTENANT COMMANDER MARY L.
BROWN; SECRETARY OF THE NAVY, *et al.*;
and JOHN DOES ONE through one billion.

Defendants.

OPINION and ORDER

On October 4, 2010, Michael S. Ross (plaintiff) filed a complaint seeking various damages in four separate counts for: (i) breach of contract and correction of his Naval and Air Force records; (ii) theft, falsifying official government documents, fraud and extortion; (iii) theft of his “Ph.D. preparation;” and (iv) “felony fraud” and falsifying official government documents. It appears that all these counts relate, in one way or another, to actions leading up to plaintiff’s discharge from the Navy in 1966. A review of the court’s files reveals that, from 1973 through 1995, plaintiff filed at least four other actions in this court (and in the predecessor U.S. Court of Claims) involving essentially the same claims.

This court is solemnly obliged, on its own accord, to address obvious questions concerning its subject matter jurisdiction. *See Mitchell v. Maurer*, 293 U.S. 237, 244 (1934). This court recognizes that plaintiff is acting *pro se* before this court, and thus the court will hold the form of plaintiff’s submissions to a less stringent standard than those drafted by an attorney. *See Reed v. United States*, 23 Cl. Ct. 517, 521 (1991) (citing *Estelle v. Gamble*, 429 U.S. 97 (1976)). Having reviewed plaintiff’s complaint, as well as the complaints he filed earlier in this court and in the U.S. Court of Claims, this court is certain that it lacks jurisdiction to consider the claims that plaintiff raises.

The statute of limitations for claims filed in this court is contained in 28 U.S.C. § 2501, which provides: “Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.” This requirement is jurisdictional, meaning that compliance with it is a condition of the government’s waiver of sovereign immunity. *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133-34 (2008); *Petro-Hunt, L.L.C. v. United States*, 90 Fed. Cl. 51, 58 (2009). Under this statute, a claim accrues when “all events have occurred to fix the Government’s alleged liability,” and the plaintiff knew or should have known of the existence of his claim. *Martinez v. United States*, 333 F.3d 1295, 1303, 1319 (Fed. Cir. 2003) (en banc) (internal quotations omitted), *cert. denied*, 540 U.S. 1177 (2004); *see also Hart v. United States*, 910 F.2d 815, 817-18 (Fed. Cir. 1990).

Plaintiff was discharged from the Navy in 1966, approximately thirty-four years before the filing of his complaint. His complaint suggests that his suit, nonetheless, is timely based on his discovery in November of 2004 of a statute that allegedly impacts his case. However, it is well-accepted that discovery of a new legal theory does not impact the accrual of a claim for purposes of this court’s six-year statute of limitations. *See Catawba Indian Tribe of S.C. v. United States*, 982 F.2d 1564, 1572 (Fed. Cir.), *cert. denied*, 509 U.S. 904 (1993). It is, rather, “a plaintiff’s knowledge of the facts of the claim that determines the accrual date.” *Young v. United States*, 529 F.3d 1380, 1385 (Fed. Cir. 2008). And that date, as noted, occurred decades ago. Accordingly, the court concludes that plaintiff’s case is time-barred.

Even if the court were inclined to resolve the limitations issue otherwise – and the law gives it no choice in this regard – it remains that at least four other decisions of this court and its predecessor have held that claims nearly identical to those alleged here were time-barred. The first of these decisions was rendered nearly thirty years ago, in 1974, *see Ross v. United States*, 204 Ct. Cl. 816, *cert. denied*, 419 U.S. 1048 (1974), to be followed successively by decisions in 1979, *see Ross v. United States*, 220 Ct. Cl. 689 (1979), *cert. denied*, 446 U.S. 965 (1980); then 1981, *see Ross v. United States*, 227 Ct. Cl. 690 (1981); and, most recently, in 1996, *Ross v. United States*, Opinion No. 95-386 (Fed. Cl. Jan. 23, 1996), *aff’d*, 98 F.3d 1358 (Fed. Cir. 1996) (table). Each of these opinions addressed essentially the same claims and same statute of limitations issues presented by plaintiff’s most recent complaint. Accordingly, the rulings in those cases are *res judicata* on this issue. *See* Restatement (Second) of Judgments § 19.¹

¹ It matters not that these earlier cases were dismissed for jurisdictional reasons rather than on the merits. To the contrary, a “[d]ismissal for lack of jurisdiction may be given *res judicata* effect as to the jurisdictional issue.” *Goat v. United States*, 46 Fed. Cl. 395, 398 (2000) (quoting *Amgen, Inc. v. United States Int’l Trade Comm’n*, 902 F.2d 1532, 1536 n.5 (Fed. Cir. 1990)); *see also Watson v. United States*, 86 Fed. Cl. 399, 402 (2009); 18 Wright, Miller & Cooper § 4418; Restatement (Second) of Judgments § 12 cmt. c. at 119 (“When the question of the tribunal’s jurisdiction is raised in the original action, in a modern procedural regime there is no reason why the determination of the issue should not thereafter be conclusive under the usual rules of issue preclusion.”).

This is not to say, of course, that this court would have jurisdiction over most of the counts in plaintiff's complaint even if they were timely. Thus, for example, this court lacks jurisdiction over claims sounding in tort – a category that includes several of plaintiff's claims, including those of fraud. *See* 28 U.S.C. § 1491; *Fullard v. United States*, 77 Fed. Cl. 226, 230 (2007); *Gant v. United States*, 63 Fed. Cl. 311, 316 (2004); *Wright v. United States*, 20 Cl. Ct. 416, 421 (1990); *Berdick v. United States*, 612 F.2d 533, 536 (Ct. Cl. 1979). Nor does it have jurisdiction to pursue claims against government employees, *see Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997); *Frank's Livestock & Poultry Farm, Inc. v. United States*, 17 Cl. Ct. 601, 607 (1989), or private individuals, *see Berdick*, 612 F. 2d at 536.

Based on the foregoing, the court hereby orders the Clerk to **DISMISS** plaintiff's complaint for lack of jurisdiction.

IT IS SO ORDERED.

Francis M. Allegra
Judge