

In the United States Court of Federal Claims

No. 11-313 C

(Filed: June 15, 2011)

NOT FOR PUBLICATION

_____)	Subject Matter Jurisdiction; Tucker Act,
PRENTISS B. DAVIS,)	28 U.S.C. § 1491; Court of Federal
)	Claims Lacks Jurisdiction Over Claimed
Plaintiff,)	Violations of the Americans with
)	Disabilities Act of 1990 and Title VII of
v.)	Civil Rights Act of 1964; RCFC 12(h)(3);
)	Transfer Pursuant to 28 U.S.C. § 1631
THE UNITED STATES,)	
)	
Defendant.)	
_____)	

Prentiss B. Davis, Everett, Washington, plaintiff, *pro se*.

OPINION AND ORDER TRANSFERRING ACTION *SUA SPONTE*

GEORGE W. MILLER, Judge

Prentiss B. Davis, *pro se*, has filed a complaint against the Boeing Company, Boeing Commercial Aircraft, Boeing Aetna, and Aetna Life Insurance Company for various claims of employment discrimination (docket entry 1, May 17, 2011).¹ For the reasons set forth below, the Court has determined that it lacks subject matter jurisdiction over plaintiff's claims, and the Court transfers plaintiff's action to the United States District Court for the Western District of Washington pursuant to 28 U.S.C. § 1631.

I. Background²

Boeing Commercial Aircraft hired plaintiff as a contract worker in August 2006 to work as a 787 Payloads Engineer. Compl. ¶ 4. After working for Boeing for nearly two years,

¹ Plaintiff captioned the complaint as follows: "Prentiss B. Davis, Plaintiff v. The Boeing Company, Boeing Commercial Aircraft, Boeing Aetna, Aetna Life Insurance Company, Defendants [sic]." Compl. at 1. The official caption of the case (appearing above) was supplied by the office of the Clerk of Court in conformance with Rule 10a of the Rules of the United States Court of Federal Claims ("RCFC") 10(a), which states that "[t]he title of the complaint must name all the parties . . . with the United States designated as the party defendant."

² The following recitation does not constitute findings of fact by the Court. Instead, the background facts are taken from plaintiff's complaint and are relied upon by the Court in determining whether plaintiff has alleged sufficient facts to show that the Court has jurisdiction over his claims. *See Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995).

plaintiff took medical leave on May 15, 2008, pursuant to the advice of his personal neurologist, Dr. Jason Hightower. Compl. ¶ 10. Then, on November 17, 2010, Boeing dismissed plaintiff under the “Boeing Leave of Absence Policy,” which states that an employee cannot exceed thirty months of combined consecutive medical leaves of absence. Compl. ¶ 3.

Plaintiff asserts claims against the Boeing Company, Boeing Commercial Aircraft, Boeing Aetna, and Aetna Life Insurance Company for various forms of disability discrimination under Title I of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101–12117 (2006). Compl. at 1, ¶ 13. Plaintiff further asserts that he filed his complaint per the “Private Suit Rights” of the ADA and Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000(e).³ Compl. ¶ 16. Plaintiff seeks: reinstatement to his employment with Boeing, including his seniority and health insurance benefits; Boeing FAA Certification; and \$81,360.00 for unreimbursed payments his employer allegedly owed for short-term disability, long-term disability, and accidental death and dismemberment (“AD&D”) insurance. Compl. ¶ 1.

II. The Court Lacks Subject Matter Jurisdiction

“Jurisdiction must be established as a threshold matter before the court may proceed with the merits of this or any other action.” *OTI Am., Inc. v. United States*, 68 Fed. Cl. 108, 113 (2005) (citing *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 88-89 (1998)). Plaintiffs bear the burden of demonstrating that the court has jurisdiction over his or her claims. *Biddulph v. United States*, 74 Fed. Cl. 765, 767 (2006). *Pro se* plaintiffs are entitled to liberal construction of their pleadings, *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), which will be interpreted in the light most favorable to plaintiffs. *Baker v. United States*, 74 Fed. Cl. 421, 421 (2006). However, like all plaintiffs, *pro se* plaintiffs must meet jurisdictional requirements for the court to hear their cases. *Biddulph*, 74 Fed. Cl. at 767. “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” RCFC 12(h)(3).⁴

Under the Tucker Act, 28 U.S.C. § 1491, the Court’s subject matter jurisdiction extends only to suits “against the United States.” 28 U.S.C. § 1491(a)(1). Thus, “[w]hen a plaintiff’s complaint names private parties, or local, county, or state agencies, rather than federal agencies, this court has no jurisdiction to hear those allegations.” *Moore v. Pub. Defenders Office*, 76 Fed. Cl. 617, 620 (2007).

In this case, rather than asserting a claim against the United States, plaintiff asserts employment discrimination claims and disability compensation claims against publicly traded corporations and related corporate entities. *See* Compl. at 1, ¶¶ 14, 15. Plaintiff does not

³ Though plaintiff does not explicitly enumerate racial discrimination claims, plaintiff repeatedly asserts that Boeing discriminated against him due to his race, and he lists Title VII as authority for recovery. Compl. ¶¶ 3, 16, Ex. E.

⁴ It appears that RCFC 12(h)(3), which requires dismissal, is at odds with 28 U.S.C. § 1631. Section 1631 does not require dismissal, but instead provides that when a court determines that it lacks subject matter jurisdiction over an action, the court shall “transfer [the] action . . . to any other . . . court in which the action . . . could have been brought,” provided that transfer “is in the interest of justice.”

identify any federal agencies responsible for the termination of his employment, nor does he identify a federal agency responsible for allegedly withholding disability reimbursements. Because plaintiff does not allege a claim against the United States, this Court does not have subject matter jurisdiction over his claims.

III. Transfer to the Western District of Washington Is Appropriate

Although this Court lacks jurisdiction over plaintiff's claims, the Court has concluded that plaintiff's claims should be transferred to a court that does have jurisdiction. "Whenever 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 or appeal to any other . . . court in which the action or appeal could have been brought at the time it was filed or noticed . . ." 28 U.S.C. § 1631. The Court shall transfer a case *sua sponte* to a federal district court if it is in the "interest of justice" to do so. *Tex. Peanut Farmers v. United States*, 409 F.3d 1370, 1375 (Fed. Cir. 2005) (citing *Phillips v. Seiter*, 173 F.3d 609, 610 (7th Cir. 1995)). Pursuant to 28 U.S.C. § 1631, a court shall transfer a case if three conditions are met: "(1) the transferor court lacks . . . jurisdiction; (2) at [the] time the case was filed, it could have been brought in the transferee court; and (3) such transfer is in the interest of justice." *Gray v. United States*, 69 Fed. Cl. 95, 98 (2005) (quoting *Skillo v. United States*, 68 Fed. Cl. 734, 744 (2005)) (alterations in original).

As discussed above, the Court lacks jurisdiction to hear this case, fulfilling the first requirement for a transfer. The Court must also determine whether, at the time this action was filed, plaintiff could have brought the action in another court, and whether transferring the case to that court is in the "interest of justice."

A. Plaintiff Could Have Filed His Claims in the United States District Court for the Western District of Washington.

Under Title VII and the ADA, after the U.S. Equal Employment Opportunity Commission ("EEOC") dismisses claims, plaintiffs have a right to sue former employers in court. 42 U.S.C. § 2000e-5(f)(1); *see* 42 U.S.C. § 12117(a) (stating the ADA follows enforcement provisions of Title VII). Pursuant to Title VII, 42 U.S.C. §§ 2000e through 2000e-16 (2006), the federal district courts have exclusive jurisdiction over appeals from complaints of discrimination filed with the EEOC. *Jackson v. United States*, 10 Cl. Ct. 691, 692 (1986). Title VII is the exclusive remedy for race, color, sex, or handicap discrimination claims and places jurisdiction to review EEOC decisions in the federal district courts. *Brown v. Gen. Servs. Admin.*, 425 U.S. 820, 829-30 (1976); *Taylor v. United States*, 54 Fed. Cl. 423, 425 (2002). Therefore, plaintiff's claims for discrimination are exclusively within the jurisdiction of the federal district courts, and plaintiff could have filed this action in a federal district court.

In addition, plaintiff's claims were timely filed. As required by a Title VII enforcement provision, § 2000e-5(e)(1), plaintiff filed his complaint against the named defendants with the EEOC within 180 days of his termination. Compl. Ex. R. Then, after the EEOC dismissed his complaint on May 5, 2011, he timely filed this action on May 17, 2011. *See* § 2000e-5(f)(1) (requiring a plaintiff to file suit within 90 days of dismissal by the EEOC). Therefore, plaintiff timely filed in accordance with the governing enforcement provisions, but he filed in an inappropriate court.

Plaintiff could have filed this case in the U.S. District Court for the Western District of Washington. Venue for discrimination cases is proper “in the jurisdiction in which the aggrieved person would have worked but for the alleged unlawful employment practice.” 42 U.S.C. § 2000e-5(f)(3); 42 U.S.C. § 12117(a). Plaintiff was employed at the Boeing Company’s Boeing Everett facility at the time he was terminated, and Everett is located within the jurisdiction of the U.S. District Court for the Western District of Washington.⁵ Compl. ¶ 10. Therefore, the Western District of Washington is the appropriate forum for plaintiff to pursue this action.

B. Transferring Plaintiff’s Action Is in the Interest of Justice.

“The phrase ‘if it is in the interest of justice’ relates to claims which are nonfrivolous and as such should be decided on the merits.” *Galloway Farms, Inc. v. United States*, 834 F.2d 998, 1000 (Fed. Cir. 1987) (citing *Zinger Constr. Co. v. United States*, 753 F.2d 1053, 1055 (Fed. Cir. 1985)). A claim is frivolous when it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

In this case, a review of the complaint and administrative agency records suggests that plaintiff’s claims are not frivolous. The EEOC did not dismiss plaintiff’s claim because “the facts alleged . . . fail to state a claim under any of the statutes.” Compl. Ex. R. Rather, the EEOC dismissed plaintiff’s claims because the EEOC was “unable to conclude that the information obtained establishes violations of the statutes.” Compl. Ex. R. Plaintiff retains the right to sue in a federal district court. It is therefore “in the interest of justice” to permit plaintiff to pursue his claims in the Western District of Washington, and the Court will order the transfer of this action to that court.

CONCLUSION

In view of the foregoing, the Court concludes that it lacks subject matter jurisdiction over this action, and it **ORDERS** the action transferred to the United States District Court for the Western District of Washington pursuant to 28 U.S.C. § 1631.

IT IS SO ORDERED.

GEORGE W. MILLER
Judge

⁵ Additionally, plaintiff is a resident of Everett, Washington, Compl. ¶ 3, and he designated Seattle, Washington as his proposed place of trial, Compl. at 7.