

IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
No. 05-1123C

(Filed: June 8, 2011)

(NOT TO BE PUBLISHED)

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MARCUS L. WILLIAMS, )  
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 Plaintiff, )  
 )  
 v. )  
 )  
 UNITED STATES, )  
 )  
 Defendant. )

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ORDER

Plaintiff has made a third request for post-judgment relief in what ostensibly was a military pay case. Plaintiff, Marcus Williams, was a Staff Sergeant in the United States Air Force who was convicted of various violations of the Uniform Code of Military Justice. Pending before the court is plaintiff's Post-Judgment Motion for Relief, filed May 12, 2011 pursuant to Rule 60(d)(3) of the Rules of the United States Court of Federal Claims ("RCFC"). In this motion, plaintiff contends that his discharge certificate from the Air Force on DD Form 214 was null and void, that its nullity deprived this court of subject matter jurisdiction, and that the court's lack of jurisdiction justifies relief from this court's judgment.

BACKGROUND

On April 25, 2006, the court rejected Mr. Williams' request to have his date of separation modified such that he would be deemed to have been separated from the Air Force prior to his conviction for assault with a deadly weapon, forgery, and assorted other crimes. *See Williams v. United States*, 71 Fed. Cl. 194, 202 (2006). Mr. Williams had been retained in the Air Force past his enlistment ending date pending disposition of the court martial charges against him as provided by Rule 202(c)(1) of the Rules for Courts-Martial, and his conviction then followed.<sup>1</sup>

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<sup>1</sup>Then-Staff Sergeant Williams was sentenced to a dishonorable discharge, confinement for a period of ten years, and a reduction in grade from Staff Sergeant to Airman Basic. *Williams*, 71 Fed. Cl. at 196. On appeal, his confinement was reduced to nine years from ten, but his sentence was otherwise affirmed. *See id.* at 196 & n.5.

After the court's decision and judgment in April 2006, Mr. Williams timely filed a motion for reconsideration, which the court denied on May 4, 2006, ruling that he had presented insufficient grounds to support his request. On September 12, 2006, Mr. Williams filed a motion under RCFC 60(b) for relief from the court's decision and judgment, claiming that a post-judgment change in his discharge certificate constituted newly discovered evidence justifying relief. On September 29, 2006, the court denied that motion. Now, on May 12, 2011, five and one-half years later, Mr. Williams has filed yet a third motion for relief from this court's judgment.<sup>2</sup>

By his currently pending motion, Mr. Williams avers that the court's jurisdiction in this case was based on a discharge that was altered approximately four months after the case was decided, that the discharge before the court at the time of decision in April 2006 "held no legal significance" at the time of the court's decision, and that the court's decision thus had no legal effect. Pl.'s Mot. at 6. In essence, Mr. Williams renews his claim that the Air Force wrongfully extended his enlistment because he was awaiting disposition of the courts-martial charges.

#### ANALYSIS

\_\_\_\_\_ RCFC 60 governs motions for relief from a final judgment or order. Mr. Williams relies on Rule 60, which provides for relief from a judgment or order on specified grounds including, among other things "fraud." RCFC 60(b)(3). A motion for relief on that ground must be made "no more than a year after the entry of the judgment." RCFC 60(c)(1). To avoid this limitation, Mr. Williams relies on RCFC 60(d), which establishes that the "rule does not limit a court's power to . . . (3) set aside a judgment for *fraud on the court*." RCFC 60(d) (emphasis added).

In support of his motion, Mr. Williams argues that the court lacked subject matter jurisdiction to render judgment in 2006 because the court's ruling was predicated on a "null and void" Certification of Release or Discharge from Active Duty (DD Form 214). Pl.'s Mot. at 5-6. On September 14, 2006, approximately four months after this court issued its ruling, the U.S. Air Force Board for Correction of Military Records changed the active service component

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<sup>2</sup>Mr. Williams additionally brought a second case in this court in 2008, challenging the government's withholding of a federal tax refund and federal tax rebate to satisfy a debt that remained in his account with the Army and Air Force Exchange Service after his dishonorable discharge and confinement. *See Williams v. United States*, 86 Fed. Cl. 594, 597 (2009). Judgment was entered for the government on those claims. *Id.* at 606.

Mr. Williams also sought relief against the government in the United States District Court for the District of Columbia, *see Williams v. Department of the Air Force*, No. 06-0508 RCL, 2007 WL 61876 (D.D.C. Jan. 4, 2007); *Williams v. Department of the Air Force*, No. 10-1448 UNA, 2010 WL 3417853 (D.D.C. Aug. 20, 2010), *aff'd*, 409 Fed. Appx. 357 (D.C. Cir. 2011), and the United States District Court for the District of Kansas. *See Williams v. Inch*, No. 07-0318-RDR, 2007 WL 6892149 (D. Kan. Sept. 26, 2007), *aff'd*, 280 Fed. Appx. 684 (10th Cir. 2008).

of Mr. Williams' military record from "AIR FORCE – USAF" to "AIR FORCE – REG AF."<sup>3</sup> Mr. Williams essentially argues that this revision retroactively nullified his original discharge papers and removed this court's subject matter jurisdiction to render judgment in 2006. Pl.'s Mot. at 2. This contention is mistaken. The changed notation in Mr. Williams' military record did not affect the subject matter jurisdiction of this court or its decision rendered on April 25, 2006.

#### CONCLUSION

The motion for relief from judgment is DENIED. The grounds put forward by plaintiff in support of the motion do not support a grant of relief under RCFC 60(d)(3).

It is so ORDERED.

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Charles F. Lettow  
Judge

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<sup>3</sup>Air Force Instruction 36-3202, issued by the Secretary of the Air Force, changed, among other things, the manner in which discharge papers were to be prepared and distributed, calling for members of the Regular Air Force to be denoted as "AIR FORCE – REG AF." Pl.'s Mot. at 4.