

United States Court of Federal Claims

No: 09-164 C
October 20, 2009
UNPUBLISHED

CHARLES HARVEY,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Charles Harvey, pro se.

Douglas G. Edelschick, Court of Federal Claims Section, Civil Division, United States Department of Justice, for defendant.

OPINION AND ORDER

Block, Judge.

I. INTRODUCTION

Navy veteran Charles Harvey, appearing *pro se*, submits a claim for \$1,000,000 in damages related to the alleged wrongful prescription of the antibiotic Gatifloxacin by a Department of Veterans Affairs (“VA”) physician. Compl. at 7–8.¹ Because medical negligence claims sound in tort, this claim falls outside the subject matter jurisdiction of this court. The case is, therefore, dismissed.

II. FACTUAL BACKGROUND

On May 26, 2004, plaintiff sought treatment at the VA medical facility in Lake City, Florida. Compl. at 7. Plaintiff alleges that, either by “negligence or ignorance,” the attending physician

¹ Plaintiff’s complaint, in excess of 100 unnumbered pages, has no apparent internal organizational structure. Consequently, the court has paginated the document sequentially in the order it was received for the purposes of citation.

wrongfully prescribed Gatifloxacin, resulting in a severe allergic reaction and permanent damage. *Id.* at 8. Plaintiff now brings this claim seeking \$1,000,000 in personal injury damages. *Id.*

III. DISCUSSION

Claims of medical negligence on the part of government employees sound in tort. *See Bravo v. United States*, 532 F.3d 1154, 1156–57 (11th Cir. 2008). Such claims are therefore beyond the jurisdiction of this court. 28 U.S.C. § 1491(a)(1); *Rick’s Mushroom Serv., Inc. v. United States*, 521 F.3d 1338, 1343 (Fed. Cir. 2008) (“[t]he plain language of the Tucker Act excludes from the Court of Federal Claims jurisdiction claims sounding in tort”). Claims of this kind instead fall under the exclusive jurisdiction of the district courts as granted by the Federal Tort Claims Act. 28 U.S.C. § 1346(b)(1); *see L’Enfant Plaza Properties, Inc. v. United States*, 645 F.2d 886, 892 (Ct. Cl. 1981) (finding tort claim to be within exclusive jurisdiction of the district courts).

Pro se litigants are not held to the same pleading standards as are parties represented by attorneys. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *see Comer v. Peake*, 552 F.3d 1362, 1367 (Fed. Cir. 2009). Nonetheless, the claim of a *pro se* litigant may be properly dismissed for lack of subject matter jurisdiction. *See Hunt v. United States*, 229 Ct. Cl. 468, 469 (1981) (*pro se* litigant dismissed for lack of subject matter jurisdiction, notwithstanding sympathetic reading of complaint); *Zhengxing v. United States*, 204 Fed. Appx. 885, 887 (Fed. Cir. 2006) (finding tort claim of a *pro se* litigant properly dismissed from the Court of Federal Claims for lack of subject matter jurisdiction). Because plaintiff’s claim sounds in tort, this court is without jurisdiction to hear it. Plaintiff’s claim is dismissed.

IV. CONCLUSION

Accordingly, it is **ORDERED** that plaintiff’s COMPLAINT be DISMISSED. The Clerk is directed to take the necessary steps to dismiss this matter.

Lawrence J. Block
Judge