

In the United States Court of Federal Claims

No. 07-787 C

(Filed February 27, 2009)

UNPUBLISHED

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EDWIN MARK ACKERMAN,  
*Pro Se,*

*Plaintiff,*

v.

THE UNITED STATES,

*Defendant.*

\* \* \* \* \*

\* Military Pay; 28 U.S.C. § 2501  
\* (2006); 37 U.S.C. § 204(a)(1) (2006);  
\* Claims Barred by the Statute of  
\* Limitations.

*Edwin M. Ackerman, Canon City, CO, pro se.*

*Tara K. Hogan, United States Department of Justice, with whom were Gregory G. Katsas, Assistant Attorney General, Jeanne E. Davidson, Director, Kirk Manhardt, Assistant Director, Washington, D.C., for defendant. Major Joshua M. Toman, United States Army Litigation Division, Military Personnel Branch, Arlington, VA, of counsel.*

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OPINION

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**Bush, Judge.**

This military pay case is before the court on defendant’s motion to dismiss. Defendant argues that plaintiff’s pay claims are barred by this court’s statute of limitations. For the reasons set forth below, this court concludes that it does not

possess jurisdiction over plaintiff's claims and must dismiss this suit.

## **BACKGROUND<sup>1</sup>**

Edwin M. Ackerman served in the United States Army. Plaintiff stopped receiving his military pay and allowances in November 1994, apparently because of a criminal incarceration. Compl. ¶ 2. Plaintiff was discharged from the Army on October 10, 1997. Def.'s Mot. App. at 9. Plaintiff requests back pay for the period of November 1994 through August 1998, when he "received his discharge." Compl. ¶ 5. In another filing, plaintiff requests additional back pay for a period of time after 1998. Pl.'s Br. of November 26, 2007 ¶ 2. Mr. Ackerman filed suit in this court on November 1, 2007.

## **DISCUSSION**

### **I. Jurisdiction**

Pursuant to the Tucker Act, the United States Court of Federal Claims has jurisdiction "to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1491(a)(1) (2006). In the present case, plaintiff's claims fall under the Military Pay Act, 37 U.S.C. § 204(a)(1) (2006), because he is requesting back pay. Claims for back pay in military cases are within the jurisdiction of this court. *Metz v. United States*, 466 F.3d 991, 998 (Fed. Cir. 2006). However, this court's statute of limitations deprives this court of jurisdiction over claims which accrued more than six years before a plaintiff filed suit in this court. 28 U.S.C. § 2501 (2006); *John R. Sand & Gravel Co. v. United States*, 128 S. Ct. 750, 753-54 (2008); *Young v. United States*, 529 F.3d 1380, 1384 (Fed. Cir. 2008).

### **II. Standard of Review**

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<sup>1/</sup> The facts recited here are taken from plaintiff's complaint and other filings, and are undisputed for the purposes of deciding this court's jurisdiction. The court makes no findings of fact in this opinion. Although the court has reviewed all of parties' allegations of jurisdictional facts, only the facts pertinent to the statute of limitations issue are discussed here.

The court acknowledges that Mr. Ackerman is proceeding *pro se*, and is “not expected to frame issues with the precision of a common law pleading.” *Roche v. United States Postal Serv.*, 828 F.2d 1555, 1558 (Fed. Cir. 1987). *Pro se* plaintiffs are entitled to a liberal construction of their pleadings. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (requiring that allegations contained in a *pro se* complaint be held to “less stringent standards than formal pleadings drafted by lawyers”). Accordingly, the court has examined the complaint and briefs thoroughly and has attempted to discern all of plaintiff’s legal arguments.

In rendering a decision on a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (RCFC), this 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), *abrogated on other grounds by Harlow v. Fitzgerald*, 457 U.S. 800, 814-15 (1982); *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 747 (Fed. Cir. 1988). However, plaintiff bears the burden of establishing subject matter jurisdiction, *Alder Terrace, Inc. v. United States*, 161 F.3d 1372, 1377 (Fed. Cir. 1998) (citing *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936)), and must do so by a preponderance of the evidence, *Reynolds*, 846 F.2d at 748 (citations omitted). If jurisdiction is found to be lacking, this court must dismiss the action. RCFC 12(h)(3).

### **III. Accrual of Mr. Ackerman’s Military Pay Claims More Than Six Years Before He Filed Suit**

“A cause of action cognizable in a Tucker Act suit accrues as soon as all events have occurred that are necessary to enable the plaintiff to bring suit, *i.e.*, when ‘all events have occurred to fix the Government’s alleged liability, entitling the claimant to demand payment and sue here for his money.’” *Martinez v. United States*, 333 F.3d 1295, 1303 (Fed. Cir. 2003) (*en banc*) (citations omitted). This accrual date, in military pay cases, is generally no later than the date of the service member’s discharge from active duty. *See Goldstein v. United States*, 130 F. Supp. 330, 332 (Ct. Cl. 1955) (stating that “separation from the service . . . is the *latest date* that could possibly be selected for the accrual of this type of cause of action”) (emphasis added). Although some events occurring prior to plaintiff’s discharge date have legal significance, including the termination of military pay and allowances in November 1994 and the end of his enlistment term of service on June 29, 1996, the accrual of plaintiff’s pay claims was tolled by the

Servicemembers Civil Relief Act, 50 U.S.C. app. § 526(a) (Supp. V 2005), which protects members of the military from expiring statutes of limitation while on active duty. Thus, the limitations period for Mr. Ackerman's pay claims, for the purposes of 28 U.S.C. § 2501, began to run on October 10, 1997, the date of his discharge from the Army.

For Mr. Ackerman's military pay claims to be within this court's jurisdiction, plaintiff would have had to have filed suit here no later than October 2003. Plaintiff's arguments that address the statute of limitations barring his claim allege that he was pursuing other remedies related to his incarceration in the years when he could have filed a timely claim in this court, that he was unaware of the availability of this forum, and that he did not have knowledge of the six-year limitations period. Pl.'s Resp. at 2-3. These justifications do not permit this court to take jurisdiction over claims barred by 28 U.S.C. § 2501. This court is bound by precedent that strictly interprets the six-year limitations period. *John R. Sand & Gravel*, 128 S. Ct. at 753-54; *Young*, 529 F.3d at 1384. As was the case in *Young*, Mr. Ackerman's "claim accrued as of the date of his discharge, and is now time-barred [because he] waited too long to bring this Tucker Act claim." 529 F.3d at 1385. Section 2501 deprives this court of jurisdiction over plaintiff's military pay claims.

## CONCLUSION

For the foregoing reasons, plaintiff's claims must be dismissed because they are barred by this court's statute of limitations.<sup>2</sup> Accordingly, it is hereby **ORDERED** that:

- (1) Defendant's Motion to Dismiss, filed February 29, 2008, is **GRANTED**;
- (2) The Clerk's Office is directed to **ENTER** final judgment in favor of defendant **DISMISSING** the complaint, without prejudice; and

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<sup>2/</sup> The court does not reach defendant's other arguments for dismissing plaintiff's claims. The court reads plaintiff's filings as presenting purely monetary claims that are barred by the statute of limitations. If plaintiff's filings could be read to seek relief related to the circumstances of his current incarceration, such claims also accrued before his discharge from the Army, and are also barred by this court's statute of limitations.

(3) Each party shall bear its own costs.

s/Lynn J. Bush  
LYNN J. BUSH  
Judge