

In the United States Court of Federal Claims

No. 99-340 C
(Filed May 27, 2005)

KURT S. SPEHR,
Plaintiff,
v.
THE UNITED STATES,
Defendant.

ORDER

Following a comprehensive Opinion, reported at 51 Fed. Cl. 69 (2001), judgment was entered dismissing plaintiff's complaint concerning his discharge from the Coast Guard. This judgment was affirmed upon appeal. 49 Fed. Appx. 303 (Fed. Cir. 2002).

On May 24, 2005, plaintiff filed a "Motion For Relief From Judgment Or Order In Accordance With Fed. R. CIV. P. 60(a) and (b)," citing the presence of 14 U.S.C. § 365 in a prior government submission as justifying relief on the basis of "fraud on the court" and or "mistake," "in the interest of justice."

It appears to be plaintiff's analysis that his discharge from the Coast Guard, upheld in the rulings cited above, should now be held to be invalid pursuant to 14 U.S.C. § 365. However, this section concerns only extensions of enlistments, not discharges therefrom. Moreover, if plaintiff is now asserting that his enlistment was improperly extended, so that it had expired earlier, pay beyond the actual enlistment expiration date would not have been lawful. Austin v. United States, 206 Ct. Cl. 719 (1975). Upon careful analysis, it is concluded that no valid basis for RCFC 60 relief has been shown.

Moreover, it is noted that plaintiff appears to seek relief under RCFC 60(b)(1), (2), or (3), which are subject to a one year time limit after final judgment. Therefore, plaintiff's motion is untimely. *See Pacetti v. United States*, 2003 WL 22765831 (Fed. Cl. 2003).

As no valid basis for RCFC 60 relief has been shown and plaintiff's motion is untimely, it is **ORDERED** that the motion, filed May 24, 2005, shall be **DENIED**.

James F. Merow,
Acting Chief Judge for
Senior Judge Thomas J. Lydon