

In the United States Court of Federal Claims

No. 10-510C

(Filed: June 27, 2011)

(Not For Publication)



WAYNE TATUM,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER OF DISMISSAL

WILLIAMS, Judge.

This matter comes before the Court on Defendant’s motion to dismiss Plaintiff pro se’s complaint pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (“RCFC”). Because Plaintiff’s complaint is time-barred, Defendant’s motion is granted.

Background¹

Plaintiff pro se, Wayne Tatum (“Plaintiff”), served in the United States Marine Corps (“Marines”) from November 3, 1970, until his discharge on December 2, 1993. He alleges that the Government violated the Due Process Clause of the Fifth Amendment, the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment, the Sixth, Eight, Ninth, and Thirteenth Amendments, the Supremacy Clause, U.S. Const. Art. VI, and 18 U.S.C.A. § 242 when it tried him by general court-martial for alleged violations of the Uniform Code of Military Justice (“UCMJ”).

¹ This background is derived from the complaint and motion papers and their accompanying exhibits and should not be construed as findings of fact.

On July 2, 2002, Plaintiff filed suit in the United States Court of Federal Claims, seeking correction of his military record, back pay, military benefits, and attorney's fees and costs. His complaint was dismissed as time-barred. On September 5, 2005, Plaintiff filed another action, arising from the same set of facts as the 2002 complaint, in the United States District Court for the District of Maryland, seeking correction of his military records as well as a promotion, back pay, military benefits, and attorney's fees and costs. The complaint was dismissed in 2007, for lack of subject-matter jurisdiction.

On August 3, 2010, Plaintiff filed this action, which arises from the same set of facts as his 2002 and 2005 complaints. He requests that the Court rescind his bad conduct discharge effective November 21, 1991, and mandate issuance of a DD-214 Discharge Certificate reflecting his honorable service from November 3, 1970, to November 26, 1991. He also asks the Court to correct his military records, to restore his rights, privileges, and benefits, including a promotion to E-7 rank, to order that he be retired from active duty effective November 26, 1991, and to award him back pay and allowances, attorney's fees, and any other relief to which he is entitled.²

Discussion

Plaintiff bears the burden of establishing the Court's jurisdiction by a preponderance of the evidence. Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988). When considering a motion to dismiss for lack of subject-matter jurisdiction, the Court will accept the complaint's undisputed allegations as true and construe the complaint in a manner favorable to the plaintiff. United Pac. Ins. Co. v. United States, 464 F.3d 1325, 1327-28 (Fed. Cir. 2006). "If the Court finds that it lacks jurisdiction over the subject-matter, it must dismiss the claim." RCFC 12(h)(3).

Complaints drafted by pro se litigants are held to "less stringent standards than formal pleadings drafted by lawyers." Naskar v. United States, 82 Fed. Cl. 319, 320 (2008) (citation omitted). However, this latitude does not permit a pro se plaintiff to subvert the Court's jurisdictional requirements. See Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995). Pro se plaintiffs must still establish the Court's subject-matter jurisdiction by a preponderance of the evidence. Tindle v. United States, 56 Fed. Cl. 337, 341 (2003); Bernard v. United States, 59 Fed. Cl. 497, 499 (2004) ("This latitude, however, does not relieve a pro se plaintiff from meeting jurisdictional requirements."), aff'd, 98 F. App'x 860 (Fed. Cir. 2004).

"Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues." 28 U.S.C. § 2501. When a claim falls outside the statute of limitations, the Court lacks jurisdiction. See Martinez v. United States, 333 F.3d 1295, 1303 (Fed. Cir. 2003). A claim accrues when all

² Plaintiff demands a jury trial, but jury trials are not permitted in this Court. See Persyn v. United States, 34 Fed. Cl. 187, 194 (1995).

of the events have occurred that fix the alleged liability of the Government and entitle the claimant to institute an action. See Ingrum v. United States, 560 F.3d 1311, 1314 (Fed. Cir. 2009); Martinez, 333 F.3d at 1303. In a military pay and separation case, such as this, claims accrue at the time of military discharge. See, e.g., MacLean v. United States, 454 F.3d 1334 (Fed. Cir. 2006); Martinez, 333 F.3d at 1303 (dismissing as time- barred an action seeking a promotion, back pay, and correction of military records); Levy v. United States, 83 Fed. Cl. 67, 74 (2008) (For “military pay case[s] seeking retirement pay, the applicable start date for accrual of the statute of limitations” is the date of discharge.).

Here, Plaintiff’s claims accrued upon on December 2, 1993 -- the date of his discharge. He filed a complaint in 2002, arising from the same operative facts as the present complaint, which was dismissed as time-barred. For the same reasons, this action, which was filed on August 3, 2010, is also time-barred.³

Conclusion

Defendant’s motion to dismiss is **GRANTED**.⁴


MARY ELLEN COSTER WILLIAMS
Judge

³ Plaintiff’s reliance on the Contract Disputes Act to argue that the statute of limitations begins to run at the earliest time that the plaintiff could have been aware of alleged fraud or discrepancies is unavailing because that statute does not apply to military pay cases such as this. See 41 U.S.C. § 604.

⁴ Plaintiff’s motion for reconsideration of the Court’s decision denying his motion for appointment of counsel is denied.