

In the United States Court of Federal Claims

No. 08-588 C

(Filed March 6, 2009)

UNPUBLISHED

* * * * *

LLOYDINE OUTTEN, *Pro Se*, *

Plaintiff, *

v. *

THE UNITED STATES, *

Defendant. *

* * * * *

Lloydine Outten, Los Angeles, CA, *pro se* plaintiff.

Patryk J. Drescher, United States Department of Justice, with whom were *Gregory G. Katsas*, Assistant Attorney General, *Jeanne E. Davidson*, Director, *Harold D. Lester, Jr.*, Assistant Director, Washington, DC, for defendant.

OPINION

Bush, *Judge*.

The court has before it defendant’s motion to dismiss this suit for lack of subject matter jurisdiction, pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (RCFC). Defendant’s motion has been fully briefed, and oral argument was neither requested by the parties nor required by the court. For the reasons stated below, defendant’s motion is granted.

BACKGROUND

On August 12, 2008, plaintiff filed a complaint in this court alleging that the Social Security Administration (SSA) has been improperly recovering overpayments from her supplement security income (SSI) since December 1999. Plaintiff's complaint states that it is filed against four entities (Internal Revenue Service, Social Security Administration, United States Postal Service and United States)¹ and requests three types of relief from this court: (1) damages of \$8,119.80 for the amount withheld by the SSA from her SSI payments as of August 2008; (2) "emotional distress" damages in the amount of \$50,000 and for significant financial suffering; and (3) a request that the court contact the four entities listed above to review her case. Compl. at 1-2.

Ms. Outten reports that since December 1999 the SSA has been deducting 10% from her monthly SSI check for previous overpayment due to self-employment earnings reported to the Internal Revenue Service for tax years 1996, 1997 and 1998. Compl. at 1. The record is difficult to construe based upon Ms. Outten's complaint; however, the court understands that plaintiff is alleging that this overpayment is due to the filing of false "self-employment" income tax claims by Loyal Outten, plaintiff's brother, in plaintiff's name. Compl. at 1. As a result of the allegedly false filings, plaintiff's income for tax years 1996, 1997 and 1998 was reportedly increased (*i.e.*, higher than plaintiff estimated to the SSA), resulting in an overpayment of \$9,551.40 in SSI benefits. The overpayment ultimately resulted in the SSA deducting overpayment amounts from plaintiff's monthly SSI.

On November 15, 2006, plaintiff wrote a letter to the SSA stating that she "did not file [the] tax forms [for] the years stated by Social Security Administration to cause the overpayment," and therefore requested the SSA to reconsider their overpayment determination. Compl. at 2. Additionally, plaintiff stated that the United States Attorney's Office was handling the case, it was still open, but plaintiff "h[as] been cleared," according to a Postal Inspector, Shari M. Delaney. *Id.*

On September 7, 2007, plaintiff wrote to the Internal Revenue Service

^{1/} In plaintiff's response to defendant's motion to dismiss, plaintiff states that she has dropped the Social Security Administration and Internal Revenue Service from her complaint, contending she "will handle [them] in a different matter." Resp. at 2.

seeking documentation that she had been cleared of any wrongdoing in regard to the filing of false tax claims. Ms. Outten stated in her letter that this documentation was needed to send to the SSA to stop them from withholding the overpayments from her monthly SSI check. She stated that these overpayment withholdings were causing her significant financial hardship. On August 8, 2007, plaintiff wrote this same request to the United States Attorney. Plaintiff's complaint states that no response was ever received from any of these agencies. In addition to these letters, plaintiff states that she telephoned the agencies numerous times to inquire about a response. Ms. Outten specifically requests this court to contact these agencies and have them review her case.

On October 14, 2008, defendant filed a motion to dismiss, pursuant to RCFC 12(b)(1), stating that this court lacks subject matter jurisdiction over plaintiff's complaint. Plaintiff filed her response to defendant's motion on November 3, 2008 and defendant's reply was filed on November 6, 2008. Defendant's motion is fully briefed and ripe for a decision from the court.

DISCUSSION

I. *Pro se* Complaint

The court acknowledges that Ms. Outten is proceeding *pro se*, and is "not expected to frame issues with the precision of a common law pleading." *Roche v. U.S. 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"). In that regard, the court has examined the complaint and briefs thoroughly and has attempted to discern all of plaintiff's legal arguments. However, while "[t]he fact that [a plaintiff] acted *pro se* in the drafting of his complaint may explain its ambiguities, . . . it does not excuse its failures, if such there be." *Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995). In other words, the leniency afforded to a *pro se* litigant with respect to mere formalities does not relieve the burden to meet jurisdictional requirements. *Kelley v. Sec'y, U.S. Dep't of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987); *Biddulph v. United States*, 74 Fed. Cl. 765, 767 (2006).

II. 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). The Tucker Act, however, “does not create any substantive right enforceable against the United States for money damages. The Court of Claims has recognized that the Act merely confers jurisdiction upon it whenever the substantive right exists.” *United States v. Testan*, 424 U.S. 392, 398 (1976) (citation omitted). A plaintiff coming before the United States Court of Federal Claims, therefore, must also identify a separate provision of law conferring a substantive right for money damages against the United States. *Todd v. United States*, 386 F.3d 1091, 1094 (Fed. Cir. 2004) (citing *Testan*, 424 U.S. at 398).

III. Standard of Review - Motion to Dismiss for Lack of Jurisdiction under RCFC 12(b)(1)

Defendant requests that the court dismiss plaintiff’s complaint for lack of subject matter jurisdiction. In rendering a decision on a motion to dismiss for lack of subject matter jurisdiction pursuant to RCFC 12(b)(1), 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. If jurisdiction is found to be lacking, this court must dismiss the action. RCFC 12(h)(3).

IV. Analysis

A. Social Security Claims

Since the foundation of Ms. Outten’s complaint is based upon the SSA’s

overpayment withdrawals from her monthly SSI checks, the court construes plaintiff's complaint as basically a claim for social security benefits. The United States Court of Federal Claims, as with all federal courts, is a court of limited jurisdiction. The court is vested with the power to hear and decide only certain types of claims. These do not include claims for social security benefits. Jurisdiction over claims for social security benefits is vested first in the SSA, and thereafter any appeals must be filed in a district court. *Marcus v. United States*, 909 F.2d 1470 (Fed. Cir. 1990); 42 U.S.C. § 405(g)-(h) (2000). Any such claim cannot be heard in this court. Therefore, the court agrees with the government and holds that plaintiff's social security claims are not within the jurisdiction of this court and must be dismissed.

B. Tort Claims

It is clear to the court that Ms. Outten's claims of "emotional distress" and "significant financial suffering" against the four entities mentioned above are tort actions for non-responsiveness to plaintiff's repeated requests. Plaintiff specifically requests that the court award her \$50,000 in damages. These allegations sound in tort and it is well-settled that tort allegations are not cognizable under the Tucker Act. *Garner v. United States*, 230 Ct. Cl. 941, 943 (1982) ("[R]elief for mental distress and psychological damage is founded in tort, which is also outside of the jurisdiction of this court.").

C. Transfer of Plaintiff's Complaint Would Not Be In The Interest of Justice

Although plaintiff does not request that this court transfer her case to an appropriate district court, that is the action that this court would normally take if it appeared that a particular district court had jurisdiction over her claim for social security benefits. It is a common enough mistake for a *pro se* plaintiff to inadvertently file in the wrong forum and under 28 U.S.C. §1631 (2006), it is a mistake which may sometimes be remedied since that statute provides, "[w]henver a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action . . . could have been brought .

...” However, in this case it would not be in the interest of justice to transfer Ms. Outten’s social security claim to the district court under the present circumstances.

In order to transfer a claim from this court to a district court, that district court must have jurisdiction to hear and decide the claim. Here, we are unable to determine whether the district court would have jurisdiction over Ms. Outten’s claim inasmuch as it is unclear whether plaintiff has exhausted mandatory administrative remedies which, as a prerequisite, must be exhausted before a transferee court may hear a social security benefits claim. *See* 42 U.S.C. § 405(g)-(h); *Barrois v. Goux Enters., Inc.*, 180 F.3d 263 (5th Cir. 1999) (Table) (stating that plaintiff failed to invoke the federal question jurisdiction of the district court because she failed to exhaust administrative remedies provided by the SSA); *Harper by Harper v. Bowen*, 813 F.2d 737, 739 (5th Cir. 1987) (holding that jurisdiction of the district court was dependent on whether the actions of the SSA amounted to a final decision by the Secretary of the agency).

Plaintiff, in the instant case, does not allege that she has exhausted her administrative remedies before the SSA. Indeed, to the contrary, her request to this court is that it assist her in marshaling her defenses in order for her to present her case to that agency for review. Resp. at 2. Regretfully, this court is not in a position to render any assistance to Ms. Outten, either directly, by contacting federal agencies, or indirectly, by transferring her case to a district court for adjudication. With respect to the former request, we lack jurisdiction to perform such services. With respect to the latter option, from all of the assertions made by plaintiff, it appears that she has not exhausted her administrative remedies before the SSA and therefore, her request for judicial review before a district court would be premature. Because a district court could therefore lack jurisdiction to review Ms. Outten’s social security claim at this juncture, transfer of her claim pursuant to 28 U.S.C. § 1631 is precluded.

CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that

- (1) Defendant’s Motion to Dismiss, filed October 14, 2008, is

GRANTED;

- (2) The Clerk's Office is directed to **ENTER** final judgment in favor of defendant **DISMISSING** plaintiff's complaint, without prejudice; and
- (3) Each party shall bear its own costs.

s/Lynn J. Bush
LYNN J. BUSH
Judge