

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
Nos. 06-304C, 06-395C (consolidated)

(Filed: August 17, 2006)

JOSEPH FUCE II,)
)
Plaintiff,)
)
v.)
)
UNITED STATES,)
)
Defendant,)
)
)

OPINION AND ORDER

These consolidated cases have been filed by plaintiff, Joseph Fuce II, to contest actions taken or omitted by a federal court and a federal agency before which were pending requests for damages and other relief presented by Mr. Fuce. In each of the two cases, the government has moved to dismiss the complaints on the ground that this court lacks subject matter jurisdiction to consider Mr. Fuce’s claims. Mr. Fuce has filed competing motions for judgment, asserting that he is entitled to relief because the government has defaulted in submitting a timely response to his claims in this court. For the reasons explained below, the government’s motions to dismiss are granted and Mr. Fuce’s motions for judgment are denied.

BACKGROUND¹

Mr. Fuce’s first claim, set out in No. 06-304C, stems from proceedings in the U.S. District Court for the Eastern District of Pennsylvania (“district court”). Mr. Fuce filed four distinct complaints with the district court from September 24, 2004 to March 23, 2005. The first suit was filed in the district court on September 24, 2004, against Turf Club Services, Inc. seeking \$750,000. *See* Compl. in No. 06-304C, ¶ 1. On November 24, 2004, Mr. Fuce filed a

¹The recited circumstances do not constitute findings of fact by the court. They are drawn from the plaintiff’s complaints in cases Nos. 06-304C and 06-395C, and otherwise from undisputed aspects of the motions and responses filed in these cases.

second lawsuit, this time seeking \$7,000,000 in punitive damages against General Security Systems, Inc. *See id.* ¶ 2. On March 23, 2005, Mr. Fuce filed two additional lawsuits in the district court, one for \$150,000 against Security Services, Inc., and another for \$700,000 against Top of the Clock, Inc. *See id.* ¶ 4. He paid the \$150 filing fee for the first two complaints and submitted motions to proceed *in forma pauperis* in the latter two cases. Compl. in No. 06-304C, ¶¶ 1, 2, 4.

Subsequently, Mr. Fuce made a series of filings that contested actions by the clerk's office and judges of the district court, particularly focusing on the clerk's office's failure to enter judgment in his favor on his claims. Compl. in No. 06-304C, ¶¶ 1-6, 14, Exs. E, F, G. When those efforts did not produce the results Mr. Fuce desired, he filed the first of his lawsuits in this court, No. 06-304C, seeking to recover damages from various employees of the district court for deprivation of his civil rights.

Mr. Fuce's second claim, set out in No. 06-395C, concerns the Social Security Administration ("SSA"). In January 2006, he submitted to the SSA a request to withdraw an application for social security benefits, for which his father had originally applied. Compl. in No. 06-395C at 1. After failing to receive a response to his request for four months, Mr. Fuce filed his second complaint, No. 06-395C, in this court, asserting that the Commissioner of the SSA deprived him of his alleged civil right to terminate a contract.

On May 25, 2006, the government moved to dismiss Mr. Fuce's complaint in No. 06-304C pursuant to Rules 12(a) and (b) of the Rules of the Court of Federal Claims ("RCFC"). Def.'s Mot. in No. 06-304C, at 1-4. Subsequently, in No. 06-304C Mr. Fuce moved for judgment on June 7, 2006, and then on July 19, 2006, he moved for default judgment, claiming that the government had filed a "fictitious Notice of appearance & motion for the purpose of causing an unnecessary delay and needless increase in the cost of litigation." Pl.'s Mot. in No. 06-304C, at 1.

In No. 06-395C, Mr. Fuce filed a motion for default judgment on June 22, 2006, and a motion for summary judgment on July 24, 2006. On July 26, 2006, the government moved to dismiss that complaint.

STANDARDS OF DECISION

Mr. Fuce, as the plaintiff, must affirmatively establish this court's subject matter jurisdiction over his claims by a preponderance of the evidence. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988); *see McNutt v. General Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936); *see also Hambsch v. United States*, 857 F.2d 763, 764 (Fed. Cir. 1988) (holding that a federal court is obliged to determine its own jurisdiction for each case). A court must accept all undisputed facts averred in a plaintiff's complaint, and a court must "draw all reasonable inferences in favor of the plaintiff" when determining whether it has subject matter jurisdiction. *Goel v. United States*, 62 Fed. Cl. 804, 806 (2004) (citing *Henke v.*

United States, 60 F.3d 795, 797 (Fed. Cir. 1995)); *see also Hamlet v. United States*, 873 F.2d 1414, 1415-16 (Fed. Cir. 1989).

The Tucker Act delegates to this court jurisdiction over “any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1). An explicit jurisdictional assignment to another federal court or an express jurisdictional limitation may override and displace this court’s normally applicable Tucker Act jurisdiction. *See, e.g., Texas Peanut Farmers v. United States*, 409 F.3d 1370, 1373-74 (Fed. Cir. 2005) (holding that specific jurisdictional provisions of Subsections 506(d) and 508(j) of the Federal Crop Insurance Act, codified at 7 U.S.C. §§ 1506(d), 1508(j), superseded Tucker Act jurisdiction); *Williams v. United States*, 71 Fed. Cl. 194, 198 (2006) (collecting authorities).

Pro se claimants are held to a lower standard of pleading than the standard applicable to pleadings prepared by counsel. In *pro se* cases, this court must search the record “to see if plaintiff has a cause of action somewhere displayed.” *Boyle v. United States*, 44 Fed. Cl. 60, 62 (1999) (quoting *Ruderer v. United States*, 412 F.2d 1285, 1292 (Ct. Cl. 1969)); *see Hughes v. Rowe*, 449 U.S. 5, 9-10 (1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

ANALYSIS

The Tucker Act constitutes a waiver of sovereign immunity for suits against the United States, but the Act standing alone does not grant jurisdiction to this court because a substantive right to monetary damages must be averred for a claim to fall under this court’s jurisdiction. *United States v. Testan*, 424 U.S. 392, 398 (1976); *James v. Caldera*, 159 F.3d 573, 580 (Fed. Cir. 1998) (citing *Hamlet v. United States*, 63 F.3d 1097, 1101 (Fed. Cir. 1995)); *Holley v. United States*, 124 F.3d 1462, 1465 (Fed. Cir. 1997).

Mr. Fuce argues that the circumstances of both of his claims demonstrate that an employee of the government deprived him of civil rights “knowingly, willfully, and without reason,” which language suggests an intentional tort. Compl. in No. 06-304C, at 1; Compl. in No. 06-395C, at 1. This court lacks jurisdiction to consider tort claims against the government. *See* 28 U.S.C. § 1491(a)(1) (quoted in pertinent part *supra*). Therefore, to the extent that either of Mr. Fuce’s claims alleges a tort, this court lacks the jurisdiction to hear those claims.

Mr. Fuce also avers that employees of the district court and the SSA Commissioner violated 42 U.S.C. §§ 1981, 1983, 1985 and 18 U.S.C. §§ 242, 1506. Compl. in No. 06-304C, ¶¶ 7-9; Compl. in No. 06-395C, ¶¶ 6-8. Mr. Fuce specifically alleges that named employees of the district court and an employee of the SSA caused his injuries through “unethical behavior.” Compl. in No. 06-304C, ¶¶ 13-14; Compl. in No. 06-395C, ¶ 12. This court lacks jurisdiction to hear claims against individuals. *See Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997).

Even if this court could construe Mr. Fuce's first complaint as asserting a claim directly against the district court itself, courts are not proper parties under any of the cited civil rights statutes. See *Erdman v. Stevens*, 458 F.2d 1205, 1207-08 (2d Cir. 1972) (holding that a judge and a clerk of a state court may be sued under 42 U.S.C. § 1983, but as private individuals and not in their capacity as government officials (citing *Law Students Civil Rights Research Council, Inc. v. Wadmond*, 299 F.Supp. 117, 123 (S.D.N.Y. 1969) (three-judge court), *aff'd on other grounds*, 401 U.S. 154 (1971))). Additionally, 28 U.S.C. § 1343 assigns exclusive original jurisdiction for all suits for deprivation of civil rights originating under 42 U.S.C. § 1985 to district courts. See *Marlin v. United States*, 63 Fed. Cl. 475, 476 (2005). Section 1343 also applies to all suits premised upon 42 U.S.C. §§ 1981, 1983. *Osborn v. United States*, 47 Fed. Cl. 224, 232 (2000). The other statutes cited by Mr. Fuce, 18 U.S.C. §§ 242, 1506, are federal criminal statutes that, among other things, apply to willful deprivation of rights under color of law on account of alienage, color, or race, 18 U.S.C. § 242, or to anyone who "feloniously steals, takes away, alters, falsifies, or otherwise avoids any record, writ, process, or other proceeding, in any court of the United States, whereby any judgment is reversed, made void, or does not take effect." 18 U.S.C. § 1506. This court does not have jurisdiction over criminal proceedings, including those arising under Sections 242 and 1506. *Maracalin v. United States*, 52 Fed. Cl. 736 (2002) (applying *res judicata* to dismiss an action that raised the same claims under 18 U.S.C. § 1506 as those presented in an earlier case that was dismissed for lack of jurisdiction), *aff'd*, 63 F. App'x 494 (Fed. Cir. 2003)).

Mr. Fuce's complaint in No. 06-395C might be liberally construed as alleging an entitlement to benefits from the SSA. However, jurisdiction over claims for social security benefits inheres first in the SSA, and then any appeals must be filed in a district court. *Marcus v. United States*, 909 F.2d 1470 (Fed. Cir. 1990); 42 U.S.C. §§ 405(g) and (h). Any such claim cannot be heard in this court.

Finally, the constitutional rights Mr. Fuce avers were abridged do not confer a money-mandating duty, which duty is required as a predicate for this court's jurisdiction. See *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995) (holding that neither the Due Process Clause nor Equal Protection Clause imposes a money-mandating duty); *Goel*, 62 Fed. Cl. at 808 n.4 (same). Consequently, this court lacks jurisdiction to hear Mr. Fuce's constitutional claims.

CONCLUSION

Mr. Fuce's motions to proceed *in forma pauperis* are GRANTED for the limited purpose of addressing this court's jurisdiction to consider Mr. Fuce's complaints.

For the reasons stated, the government's motions to dismiss those complaints are GRANTED. Mr. Fuce's motions for summary and default judgment are correspondingly

DENIED.² Both cases shall be dismissed for lack of subject matter jurisdiction. The clerk shall enter judgment accordingly. No costs.

It is so ORDERED.

Charles F. Lettow
Judge

²The government defended the cases brought by Mr. Fuce by moving for dismissal. Consequently, there has been no default. *See* RCFC 55(a). Moreover, default judgment is inappropriate because Mr. Fuce has failed to establish this court's jurisdiction over any of his claims.