

In the United States Court of Federal Claims
NOT FOR PUBLICATION

No. 05-1016C
(Filed: May 3, 2006)

* * * * *

WILLIE RAY MAZON,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

* * * * *

ORDER OF DISMISSAL

Pending before this court is a motion by the United States (“government” or “United States”) to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Rules of the Court of Federal Claims (“RCFC”). Willie Ray Mazon, a pro-se plaintiff, filed the present action against the United States on September 20, 2005, seeking review of a Department of Veterans Affairs (“VA”) benefit determination. Mr. Mazon was on active duty in the United States Army from August 12, 1976, to November 12, 1976. In 1990, Mr. Mazon received a service-connected VA disability award for a psychiatric condition. The VA award is effective from the date of Mr. Mazon’s claim to the VA, which was on March 21, 1989. Pursuant to this determination, Mr. Mazon receives \$2,546.00 per month from the VA.

Mr. Mazon has sought to have the VA change the effective date of his disability award so that he can receive compensation back to the time of his basic training in 1976. On April 13, 2000, the Board of Veterans' Appeals ("BVA" or "Board") denied Mr. Mazon's request for an earlier effective date. Mr. Mazon appealed this decision to the Court of Appeals for Veterans Claims, which remanded the matter to the BVA based upon the enactment of the Veterans Claims Assistance Act of 2000, Pub. L. No. 106-475, 114 Stat. 2096 (2000). In its remand order, issued on July 26, 2001, the Court of Appeals for Veterans Claims stated that the BVA's April 13, 2000 decision, "to the extent that it denied entitlement to an effective date prior to March 21, 1989, for the award of service connection for schizophrenia, is VACATED and the matter is REMANDED to the Board for readjudication."

In its March 21, 2002 decision on remand, the BVA again denied Mr. Mazon's request for an earlier effective date. Mr. Mazon did not file an appeal of the BVA decision within the time provided for under 38 U.S.C. § 7266 (2000), which requires that a notice of appeal be filed within 120 days of a BVA decision. On August 27, 2005, Mr. Mazon requested review of the BVA decision under 38 U.S.C. § 7111 (2000), which provides that the BVA may revise a prior decision on "grounds of clear and unmistakable error." This request is pending before the BVA.

Mr. Mazon filed a complaint in this court on September 20, 2005, in which he challenges the March 21, 2002 decision of the BVA denying his request for an earlier

effective date for payment of his VA disability compensation.¹ In his complaint, Mr. Mazon “prays, that this Court after review finds that the Board’s March 21, 2002 decisions were Arbitrary, Capricious, Unsupported by Substantial Evidence, or Contrary to Law. Also contempt of court.”

On January 20, 2006, the government filed a motion to dismiss the case for lack of subject matter jurisdiction under RCFC 12(b)(1) on the ground that this court does not have jurisdiction to review decisions of the BVA under 38 U.S.C. § 511 (2000). The government further states that, under 38 U.S.C. § 7252(a) (2000), the Court of Appeals for Veterans Claims has exclusive jurisdiction to review BVA decisions. The government contends that, because Mr. Mazon did not appeal the BVA’s 2002 decision to the Court of Appeals for Veterans Claims within the time provided for such appeals, that decision became final under 38 U.S.C. § 7266. The government argues, in the alternative, that the case must be dismissed for failure to state a claim under RCFC 12(b)(6), on the ground that Mr. Mazon is seeking additional review before the BVA under 38 U.S.C. § 7111, and therefore he has not exhausted his administrative remedies.

¹ Mr. Mazon previously filed suit in this court against the United States seeking correction of his military records to indicate that he had been separated from the Army due to a disability. On March 17, 2004, this court granted the government’s motion to dismiss Mr. Mazon’s complaint on the ground that the action was barred by the six-year statute of limitations prescribed by 28 U.S.C. § 2501, and therefore was beyond this court’s subject matter jurisdiction. Mazon v. United States, No. 03-264C (Fed. Cl. Mar. 17, 2004). The dismissal was affirmed by the Federal Circuit on October 5, 2004. Mazon v. United States, No. 04-5094 (Fed. Cir. Oct. 5, 2004).

In response, Mr. Mazon filed a Motion to Amend Plaintiff's Complaint on February 24, 2006. In his amended complaint, Mr. Mazon alleges that the BVA violated his constitutional rights by failing to abide by the directive issued by the Court of Appeals for Veterans Claims to reconsider the effective date of his claim. Mr. Mazon states, in relevant part, "the VA Secretary or employees did not comply with the Court Order from the Court of Appeals for Veterans Claims (CAVC), dated July 26[,] 2001, were in direct civil contempt and then violated plaintiff's constitutional rights by unlawful compliance, plaintiff could have received an earlier effective date for disability back pay, therefore damages are due plaintiff for injury."

DISCUSSION

Section 511 of title 38, United States Code, as amended by the Veterans' Judicial Review Act ("VJRA"), Pub. L. No. 100-687, 102 Stat. 4105 (1988) and the Department of Veterans Affairs Codification Act, Pub. L. No. 102-83, § 2(a), 105 Stat. 378, 388 (1991), provides, in pertinent part, that: "The Secretary [of Veterans Affairs] shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or dependents or survivors of veterans. Subject to subsection (b), the decision of the Secretary as to any question shall be final and conclusive and may not be reviewed by any other official or by any court."²

² None of the exceptions listed in 38 U.S.C. § 511(b) authorize the court's review of the current case.

Other provisions of VJRA establish the exclusive avenue for redress of veterans' benefits determinations: (1) claimants may first appeal to the BVA, 38 U.S.C. § 7104(a), (2) then to the Court of Appeals for Veterans Claims, id. § 7232(a), (3) then to the Court of Appeals for the Federal Circuit, id. § 7292(c), and (4) finally to the United States Supreme Court, id. See Gardner v. Brown, 5 F.3d 1456, 1463 (Fed. Cir. 1993), aff'd, 513 U.S. 115 (1994); Thomas v. Principi, 394 F.3d 970, 973 (D.C. Cir. 2005). It is thus well-settled that Section 511 precludes judicial review of veterans' benefits determinations in this court. Davis v. United States, 36 Fed. Cl. 556, 559 (1996) (cases cited therein).

Therefore, the key issue presented by the government's motion to dismiss is whether Mr. Mazon has pled any claim that is not barred by 38 U.S.C. § 511. A review of both Mr. Mazon's original complaint and his amended complaint, which he filed in response to the government's motion to dismiss, reveals that Mr. Mazon is seeking this court's review of the BVA's decision to deny him veterans' benefits. At bottom, Mr. Mazon's objections to the BVA's actions, including his constitutional claims, are all challenges to the BVA's decision not to award him veterans' benefits back to an earlier effective date. See Cheves v. Dep't of Veterans Affairs, 227 F. Supp. 2d 1237, 1246 (M.D. Fla. 2002) (holding that a party may not disguise his benefits claim by claiming a constitutional violation in connection with the denial of the benefit).³ In such

³ The government also correctly argues that this court would not have jurisdiction over Mr. Mazon's constitutional claims, in any case, on the grounds that these claims, standing alone, are not "money mandating." See James v. Caldera, 159 F.3d 573, 581 (Fed. Cir. 1998).

circumstances, all of Mr. Mazon's claims are barred by 38 U.S.C. § 511 and must be dismissed for lack of subject matter jurisdiction pursuant to RCFC 12(b)(1). The government's motion to dismiss is **GRANTED**. The Clerk is directed to dismiss the complaint without prejudice. Each party is to bear its own costs.

IT IS SO ORDERED.

s/Nancy B. Firestone _____
NANCY B. FIRESTONE
Judge _____
