

# In the United States Court of Federal Claims

No. 10-804C

(Filed: July 22, 2011)

(Unpublished)

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ROGER A. CONKLIN,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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*Roger A. Conklin, appearing pro se, Littleton, Colorado.*

*Kenneth S. Kessler, Trial Attorney, with whom were Tony West, Assistant Attorney General, Jeanne E. Davidson, Director, and Deborah A. Bynum, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for Defendant.*

## OPINION AND ORDER ON DEFENDANT'S MOTION TO DISMISS

WHEELER, Judge.

Plaintiff, Roger A. Conklin, filed a *pro se* complaint in this Court on November 15, 2010. The complaint is in the form of an eleven-page letter “to whom it may concern” in which Mr. Conklin describes himself as a 47-year-old disabled person to whom “many horrible things have happened.” The complaint contained allegations that government agents were “coming into my home when I was away, but not taking obvious things of value, using technology, which allows them to remotely see/hear me in my home, interfering with postal mail, interfering with medical care from most or all of my

medical/healthcare providers and interfering on a grand scale with my ERISA disability claim.” (Compl. 3.)

Mr. Conklin’s complaint also seeks the advice of the Court on how best to pursue his claims. Id. at 4-10. Mr. Conklin then requests the following relief: (1) justice; (2) an order that his ERISA claim be paid; (3) a yearly annuity of \$70,000 after taxes; (4) his home foreclosure removed from his record; (5) his credit history “cleared up;” (6) an order that his employer’s long term disability insurance provider pay for modifications to his house and other benefits; (7) a permanent injunction; (8) a formal acknowledgment of all events and a formal apology; (9) an order to pay off his student loans; and (10) punitive damages. Id. at 10-11.

Mr. Conklin states that he has “filed numerous complaints, requesting legitimate investigations,” id. at 1, and he attaches correspondence to the Colorado Bar Association, the Senate Judiciary Committee, the Inspector General of the Department of Justice, his former employer, Senator Alan Wayne Allard of Colorado, the Central Intelligence Agency, the Colorado Attorney General’s Office, and his local law enforcement office seeking help and alleging a conspiracy against him.

Defendant filed a motion to dismiss for lack of subject matter jurisdiction on January 20, 2011. Mr. Conklin filed two requests for enlargement of time to submit his response, and the Court granted both requests. With the second enlargement, the due date for Mr. Conklin’s response was May 9, 2011. When two weeks passed without any response, the Court issued an order on May 23, 2011 directing Mr. Conklin to show cause why his complaint should not be dismissed pursuant to Rule 41(b) for failure to prosecute. On June 9, 2011, Mr. Conklin filed another motion for an enlargement of time, in which he stated “[g]oing forward, Plaintiff simply does not know the amount of time needed to adequately respond to the Defendant’s Motion to Dismiss. It might be six months or a year, really do not know.” For the reasons explained below, the Court denies Mr. Conklin’s request for a further enlargement of time and grants Defendant’s motion to dismiss.

### Discussion

As a preliminary matter, the Court will not grant Mr. Conklin’s motion for a further enlargement of time. The Court may on its own accord address a challenge to subject matter jurisdiction at any time. Fanning, Phillips, Molnar v. West, 160 F.3d 717, 720 (Fed. Cir. 1998); see also Hernandez v. United States, 93 Fed. Cl. 193, 195 (2010) (determining, after a plaintiff filed an amended complaint in response to a motion to dismiss, that the interests of justice would be served by deciding jurisdiction *sua sponte* without requiring further briefing from the parties). Mr. Conklin’s response is unnecessary because the Court has carefully reviewed the complaint and has determined for itself that it does not have jurisdiction over Plaintiff’s claims.

A determination of the Court's jurisdiction begins with the complaint, which must be well-pleaded and state the necessary elements of the plaintiff's claim. RCFC 8(a)(2); Holley v. United States, 124 F.3d 1462, 1465 (Fed. Cir. 1997). When deciding a motion for lack of subject matter jurisdiction, the Court must assume that all factual allegations are true and draw all reasonable inferences in the plaintiff's favor. Henke v. United States, 60 F.3d 795, 797 (Fed. Cir. 1995). Nevertheless, the plaintiff bears the burden of establishing that the Court has jurisdiction. Minehan v. United States, 75 Fed. Cl. 249, 253 (2007). The complaint of a *pro se* plaintiff is held to less stringent standards than a complaint drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). In such cases, the Court may "strain[] our proper role in adversary proceedings to the limit, searching the record to see if plaintiff has a cause of action somewhere displayed." Saladino v. United States, 62 Fed. Cl. 782, 787 (2004) (quoting Ruderer v. United States, 412 F.2d 1285, 1292 (Ct. Cl. 1969)). However, the leniency afforded to *pro se* plaintiffs regarding formalities does not lessen the burden to meet jurisdictional requirements. Kelley v. Sec'y, U.S. Dep't of Labor, 812 F.2d 1378, 1380 (Fed. Cir. 1987); see also Minehan, 75 Fed. Cl. at 253. Furthermore, the Court does not have a duty to create a claim which was not spelled out in the pleading. Scogin v. United States, 33 Fed. Cl. 285, 293 (1995).

The Court of Federal Claims is a court of limited jurisdiction. Brown v. United States, 105 F.3d 621, 623 (Fed. Cir. 1997). Further, the United States, as sovereign, is immune from suits unless it gives its consent. United States v. Testan, 424 U.S. 392, 399 (1976). This Court derives its jurisdiction from the Tucker Act, which confers jurisdiction upon the Court of Federal Claims over specified categories of actions and waives the Government's sovereign immunity for those actions. Fisher v. United States, 402 F.3d 1167, 1172 (Fed. Cir. 2005). There are three types of claims over which the Court has jurisdiction under the Tucker Act: (1) claims alleging the existence of a contract between the plaintiff and the government; (2) claims where the plaintiff seeks a refund of money paid to the government directly or in effect; and (3) claims based on a federal statute that can be fairly interpreted as mandating compensation by the federal government for the damage sustained. Testan, 424 U.S. at 400; Ontario Power Generation v. United States, 369 F.3d 1298, 1301 (Fed. Cir. 2004). The Court lacks jurisdiction over torts or allegations of criminal activities. Moore v. United States, 94 Fed. Cl. 456, 463 (2010). Also, the Court only has jurisdiction over claims against the United States, and thus lacks jurisdiction over claims against individual government officials. Miller v. United States, 67 Fed. Cl. 195, 198 (2005).

The Court does not have jurisdiction over Mr. Conklin's complaint. First, the Court cannot provide legal advice to Mr. Conklin regarding the presentation of his claims. See Jones v. Griffith, 870 F.2d 1363, 1366 (7th Cir. 1989) ("Federal Courts are not authorized to render advice to persons contemplating litigation or acts that may lead to litigation."); Smith v. Palmer, No. 11-CV-12765, 2011 WL 2623301, at \*1 (E.D. Mich.

July 5, 2011) (“[T]o the extent that Petitioner is asking this Court for legal advice with regard to this petition or any other matters, it is both inappropriate and impractical for this Court to render such advice to a party.”).

Aside from asking the Court for legal advice, Mr. Conklin alleges that government agents have entered his home and spied on him, interfered with his mail, interfered with his medical care, and interfered with his disability claim from his employer. These are not claims that this Court can review. To the extent that his claims are against individual government officials, the Court does not have jurisdiction over these claims. Miller, 67 Fed. Cl. at 198. Moreover, this Court does not have jurisdiction because the claims are either for crimes or torts and the Court does not have jurisdiction of such claims. See Howard v. United States, 21 Cl. Ct. 475, 479 (1990) (finding plaintiff’s claims that NASA harassed him, watched his person, and listened to his private conversations were criminal acts, or at least torts, and therefore the court did not have jurisdiction over the claims); Moore v. U.S. Postal Serv. Emps., No. 10-65C, 2010 WL 2507797, at \*2 (Fed. Cl. June 21, 2010) (holding that failure to deliver the mail is a claim sounding in tort); Matthews v. United States, 72 Fed. Cl. 274, 282 (2006) (holding that interference with mail is a crime over which the Court of Federal Claims does not have jurisdiction); Restatement (First) of Torts § 326 (1934) (describing the tort of “intentionally prevent[ing] a third person from giving to another aid necessary to his bodily security”); Wilson v. United States, No. 09-795, 2010 WL 1718932, at \*3 (Fed. Cl. Apr. 28, 2010) (stating that conspiracy to defraud plaintiff of disability benefits is a tort).

Mr. Conklin also asked, in his first request for an enlargement of time, that if the Court determines it does not have jurisdiction, the Court transfer the case to a court with proper jurisdiction. A case may be transferred pursuant to 28 U.S.C. § 1631 (2006), which states that when a “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 at the time it was filed. . . .” The basis for determining if a case should be transferred is whether it would be in the interests of justice to do so. Spencer v. United States, 98 Fed. Cl. 349 (2011). “[I]t is not in the interest of justice to transfer claims that are unlikely to be meritorious in another court of the United States.” Brunson v. United States, No. 10-837, 2011 WL 2784596, at \*2 (Fed. Cl. July 12, 2011). Although Mr. Conklin attaches documents with more detail, the allegations contained in the complaint are vague and conclusory. Therefore the Court finds that it is not in the interest of justice to transfer the case. See Id. (refusing to transfer the case because the allegations are vague and conclusory.)

### Conclusion

For the foregoing reasons, Plaintiff’s motion for a further enlargement of time is DENIED and Defendant’s motion to dismiss for lack of subject matter jurisdiction is GRANTED. The Clerk is instructed to dismiss Plaintiff’s complaint without prejudice.

IT IS SO ORDERED.

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THOMAS C. WHEELER  
Judge