

In the United States Court of Federal Claims

No. 11-878C
(Filed: April 20, 2012)

MARY V. SIEBEN,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

*
*
*
*
*
*
*
*
*
*

Rule 5.2; motion to seal

ORDER

In this military disability-benefits case, Plaintiff Mary Sieben challenges the disability rating assigned to her by the United States Air Force. On April 13, 2012, the Government filed the administrative record, which contains many medical documents and other medical information about Plaintiff. On April 16, 2012, Plaintiff filed a Motion to Seal the Record as it Pertains to Medical Records, requesting the Court to seal “that portion of the Administrative Record containing plaintiff’s medical records and documents containing her medical information.” For the reasons set forth below, the Court denies Plaintiff’s motion.

Plaintiff asserts that the Court should seal the administrative record because it contains “extremely detailed medical records and other personal information necessary to establish disability as alleged by Plaintiff. While such medical and personal information is critical to the Court, it is of no legitimate use to anyone not a party to the case.” Mot. at 2. Plaintiff requests the Court to seal the administrative record to prevent “public access, whether online or in person.” *Id.* As authority for her motion, Plaintiff relies on Rule 5.2 of the Rules of the Court of Federal Claims (“RCFC”). RCFC 5.2 provides for the redaction of certain information from filings, the sealing of documents, and the issuance of protective orders. Presumably, Plaintiff’s motion is premised on RCFC 5.2(d), which provides that the Court may order that a filing be made under seal.

The Government opposes the motion, asserting that the public’s right of access to the evidence before the Court outweighs Plaintiff’s privacy interest. It states that ““There is a strong presumption in favor of a common law right of public access to court proceedings.”” Def.’s Resp. at 2 (quoting *In re Violation of Rule 28(D)*, 635 F.3d 1352, 1356 (Fed. Cir. 2011)). The Government asserts that the administrative record, which includes Plaintiff’s medical records, is at the heart of the evidence the Court will review in its “trial on the record.” Def.’s Resp. at 3

(quoting *Bannum, Inc. v. United States*, 404 F.3d 1346, 1354 (Fed. Cir. 2005)). Because Plaintiff voluntarily placed these records at issue, the Government asserts that the public's interest in access outweighs Plaintiff's privacy interest.

The Court has the discretion to seal a document if it determines that the public's interest in access to judicial records is outweighed by the movant's interests in privacy. See *Nixon v. Warner Comm'ns*, 435 U.S. 589, 598-99 (1978); *In re Violation of Rule 28(D)*, 635 F.3d at 1356-57; see also *Miller-Holzwarth, Inc. v. United States*, 44 Fed. Cl. 153, 154 (1999). In balancing the interests in this case, the Court is informed by Rule 5.2 of the Federal Rules of Civil Procedure ("FRCP"). RCFC 5.2 is identical to FRCP 5.2, except that it does not contain subsection (c), which is entitled "Limitations on Remote Access to Electronic Files; Social-Security Appeals and Immigration Cases." FRCP 5.2(c) provides that, in Social Security appeals, while persons not party to the appeal may have access to the administrative record at the courthouse, only parties and their attorneys may have remote electronic access to the administrative record. The history of FRCP 5.2(c) shows that the United States Judicial Conference recommended the separate privacy rule for Social Security cases because, unlike ordinary civil cases, Social Security cases contain "extremely detailed medical records and other personal information." Judicial Conference Committee on Court Administration and Case Management, *Report on Privacy and Public Access to Electronic Case Files* (December 2006) (available at: <http://www.privacy.uscourts.gov/Policy.htm> (last visited Apr. 19, 2012)). In discussing the personal nature of the administrative record in Social Security appeals, the Committee noted that:

[A]ll Social Security disability claims, which are the majority of Social Security cases filed in district court, contain extremely detailed medical records and other personal information which an applicant must submit in an effort to establish disability. Such medical and personal information is critical to the court and is of little or no legitimate use to anyone not a party to the case. Thus, making such information available on the Internet would be of little public benefit and would present a substantial intrusion into the privacy of the claimant. Social Security files would still be available in their entirety at the courthouse.

Id. The history shows that, in adopting Rule 5.2(c), the Judicial Conference struck a balance between the public's right to access court records, which are public documents, and the individual's interest in keeping medical information private.

Although the Court of Federal Claims did not adopt FRCP 5.2(c), the Court is persuaded that the Judicial Conference struck the proper balance between public and private interests in Social Security cases by prohibiting remote electronic access to the administrative record but permitting such access at the courthouse. The Court therefore applies that balancing to this military disability-benefits case.

Here, the Government filed a paper copy of the administrative record. Ordinarily, when only a paper copy of the administrative record is filed, it is not available electronically; the public still can access the administrative record, but only by coming to the courthouse. The Court finds that, because public does not have remote electronic access to the administrative

record, Plaintiff's interest in the privacy of her medical records is adequately protected. In the future, if the administrative record is made available to the litigants through CM-ECF, the Clerk is instructed to preclude public access. The Court of Federal Claims' ordinary privacy rules and policies shall apply to all other documents and filings. Accordingly, Plaintiff's Motion to Seal the Administrative Record is DENIED.

s/ Edward J. Damich
EDWARD J. DAMICH
Judge