

In the United States Court of Federal Claims

NOT FOR PUBLICATION

No. 07-208C

(Filed May 29, 2008)

RAYMOND HARRY SWENTEK,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER

The Clerk's Office received from Mr. Swentek, on April 24, 2008, a document titled "Motion for Consolidation of Cases Nos 07-208C, 07-214C, and Rehearing and or Review Consideration, Providing Wholeness and to Creditors Thereof." The Clerk did not file the document because only one copy was submitted, and not three copies as required under Rule 5.3(d) of the Rules of the United States Court of Federal Claims (RCFC). The Court, mindful of plaintiff's *pro se* status, will nonetheless excuse the defect and accept the submission, and the Clerk is hereby directed to file the document. The Court notes that plaintiff provided a certificate of service on defendant at the bottom of the first page of his submission.

Mister Swentek apparently seeks to consolidate the two cases which he filed in our Court in late March and early April of last year, but this is not possible for several reasons. First, the cases have been assigned to two different judges, and according to RCFC 42.1, a judge has the power only to consolidate the cases on his own docket. Moreover, only one case should have been docketed at all, given that plaintiff concedes he had separately mailed to the Clerk's Office two copies of the same complaint. *See* Status Conference Tr. 24-25, Sept. 5, 2007. Finally, Mr. Swentek's request is moot, because Judge Baskir dismissed 07-214C on May 22, 2008 on the ground of *res judicata*. Thus, Mr. Swentek has received what amounts to "consolidation" in that the same decision (the order dated January 25, 2008 in this case) controlled both docket numbers. The motion to consolidate is therefore **DENIED**.

Mister Swentek also belatedly asks for reconsideration of the dismissal in case number 07-208C, which according to RCFC 59(b) should have been received within ten days of the

January 28, 2008 entry of judgment. Mister Swentek appears to request that he be excused from the ten-day deadline of RCFC 59(b) due to health problems. But exceptions to this deadline are forbidden by RCFC 6(b). Even were the motion to reconsider timely, plaintiff has not presented the Court with adequate grounds for reconsideration such as a manifest error of law or fact on a court's part. *Pacific Gas & Elec. Co. v. United States*, 58 Fed. Cl. 1, 2 (2003). Specifically, Mr. Swentek must have shown: a) an intervening change in controlling law; b) the availability of previously unavailable evidence; or c) the necessity of allowing a motion in order to prevent manifest injustice. *Griswold v. United States*, 61 Fed. Cl. 458, 460-61 (2004). The plaintiff has not shown cause for reconsideration.

Because plaintiff is representing himself, however, the Court liberally construes his request as a motion for relief from judgment or order under RCFC 60(b). Here too, however, Mr. Swentek has failed to present the Court with adequate grounds for relief -- such as newly discovered evidence that could not have been discovered within the ten-day time limit of RCFC 59(b). *See* RCFC 60(b). The most recent of the "new" evidence that Mr. Swentek submits to the Court is from 1981 and thus does nothing to undermine the statute of limitations ground upon which the case was dismissed. Moreover, this evidence appears to have been available to Mr. Swentek during the ten-day time period of RCFC 59(b) if not during the adjudication of Mr. Swentek's case. The motion to vacate is therefore **DENIED**.

IT IS SO ORDERED.

VICTOR J. WOLSKI
Judge