

In the United States Court of Federal Claims

11-800C

(Filed: May 9, 2012)

MORRIS J. PEAVEY,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER GRANTING DEFENDANT’S MOTION TO DISMISS

This is a *pro se* action brought by Morris J. Peavey alleging misconduct by the United States primarily relating to his prior military service. Currently before the court is defendant’s motion to dismiss plaintiff’s complaint for lack of subject matter jurisdiction. For the reasons expressed below, we grant defendant’s motion.

The complaint was filed on November 29, 2011. Plaintiff summarizes his complaint as follows: “This cause of action is brought against the United States Army and its records custodians as one of medical malpractice, fraud, and premature destruction of medical records to continue the fraud.” Compl. at 3. We read the complaint as alleging three claims: (1) medical practice allegedly committed by the United States Army in the 1960s; (2) fraud by failing to correct and disclose plaintiff’s Army medical records, and destroying those records starting in the 1960s; and, (3) unrelated to his claims against the Army, plaintiff alleges that in 1994 the IRS placed a tax lien on the property of a business client of his, resulting in lost “third party business tax interest.”¹

¹ Plaintiff cites 26 U.S.C. § 7121 (2006) as the code section which the IRS allegedly violated. Section 7121 deals with closing agreements and continue...

Although *pro se* filings are liberally construed, this relaxed standard cannot cure jurisdictional defects. We do not possess jurisdiction over tort-based claims. 28 U.S.C. § 1491(a)(1) (2006). Consequently, plaintiff's medical malpractice and fraud claims are not properly before the court. With respect to plaintiff's federal tax lien claim, to the extent it could be a tort action, we do not have jurisdiction. To the extent that it could be construed as a Fifth Amendment taking claim, we do not have jurisdiction because a federal tax lien cannot be construed as a regulatory or statutory taking. *First Atlas Funding Corp. v. United States*, 23 Cl. Ct. 137, 139-40 (1991); *see also Sanders v. United States*, 34 Fed. Cl. 38, 47-48 (1995).² Thus, plaintiff does not allege a claim over which we have subject matter jurisdiction.

For the reasons stated, the defendant's motion to dismiss is GRANTED. The clerk shall dismiss the complaint and enter judgment in favor of defendant. No costs.

ERIC G. BRUGGINK
Judge

¹...continue
compromises, however. Plaintiff also asserts that he was subject to "substantial due process violations," and that the Army lied to his Congressman. Compl. at 38. He also alleges, without specificity, violations of the Health Insurance Portability and Accountability Act, Pub. L. 104-191, 110 Stat. 1936 (1996), and none of the relief sought relates to the HIPPA claim.

² We also note that all of plaintiff's claims are barred by the six-year statute of limitations provided by 28 U.S.C. § 2501 (2006). *See John R. Sand & Gravel Co. v. United States*, 552 U.S. 128, 134 (2008).