

In the United States Court of Federal Claims

NOT FOR PUBLICATION

No. 03-1677C

(Filed November 16, 2007)

WILLIAM P. GREENE,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER

Plaintiff has submitted two documents, received in the Clerk's office on November 8, 2007, but not filed at that time. One is a motion, received (and apparently mailed, as the certificate of service is dated October 31, 2007) out of time, seeking an enlargement of time in which to submit a document that was to be filed on or by October 30, 2007. *See* Order (Oct. 9, 2007) at 2. The other appears to be a motion to compel defendant to produce certain documents. Because this second motion begins by requesting production of the "Report of Survey" that was the subject of a previous motion and previous orders, *see* Order (Sept. 13, 2007); Order (Sept. 14, 2007), the Clerk's office believed this was a redundant copy of the prior motion and did not file it upon receipt. Moreover, the Court's previous order in this matter stated that briefing on the pending motions for judgment would close as of October 30, 2007, and thus did not contemplate any further discovery motions. *See* Order (Oct. 9, 2007) at 2. But recognizing plaintiff's *pro se* status, the Court will nonetheless allow these submissions to be filed. The Clerk's office is directed to file Mr. Greene's two motions.

In his motion to compel, Mr. Greene requests two separate items. One is the "Report of Survey" that apparently relates to the Army's prior collection of \$602.02. Since the government has reimbursed Mr. Greene the amount in question, plaintiff's previous request for this document was denied as moot. Order (Sept. 14, 2007). The second requested document is "a copy of the law that granted the Defendants [sic] the right to collect interest on monies collected from the Plaintiff." Even had Mr. Greene sought this through a proper discovery request -- perhaps more appropriately using an interrogatory under Rule 33 of the Rules of the United States Court of Federal Claims ("RCFC") -- it is hard to see the relevance of the request to any claims within this Court's jurisdiction. If his pay were improperly reduced to reflect an interest charge on a debt he did not owe, it is the fact of the reduction (and its amount) that matters, not the purported

basis. But in any event, the Court is not aware of any claim that plaintiff suffered such an interest charge. Instead, Mr. Greene argues that the documents he seeks constitute “evidence” that he believes “will be crucial” to the appeal of the Court’s prior decision that Due Process claims were neither contained in plaintiff’s complaint nor within our jurisdiction. *See* Order (Apr. 2, 2007) at 6-8. Even if this discovery were sought on a timely basis and following proper procedures, it would be beyond the scope of legitimate discovery allowed under RCFC 26(b), as it is not relevant to a claim before the Court. Mister Greene’s motion requesting these documents is **DENIED**.

Plaintiff’s second motion seeks a forty-five day enlargement of time in which to file the reply brief which the Court ordered filed on or by October 30, 2007. Mister Greene states, as the basis for his request, that he “is still researching the issue of the Defendant[’]s requirement to pay interest.” The issue of plaintiff’s eligibility to receive interest on back pay was first discussed at a status conference held more than two years ago. *See* Tr. (Jul. 28, 2005) at 41-43. Mister Greene was instructed to include any argument concerning payment of interest in a status report that was initially due on August 29, 2005. *See id.* at 43; Order (Aug. 1, 2005). Plaintiff requested a twenty-day extension of time to file a paper concerning interest, *see* Motion (Sept. 2, 2005), the Court granted the motion, and plaintiff was next given until November 21, 2005 to file a paper on this issue. Order (Nov. 1, 2005). On the due date, plaintiff mailed another motion for an enlargement. *See* Motion for Extension (Dec. 5, 2005). The Court then set an April 7, 2006 deadline for filing a paper which includes the interest issue. Order (Mar. 24, 2006). Mister Greene moved for and received another extension through April 24, 2006. Order (Apr. 17, 2006). An additional extension was given through May 12, 2006. Order (May 5, 2006). The document that was ultimately (and belatedly) filed, however, contained no discussion of plaintiff’s eligibility to receive pre-judgment interest. *See* Motion to Submit (May 30, 2006).

The Court’s memorandum opinion and order dated April 2, 2007, however, gave Mr. Greene an additional opportunity to file a document supporting and explaining his contentions regarding back pay. *See* Mem. Op. & Order (Apr. 2, 2007) at 9. After seeking and receiving an extension, *see* Order (Jun. 12, 2007), Mr. Greene (again, belatedly) submitted this document, which was filed on July 13, 2007. In this paper, plaintiff contended -- with no supporting legal citations -- that the government should pay interest on its debts, and declared that he would submit his evidence and calculations regarding interest within thirty days of the resolution of “all back pay issues.” Mot. to File (Jul. 13, 2007) at 2. The Court’s order dated October 9, 2007 gave Mr. Greene until October 30, 2007, to file a final document in his case articulating why he believes the record establishes that he is owed more than conceded and paid by the defendant, “including any argument regarding the availability of interest and any amount thereof.” Order (Oct. 9, 2007) at 2. After all of these months, and all of these extensions, Mr. Greene requests yet more time to research the matter.

It appears to the Court that further research on the part of plaintiff will prove futile. This Court may only award interest on a claim against the United States under a valid contract or federal statute that expressly provides for the payment of interest. 28 U.S.C. § 2516(a) (2000); *see Library of Congress v. Shaw*, 478 U.S. 310, 317 (1986) (superceded by statute for other

reasons); *see also Werner v. United States*, 226 Ct. Cl. 462, 466 n.5 (1981). Pre-judgment interest may be awarded only if there has been “a clear and express waiver of sovereign immunity by contract or statute, or if interest is part of compensation required by the Constitution.” *Clary v. United States*, 333 F.3d 1345, 1351 (Fed. Cir. 2003) (citing *United States Shoe Corp. v. United States*, 296 F.3d 1378, 1381 (Fed. Cir. 2002)).

As was discussed in the Court’s April 29, 2005 opinion and order in this case, although Mr. Greene did not clearly identified a money mandating statute supporting his claims for back pay, plaintiff did allege that the government owed him money for military service for which he had not been paid. *Greene v. United States*, 65 Fed.Cl. 375, 379 (2005). The Court found that, as Mr. Greene was a member of the Army Reserve, 37 U.S.C. § 206(a) was the money - mandating statute that provided the necessary basis for his back pay claim under the Tucker Act. *Id.* (citing *Palmer v. United States*, 168 F.3d 1310, 1313-14 (Fed. Cir. 1999); *Dehne v. United States*, 970 F.2d 890, 892 (Fed. Cir. 1992)).

The money mandating statute -- 37 U.S.C. § 206(a) -- does not expressly provide for the payment of interest. See 37 U.S.C. § 206(a) (2000). Moreover, precedents of our Court have found that no statutory provision establishes a right to interest in military pay cases. *See Anderson v. United States*, 54 Fed.Cl. 620, 629 (2002); *Ulmet v. United States*, 19 Cl. Ct. 527, 536-37 (1990). Because no explicit waiver of sovereign immunity allows for recovery of back pay interest in this case, Mr. Greene’s motion for an enlargement of time to research whether the government owes him interest as a part of his claims is **DENIED**. Given Mr. Greene’s *pro se* status, and the possibility that his fruitless research on the issue of interest might have diverted him from preparing a reply paper articulating the reasons he believes he is owed additional amounts from the government, plaintiff is granted ten days from the date of this order in which to file his reply paper. Plaintiff must submit his reply brief in a manner in which it will be **received by the Clerk of the Court on or by November 26, 2007**. This is the last extension that Mr. Greene will be allowed. After the time for filing plaintiff’s reply brief has run, the Court will consider briefing closed and the cross-motions for judgment submitted for decision, and will issue an opinion shortly thereafter.

IT IS SO ORDERED.

VICTOR J. WOLSKI
Judge