

In the United States Court of Federal Claims

No. 07-514 C
(Filed July 16, 2007)

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LONNIE RAY WICKLIFFE, \*
Plaintiff, \*
v. \*
THE UNITED STATES, \*
Defendant. \*

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ORDER

In this action Lonnie Ray Wickliffe, appearing pro se, seeks a writ of mandamus, addressed to the Department of the Navy, Board for Correction of Naval Records and the National Personnel Records Center, to require that these agencies provide "true, complete, and accurate, Record of Proceedings," involving his military service and applications.

Mr. Wickliffe also submits an incomplete application to proceed in forma pauperis, which fails to list all his assets. See 28 U.S.C. § 1915(a)(1). In the interests of judicial economy and to analyze whether the court has jurisdiction over this matter, it is assumed without deciding that Mr. Wickliffe could establish entitlement to proceed in forma pauperis.

The court has an obligation to examine its jurisdiction at all stages of a proceeding and may raise the issue for consideration sua sponte. Wood-Ivey Sys. Corp. v. United States, 4 F.3d 961, 967 (Fed. Cir. 1993); McCullough v. United States, 76 Fed. Cl. 1, 3 (2006).

Material filed by Mr. Wickliffe in this matter shows that this action was preceded by litigation he initiated in the United States District Court for the Southern District of Indiana (Indianapolis), Wickliffe v. National Personnel Records Center, No. 1:07-CV-00214-LJM-JMS. This district court cause of action was dismissed

with prejudice for failure to prosecute by an order and judgment entered June 8, 2007. A timely motion for reconsideration was denied on June 18, 2007.

The subject matter of the action filed in the district court is not entirely clear. Mr. Wickliffe's claim of service connection for post-traumatic stress disorder had been denied by the Board of Veterans' Appeals in 1990 and the denial was affirmed by the United States Court of Veterans Appeals in 1992. *See Lonnie Wickliffe a/k/a Mutee El-Amin v. Jesse Brown*, Order, filed May 26, 1993 (Fed. Cir. No. 93-7037). The referenced district court action, dismissed in June 2007, appears not again to seek benefits administered by the Department of Veterans Affairs, but to be premised on an assertion that the government breached the enlistment contract, signed January 24, 1969, which was the genesis of Mr. Wickliffe's active duty service in the United States Marine Corps from January 24, 1969 to July 28, 1970, with a Reserve obligation thereafter until January 23, 1975.

It is settled law, however, that a claim for military pay or benefits is not based on contract, as statutes are the exclusive source of law governing the compensation rights of members of the military. *Schism v. United States*, 316 F.3d 1259 (Fed. Cir. 2002). If it were assumed that Mr. Wickliffe's *pro se* district court pleading, although citing a breach of contract, could be read to encompass a claim for statutory military disability pay stemming from his active duty service in 1969-1970, issues such as required prior administrative consideration by the Navy for such a claim and district court jurisdiction thereafter over any such claim exceeding \$10,000 would have arisen. *See Chambers v. United States*, 417 F.3d 1218 (Fed. Cir. 2005); 28 U.S.C. § 1346(a)(2). As the district court litigation was dismissed with prejudice, for failure to prosecute, these issues were not reached.

Mr. Wickliffe's application to this court for a writ of mandamus may, in fact, be intended to comprise an appeal to the United States Court of Appeals for the Federal Circuit from the dismissal of his district court litigation. *See Smith v. Barry*, 502 U.S. 244, 248 (1992). Mr. Wickliffe includes a "Notice of Appeals" and a copy of the district court docket entries as part of his mandamus filing. If Mr. Wickliffe's filings here are intended to comprise an appeal from the dismissal of his district court action, he has filed in the wrong court. A notice of appeal from the district court judgment dismissing his case must be filed with the district court. *See* Federal Rules of Appellate Procedure ("FRAP") 4(a)(1). If the action was brought in the district court pursuant to 28 U.S.C. § 1346(a)(2), the United States Court of Appeals for the

Federal Circuit would have jurisdiction over any timely appeal. 28 U.S.C. § 1295(a)(2).

As Mr. Wickliffe's pleadings here are limited to a request to obtain a writ of mandamus, the question of this court's jurisdiction to act must be considered. Absent a pleaded monetary claim against the United States, within the jurisdictional categories set forth in 28 U.S.C. § 1491, the Court of Federal Claims can only dismiss the case. *Fisher v. United States*, 402 F.3d 1167, 1173 (Fed. Cir. 2005). Without jurisdiction, the court has no power to grant any relief. *Hornback v. United States*, 405 F.3d 999 (Fed. Cir. 2005). The mandamus statute, 28 U.S.C. § 1361, grants jurisdiction to district courts not the Court of Federal Claims. *Daluz v. United States*, 73 Fed. Cl. 129 (2006). Moreover, even if jurisdiction were present, Mr. Wickliffe has not pleaded facts sufficient to support the granting of a writ of mandamus – a “‘drastic and extraordinary’ remedy ‘reserved for really extraordinary causes.’” *Cheney v. U. S. Dist. Court for the D.C.*, 542 U.S. 367, 380 (2004) (quoting *Ex parte Fahey*, 332 U.S. 259, 258-60 (1947)). If jurisdiction were present, the discovery rules of this court would provide a basis to acquire government records relevant to the resolution of any pleaded monetary claim against the United States within the jurisdiction provided by 28 U.S.C. § 1491. As Mr. Wickliffe would have an adequate alternative means to acquire relevant records if jurisdiction over the matter were present, there is no viable basis pleaded for the granting of a writ of mandamus. *Mallard v. U. S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296, 309 (1989); *In re U.S.*, 463 F.3d 1328, 1332 (Fed. Cir. 2006).

In the above circumstances, Mr. Wickliffe has failed to plead any matter on which relief can be granted. On the possibility that Mr. Wickliffe intends his filings here to comprise a notice of appeal from the district court's judgment entered on June 8, 2007, the “Notice of Appeals” filed on July 10, 2007 shall be transferred to the district court pursuant to 28 U.S.C. § 1631.

Accordingly, it is **ORDERED** that:

(1) Mr. Wickliffe's application to proceed in forma pauperis is **GRANTED** solely to the extent required for the implementation of this order and is, otherwise, **DENIED** as **MOOT**;

(2) Mr. Wickliffe's application for a writ of mandamus is **DISMISSED** as no jurisdiction is established by which such relief could be granted and if such jurisdiction were present, no viable basis for granting the application is pleaded; and

(3) The "Notice of Appeals," filed July 10, 2007, shall be transferred to the United States District Court , Southern District of Indiana (Indianapolis), Civil No. 1:07-CV-214-LJM-JMS together with a copy of this order as pursuant to 28 U.S.C. § 1631, it is found that under FRAP 4(a)(1), the Court of Federal Claims lacks jurisdiction over a Notice of Appeal addressed to a district court judgment, and jurisdiction over the matter resides in the District Court.

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James F. Merow  
Senior Judge