

# In the United States Court of Federal Claims

Case No. 08-11C  
(Filed: October 1, 2008)

*Not to be published*

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<b>PATRICIA LUCIOUS and TIARA WILLIAMS,</b>	*
<i>Plaintiffs, pro se</i>	*
 	*
v.	*
 	*
<b>THE UNITED STATES OF AMERICA,</b>	*
<i>Defendant.</i>	*
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## ORDER FOR DISMISSAL

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**BASKIR, Judge**

\_\_\_\_\_ Plaintiff Patricia Lucious and her daughter Tiara Williams filed a complaint for alleged failures of the U.S. Equal Employment Opportunity Commission (EEOC) to properly investigate her claims of employment discrimination. This matter is before the Court on Defendant's "Motion for Summary Dismissal" pursuant to RCRC 12(b)(1) and (b)(6). In her response, Plaintiff has asked that if the action is dismissed, it be transferred to a district court. **Because the Court finds that it lacks jurisdiction to hear this matter, the Defendant's Motion for Summary Dismissal is GRANTED. The Court also finds that the test of 28 U.S.C. § 1631 for transfer has not been met.**

### I. BACKGROUND

We recite the procedural history to demonstrate the long, uphill road Patricia Lucious has climbed to reach our Court. Ms. Lucious was employed as a certified nursing assistant with the Denver Veterans Affairs Medical Center (VA). After two years of apparently satisfactory performance, Ms. Lucious was terminated from her

employment. The termination allegedly came shortly after the VA became aware of Ms. Lucious's medical condition of high blood pressure. In August 2005, Ms. Lucious filed charges of employment discrimination against the VA with the Colorado Civil Rights Commission (CCRC). The CCRC found there was insufficient evidence to support the charge of discriminatory practices and dismissed the matter. Dissatisfied with the result, Ms. Lucious filed a claim against the VA with the EEOC in July 2006. The EEOC dismissed the charges after "its careful review failed to indicate that violations of the laws enforced by EEOC had occurred." Ms. Lucious's request for reconsideration was denied in May 2007. In its dismissal notice, the EEOC informed Ms. Lucious of her right to file a civil action in district court as to her dismissed claims. She did not invoke this right.

Rather, in May 2007, Ms. Lucious filed a civil action in Small Claims Court for the City and County of Denver, Colorado, against two EEOC employees personally and in their official capacities. In that matter, Ms. Lucious claimed that the defendants owed her \$7,500.00 for allegedly failing to "perform the implied contract" for "2 plus years." The defendants removed the matter to the U.S. District Court for the District of Colorado, and successfully moved to have the United States substituted as the sole defendant. The district court construed Ms. Lucious's claim as one of tortious interference with a contract arising under the Federal Tort Claims Act (FTCA). It therefore determined that Ms. Lucious had not exhausted her administrative remedies with respect to that claim and dismissed without prejudice.

In January 2008, Ms. Lucious filed a complaint with this Court. Plaintiff names the EEOC as defendant and complains that the agency wrongfully dismissed her discrimination claims against the VA. After reviewing her complaint, the Court expressed concern that it may lack subject matter jurisdiction to consider the matter. *See Mitchell v. Maurer*, 293 U.S. 237, 244 (1934) (courts are compelled to address questions concerning its subject matter jurisdiction). Because the nonmoving party bears the burden of invoking our jurisdiction, *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936), we ordered Ms. Lucious to "Show Cause" why the instant complaint should not be dismissed for lack of jurisdiction. *See also Reynolds v. Army and Air Force Exchange Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988). Ms. Lucious failed to respond, averring only that jurisdiction exists pursuant to Title VII and the Rehabilitation Act. Defendant now moves this Court to grant it summary dismissal.

## II. STANDARD OF REVIEW

In ruling on a RCFC 12(b)(1) motion, the Court must accept as true the complaint's undisputed factual allegations and construe the facts in the light most favorable to the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). This Court holds the pleadings of *pro se* plaintiffs to "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972). However, the fact that a plaintiff proceeds *pro se* does not excuse or exempt her from meeting the

Court's jurisdictional requirements. *See Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995) (holding that a litigant's *pro se* status may explain ambiguities in the pleadings, but does not excuse failures in the pleadings).

This Court's subject matter jurisdiction is strictly construed. *United States v. John C. Grimberg Co.*, 702 F.2d 1362, 1372-74 (Fed. Cir. 1983). In a RCFC 12(b)(1) motion, the non-moving party bears the burden of establishing jurisdiction by a preponderance of the evidence. *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. at 189. If the Court finds jurisdiction lacking as a matter of law, dismissal is required. *Thoen v. United States*, 765 F.2d 1110, 1116 (Fed. Cir. 1985).

### III. DISCUSSION

Liberally construed, Plaintiff apparently seeks *de novo* review of the EEOC's dismissal of her claims. Ms. Lucious asks that the Court find the EEOC in violation of various statutory and Constitutional laws, including Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (Title VII) and the Americans With Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* (ADA). At issue is whether the Court has jurisdiction to entertain this matter and if not, whether a transfer to the district court is proper under 28 U.S. C. § 1631.

#### A. Jurisdiction

Title VII forbids employment discrimination based on race, color, religion, sex, or national origin. 42 U.S.C. §§ 2000e-2, e-3. With Title VII, §§ 701-18, as amended, 42 U.S.C. §§ 2000e-17 (1982), Congress has defined a comprehensive and exclusive statutory scheme by which federal employees may redress discrimination claims. *Brown v. Gen. Servs. Admin.*, 425 U.S. 820, 829 (1976). These remedies are specifically made available to a claimant under the Rehabilitation Act of 1973. 29 U.S.C. § 794a(a)(1). In light of this scheme, judicial review of claims arising under Title VII and the Rehabilitation Act rests with the district courts. *Jackson v. United States*, 10 Cl. Ct. 691, 694 (1986) (citations omitted). It is well-established that "any jurisdiction this Court may have had over back pay claims based on racial discrimination has been divested by the Equal Employment Opportunity Act of 1972." *Clark v. United States*, 212 Ct. Cl. 590 (1981) (unpub.) *cert. denied*, 434 U.S. 839 (1977).

Accordingly, we have no jurisdiction to review or enforce an administrative decision resulting from EEOC proceedings. While we sympathize with Ms. Lucious's apparent exasperation over our jurisdictional limitations, we cannot act when we have no Congressional authority to do so.

## B. Transfer

Ms. Lucious requests in the alternative that this Court “remand” this case back to “Judge Babcock’s court and small claims court.” We construe this to be a request to transfer the matter to the U.S. District Court for the District of Colorado. Pursuant to 28 U.S.C. § 1631, transfer is warranted when three conditions are satisfied: (1) the transferring court must lack jurisdiction; (2) the transferee court must be one in which the action could have been brought at the time the claim was filed; and (3) the transfer must be in the interests of justice. *Rodriguez v. United States*, 862 F.2d 1558, 1559-60 (Fed. Cir. 1988) (citations omitted). We find Ms. Lucious has failed to demonstrate that all three conditions can be satisfied. **We therefore deny her transfer request.**

It is well settled that transfer of a case to another court is only permissible if the destination court has subject matter jurisdiction to hear the case. *Souders v. S. Carolina Pub. Serv. Auth.*, 497 F.3d 1303, 1307 (Fed. Cir. 2007). As we established above, the federal district courts have subject matter jurisdiction to hear discrimination claims arising under Title VII and the Rehabilitation Act. Presumably then, Ms. Lucious’s claim “could have been brought” in district court such that it would have had jurisdiction to entertain the claim. However, because Ms. Lucious would have been time-barred in district court at the time the matter was filed here, we do not find that transfer would be “in the interest of justice.”

The Federal Circuit has held that transfer is in the “interest of justice” if the plaintiff would be unable to refile her cause of action in another court because it is time-barred. *Texas Peanut Farmers v. United States*, 409 F.3d 1370, 1374 (Fed. Cir. 2005) (citations omitted) (“compelling reason for transfer is that [the plaintiff] . . . will be time-barred if his case is dismissed and thus has to be filed anew in the right court.”). That is not the case here. The EEOC dismissed the administrative action sometime between July 2006 and January 2007. Its final correspondence denying reconsideration was in May 2007. In both instances, the EEOC informed Ms. Lucious of her right to sue in federal district court and the requirement that the action be brought, if at all, within 90 days. Ms. Lucious did not file within this time frame. Rather, she waited until January 2008 to seek review of the agency action, some eight months after the final decision. By then, the filing period had well expired.

Accordingly, we decline to transfer a case clearly barred by the statute of limitations “in the interest of justice.” See e.g. *Lewton Lakes Estates, Inc. v. United States*, 152 F.3d 948 (unpub. at \*4) (Fed. Cir. 1998) (affirming the denial of transfer to district court for a claim that would have been barred by the statute of limitations at the time the matter was filed here); see also *Goeway v. United States*, 222 Ct. Cl. 104 (1979) (finding the transfer of a claim that is barred by the statute of limitations would not serve the interest of justice). Because Ms. Lucious has failed to show that the Court can lawfully transfer the claim to district court, we refuse to do so.

We note that the Supreme Court has held that filing a timely charge of discrimination under Title VII is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling. *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982) (“Congress intended the filing period to operate as a statute of limitations instead of a jurisdictional requirement”). However, neither party has argued for the application of the doctrine of equitable tolling or waiver in this instance. We therefore decline to opine as to the merits of those affirmative defenses.

Admittedly, this is a frustrating result. Especially given that Ms. Lucious had filed suit within the 90-day period in small claims court. However, rather than seek review of her discrimination claims dismissed by the EEOC, Ms. Lucious initiated a separate tort action against its employees. That case was properly removed to district court and summarily dismissed. The district court held that Ms. Lucious had not exhausted her administrative remedies *as to the tort claims* prior to filing a civil suit. Therefore, it had no jurisdiction to entertain the matter. Undoubtedly vexing, Ms. Lucious was in the right court at the right time, pleading the wrong thing. Now, she is in the wrong court at the wrong time, pleading the right thing. However, because she is out of time, there is no “right court” into which Ms. Lucious can be transferred. Accordingly, Plaintiff has not satisfied the transfer requirements pursuant to 28 U.S.C. § 1631. We must therefore deny the transfer request.

#### IV. CONCLUSION

**Based on the foregoing, we conclude that the Court has no subject matter jurisdiction to entertain Plaintiff’s claims. We further decline to transfer the matter to district court. The Clerk is hereby directed to DISMISS Plaintiff’s complaint.**

**IT IS SO ORDERED.**

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LAWRENCE M. BASKIR  
Judge