

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
No. 09-712C
(Not for Publication)
(Filed: September 2, 2010)

| | | |
|--------------------|---|--|
| DARRYL W. RISER, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| THE UNITED STATES, |) | |
| |) | |
| Defendant. |) | |

ORDER

Pending before the court in this military pay case is plaintiff’s Motion for Reconsideration under Rule 60(b) (“Pl.’s Mot.”). In pursuing his claims for back pay and reinstatement, plaintiff, a former Major in the U.S. Army Reserves, asks the court to reconsider the prior denial of an earlier motion by him to supplement the record with his letter resigning from the Army Reserves and an e-mail string of communications with his commanding officer associated with that resignation, along with a compact disk provided by plaintiff. Pl.’s Mot. at 3.

Before filing a complaint in this court, plaintiff had pursued his claims before the Army Board for Correction of Military Records (“Army Board” or “ABCMR”). In conjunction with the court’s denial of plaintiff’s motion to supplement the record considered by the Board, the court had, at the request of the government, remanded the case to the Board such that it might address the additional materials. *See Riser v. United States*, 93 Fed. Cl. 212, 214 (2010). The court had taken that step because the resignation correspondence should have been part of the administrative record considered by the ABCMR, pursuant to Army Regulation 600-8-104, Table 2-1 (June 22, 2004).

The remand has now been completed. On August 19, 2010, the ABCMR issued its decision and once again denied plaintiff’s claims.

Taking all of these circumstances into account, the court denies plaintiff’s motion because it is improper procedurally at this juncture in the case. If plaintiff wishes to contest the ABCMR’s decision rendered on remand, he must invoke Rule 52.2(f) of the Rules of the Court of Federal Claims (“RCFC”). In full, RCFC 52.2(f) provides:

- (f) Post-Remand Proceedings.
 - (1) *Notice*. Within 30 days after the filing of the final decision or other action on remand, each party must file with the clerk and serve on each adverse party a notice stating:

(A) whether the final decision or other action on remand affords a satisfactory basis for disposition of the case; or

(B) whether further proceedings before the court are required, and if so, the nature of such proceedings.

(2) *Issuing an Order.* After the service of the notice, the court will enter an order prescribing the procedure to be followed or directing any other action deemed appropriate.

Thus, under Rule 52.2(f), to proceed further with his claims, plaintiff must file a notice to that effect with the clerk of this court and properly serve a copy on the government. *See* RCFC 5 (governing service of such a notice). After filing of any such notice, the court will enter a plan and procedure for further development and briefing of plaintiff's claims. In view of the foregoing, plaintiff's motion for reconsideration is DENIED.

It is so ORDERED.

Charles F. Lettow
Judge