

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
No. 06-561C

(Filed: December 15, 2006)

JIMMIE LEE LAZENBERRY, *pro se*,)
)
)
 Plaintiff,)
)
)
 v.)
)
 UNITED STATES,)
)
)
 Defendant.)
)

ORDER

In this action, plaintiff, Mr. Jimmie Lee Lazenberry, seeks judicial review of an unidentified administrative decision denying his claim for compensation for injuries he suffered while employed by a construction company, Quick Builders and Company (“the company”). The government has moved to dismiss, invoking Rule 12(b)(1) of the Rules of the Court of Federal Claims (“RCFC”) and arguing that this court lacks subject matter jurisdiction over Mr. Lazenberry’s claim. For the reasons stated below, the government’s motion is granted.

BACKGROUND

Mr. Lazenberry was hired by the company on May 5, 2001, and sometime thereafter was involved in an on-the-job accident in which he suffered elbow and back injuries. Compl. at 2-3. He received treatment for his elbow injury, presumably at the company’s expense, but was not treated for his back injury or for other unidentified injuries that he discovered three days after the accident. *Id.* at 3. An unidentified “case worker” told Mr. Lazenberry that she would “only pay for one injury,” presumably the elbow injury, and that it was too late for him to make a claim for other injuries. *Id.* In connection with his employment, Mr. Lazenberry avers that he later discovered that he had not been drug tested, that no safety equipment had been provided to him, and that no job safety test was conducted. *Id.* at 3-4. The complaint suggests that these circumstances are material to Mr. Lazenberry’s claim for compensation from the company. *Id.* In his complaint filed with this court on July 31, 2006, Mr. Lazenberry seeks judicial review of the decision of the “case worker” not to provide treatment for his injuries or otherwise to compensate him for the injuries. *Id.*

JURISDICTION

As plaintiff, Mr. Lazenberry bears the burden of establishing by a preponderance of the evidence that this court possesses subject matter jurisdiction over his claims. *Reynolds v. Army and Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988); *see McNutt v. General Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936). In determining whether subject matter jurisdiction exists, a court must accept as true all undisputed facts asserted in the plaintiff's complaint and "draw all reasonable inferences in favor of the plaintiff." *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995); *see also Hamlet v. United States*, 873 F.2d 1414, 1415-16 (Fed. Cir. 1989).

Pro se claimants are held to a less stringent standard in pleading than that which is applied to formal pleadings prepared by counsel. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Nonetheless, a *pro se* plaintiff must distinctly and affirmatively plead subject matter jurisdiction in the complaint. *See Henke*, 60 F.3d at 799.

Under the Tucker Act, the Court of Federal Claims has "jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1491(a)(1). The Tucker Act itself, however, does not confer on a plaintiff a right to recovery. *United States v. Testan*, 424 U.S. 392, 398 (1976). To establish such a right, the plaintiff must also identify a substantive claim that "can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained." *United States v. Mitchell*, 463 U.S. 206, 217 (1983) (citing *Testan*, 424 U.S. at 400).

Mr. Lazenberry's complaint is not a "claim against the United States" or any of its agents. *See* 28 U.S.C. § 1491(a)(1); RCFC 4 Rules Committee Note (2002) ("only the United States is properly the named defendant"); RCFC 10(a) (in the complaint, the United States shall be "designated as the party defendant"). Although the complaint does not specify the affiliation of the "case worker" who denied Mr. Lazenberry's claims, his central allegations concern the conduct of a private company with no alleged connection to the federal government. Compl. at 2. Moreover, Mr. Lazenberry does not explicitly seek money damages or identify any money-mandating Constitutional provision, federal statute, or federal regulation under which this court may exercise jurisdiction and provide relief. *See* Compl. at 1-5. In short, his request for judicial review of the decision of the "case worker," *see* Compl. at 2, ostensibly concerns wholly private matters. In that connection, even if this court were to construe Mr. Lazenberry's complaint as a demand for money damages against the United States, his allegations – that the company is responsible for injuries he received while in its employ – sound in tort. This court lacks jurisdiction to hear claims premised on tort. *Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997). Consequently, this court lacks subject matter jurisdiction over Mr. Lazenberry's claim.

Notwithstanding this determination that the court lacks subject matter jurisdiction over this matter, the court has a residual power under 28 U.S.C. § 1631 to transfer the case to “any other such court [as defined in 28 U.S.C. § 610] in which the action or appeal could have been brought at the time it was filed or noticed.” The allegations contained in the complaint, however, are far too sparse to allow this court to identify a proper federal court to which the case might be transferred.

CONCLUSION

Therefore, the government’s motion to dismiss is GRANTED, and this case shall be dismissed without prejudice for lack of subject matter jurisdiction. The Clerk shall enter judgment accordingly. No costs.

It is so ORDERED.

Charles F. Lettow
Judge