In the United States Court of Federal Claims

No. 04-1609C
(Filed June 29, 2005)
(Unpublished)

* *

JOHN H. HARRINGTON, JR.,	*
Plaintiff,	*
v.	*
THE UNITED STATES,	*
Defendant.	*

* *

MEMORANDUM OPINION AND ORDER OF DISMISSAL

WILLIAMS, Judge.

This matter comes before the Court on Defendant's "motion to dismiss for lack of subject matter jurisdiction, claim preclusion, and failure to state a claim upon which relief can be granted." Plaintiff, John H. Harrington, Jr., pro se, alleges racial and sexual discrimination in connection with his employment with the Defense Fuel Supply Center (DFSC), of the Defense Logistics Agency (DLA). Plaintiff erroneously attempts to "appeal" in this Court a decision of the United States Court of Appeals for the District of Columbia which held that Plaintiff had not established a case for discrimination. Plaintiff now brings the instant litigation raising his original discrimination claims and new claims of tortious conduct on the part of agents of the United States government.

This Court is without jurisdiction to hear Plaintiff's claims of discrimination and tortious conduct against the government. In addition, this Court lacks jurisdiction to review actions of other federal courts.[1] Accordingly, Defendant's motion for dismissal for lack of subject matter jurisdiction is granted.

---

[1] Further, Plaintiff's discrimination claims appear to be barred under the doctrine of res judicata.

Background[2]

Plaintiff was employed as a Procurement Clerk by the DFSC from March 12, 1984 until July 14, 1988. On June 17, 1985, he applied for promotion to Contract Administrator, but was informed in August of 1985 that he was not selected for the position.[3] He filed a racial and sexual discrimination complaint with the Equal Employment Opportunity Commission (EEOC) regarding his nonselection. Shortly thereafter Plaintiff's supervisor met with him regarding excessive use of emergency leave. Plaintiff was ultimately reprimanded for an incident in which he took emergency leave on three consecutive workdays ending January 2, 1986, despite being informed that he would be charged with absence without leave. Plaintiff subsequently filed additional EEOC complaints on February 7 and March 28, 1986, alleging that the reprimand was issued in retaliation for his first-filed complaint.

After receiving his reprimand and filing additional EEOC complaints, Plaintiff alleges that he was injured and harassed by his employers and coworkers. The injuries and harassment took the form of Plaintiff's employer allegedly placing women in tight pants and short skirts near him in order to provoke a reaction from him, placing persons that looked like people he knew at the job and outside of the job to confuse him, "bugging" his home in order to eavesdrop on his conversations and harass him, and tampering with his lunch and work product. After bringing his concerns to the attention of his supervisor, and being offered counseling assistance by a supervisor but declining to accept it, Plaintiff was issued a notice of removal from federal service effective June 15, 1988.

Plaintiff alleges that the harassment continued after he left his job, asserting that various corporations, state and local officials, and private individuals, have tampered with his food and property and disrupted his jobs.

Discussion

In ruling on a motion to dismiss for lack of subject matter jurisdiction, the Court must presume all undisputed factual allegations to be true and construe all reasonable inferences in favor of the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Cedars-Sinai Med. Ctr. v. Watkins, 11 F.3d 1573, 1583 (Fed. Cir. 1993); Holland v. United States, 57 Fed. Cl. 540, 551 (2003). It is the traditional role of the Court, with respect to pro se plaintiffs, to examine the record "to see if plaintiff has a cause of action somewhere displayed." Ruderer v. United States, 188 Ct. Cl. 456, 468 (1969). In such instances, the Court does not hold Plaintiff's pleadings to the more stringent standards that would apply if Plaintiff were represented by counsel. See Hughes v. Rowe, 449 U.S. 5, 9 (1980). Still, the fact that Plaintiff "acted pro se in the drafting of his complaint may explain its ambiguities,

---

[2] This background is derived from Plaintiff's complaints and the Appendix to Defendant's motion to dismiss.

[3] Plaintiff states that two white females, two white males and one African-American female were selected.

but it does not excuse its failures, if such there be." Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995). Ultimately, the plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. Taylor v. United States, 303 F.3d 1357, 1359 (Fed. Cir. 2002).

This Court has no jurisdiction over claims of discrimination. See Cottrell v. United States, 42 Fed. Cl. 144, 149-50 (1998). Title VII of the Civil Rights Act of 1964 vests district courts with subject matter jurisdiction over claims of discrimination. Taylor v. United States, 54 Fed. Cl. 423, 425 (2003). Accordingly, this Court lacks jurisdiction over Plaintiff's claims of discrimination.

Plaintiff alleges in his response to Defendant's motion to dismiss that he has been subject to continual harassment up through the present in the form of break-ins, eavesdropping, and tampering with his food and property by various corporations, individuals, and state and local officials. This Court lacks jurisdiction over claims alleging tortious conduct. The Tucker Act excludes claims "sounding in tort." 28 U.S.C. 1491 (a) (1); see also Brown v. United States, 105 F.3d 621, 623 (Fed. Cir. 1997) ("[t]he Court of Federal Claims is a court of limited jurisdiction. It lacks jurisdiction over tort actions against the United States.").[4]

Additionally, an appeal from a decision of the D.C. Circuit does not fall within this Court's jurisdiction. See, e.g., Joshua v. United States, 17 F.3d 378, 380 (Fed. Cir. 1994); Lark v. United States, 17 Cl. Ct. 567, 571 (1989) ("There is little dispute that this court's jurisdiction does not extend to the review of substantial actions taken by other federal courts."). Judicial review of a decision of a United States Court of Appeals lies with the United States Supreme Court, see 28 U.S.C. § 1254, and this Court has denied Plaintiff's petition for certiorari.[5]

---

[4] Further, Plaintiff has offered no connection between the alleged incidents and the named Defendant. Accordingly, this Court has no jurisdiction over these claims. See generally United States v. Sherwood, 312 U.S. 584, 588 (1941) (where the relief sought is against a person or entity other than the United States, the suit is beyond the jurisdiction of the Court of Claims); Stephenson v. United States, 58 Fed. Cl. 186, 190 (2003) ("[P]laintiffs' assertion of claims against various individual officials in their personal and professional capacities cannot be entertained in this court.").

[5] The United States District Court for the District of Columbia found that Plaintiff failed to prove by a preponderance of the evidence that the actions taken by DFSC were a pretext for discrimination. Harrington v. Straw, Nos. 89-3027, 89-1347 (D.D.C. May 27, 1993), and this decision was affirmed. Harrington v. Straw, 1993 WL 535794, at *1 (D.C. Cir. 1993). The doctrine of res judicata prevents Plaintiff from relitigating issues that were or could have been raised in a prior action that resulted in a final judgment on the merits. Ammex, Inc. v. United States, 334 F.3d 1052, 1055 (Fed. Cir. 2003) (citing Federated Dep't. Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981)). Applying res judicata, "a second suit will be barred by claim preclusion if: (1) there is identity of parties (or their privies); (2) there has been an earlier final judgment on the merits of a claim; and (3) the second claim is based on the same set of transactional facts as the first." Jet, Inc. v. Sewage Aeration Sys., 223 F.3d 1360, 1362 (Fed. Cir. 2000).

Conclusion

The Clerk is directed to dismiss this action for lack of subject matter jurisdiction.

_____

MARY ELLEN COSTER WILLIAMS
Judge