

# In the United States Court of Federal Claims

No. 08-643C

(Filed: January 13, 2009)

(Unpublished)

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\*  
RAFAL FILIPCZYK, \*  
\*  
Plaintiff, \*  
\*  
v. \*  
\*  
THE UNITED STATES, \*  
\*  
Defendant. \*  
\*\*\*\*\* \*

*Rafal Filipczyk, appearing pro se, Diamondhead, Mississippi, Plaintiff.*

*J. Hunter Bennett, with whom were Gregory G. Katsas, Assistant Attorney General, Jeanne E. Davidson, Director, and Reginald T. Blades, Jr., Assistant Director, United States Department of Justice, Commercial Litigation Branch, Civil Division, Washington, D.C., for Defendant.*

## OPINION AND ORDER ON DEFENDANT’S MOTION TO DISMISS

WHEELER, Judge.

Before the Court is Defendant’s motion to dismiss for lack of subject matter jurisdiction, pursuant to Rule 12(b)(1) of the Court of Federal Claims (“RCFC”). *Pro se* Plaintiff Rafal Filipczyk is a civilian employee of the Naval Oceanographic Office (“NAVO”), located at Stennis Space Center in Mississippi. On July 28, 2007, Mr. Filipczyk left his permanent duty station and began temporary duty assignment aboard the United States Naval Ship Bowditch (“Bowditch”). After the Bowditch docked in Okinawa, Japan on September 24, 2007, Mr. Filipczyk rented a hotel room for three nights, from September

25-28, 2007. The Bowditch subsequently docked in Sasebo, Japan, and Mr. Filipczyk rented a hotel room for the nights of October 22-23, 2007.

On October 30, 2007, Mr. Filipczyk submitted a request to NAVO for reimbursement for his hotel expenses, totaling \$175.17. NAVO denied the request based on a provision in the collective bargaining agreement between NAVO and the American Federation of Government Employees, which prohibits reimbursement of hotel expenses incurred during the first 48 hours that a ship to which an employee is assigned is in port. On March 20, 2008, Mr. Filipczyk appealed NAVO's denial of reimbursement to the United States Civilian Board of Contract Appeals ("Board"), alleging violation of 5 U.S.C. § 5702(a)(1)-(2) (2006) and 5 U.S.C. § 5911(e) (2006). The Board dismissed Mr. Filipczyk's claim on June 17, 2008 on the grounds that it lacked subject matter jurisdiction because the collective bargaining agreement did not permit appeal to the Board as an administrative procedure for resolving grievances. Mr. Filipczyk petitioned the Board for reconsideration, which the Board denied on August 19, 2008. On August 27, 2008, the Board granted Mr. Filipczyk's motion to rewrite one sentence of its earlier decision but upheld its holding that it did not possess subject matter jurisdiction to hear his claim. On September 11, 2008, Mr. Filipczyk filed a complaint in the Court of Federal Claims asking the Court to vacate the Board's denial of subject matter jurisdiction. Defendant filed a motion to dismiss pursuant to RCFC 12(b)(1) on November 10, 2008. Mr. Filipczyk filed a response on November 20, 2008, and Defendant submitted a reply on December 5, 2008.

When considering a motion to dismiss for lack of subject matter jurisdiction under RCFC 12(b)(1), the Court accepts as true the undisputed allegations in the complaint, and draws all reasonable inferences in favor of the plaintiff. Hamlet v. United States, 873 F.2d 1414, 1416 (Fed. Cir. 1989) (citing Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)). Furthermore, *pro se* litigants are afforded considerable leeway in presenting their pleadings to the Court. Haines v. Kerner, 404 U.S. 519, 520-21 (1972) (explaining that *pro se* pleadings are held to "less stringent standards than formal pleadings drafted by lawyers . . ."). This broad latitude afforded *pro se* litigants does not, however, exempt them from meeting this Court's jurisdictional requirements. See Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995) ("The fact that [the plaintiff] acted *pro se* in the drafting of his complaint may explain its ambiguities, but it does not excuse its failures, if such there be."). Consequently, Plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988) (internal citations omitted).

The Tucker Act grants the Court of Federal Claims jurisdiction "to render judgment upon 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 liquidation or unliquidated damages in cases not

sounding in tort.” 28 U.S.C. § 1491(a)(1) (2006). The Tucker Act, however, “does not create any substantive right[s] enforceable against the United States for money damages[;] . . . the Act merely confers jurisdiction upon it whenever the substantive right exists.” United States v. Testan, 424 U.S. 392, 398 (1976) (internal citations omitted). A plaintiff coming before this Court, therefore, must identify a separate provision of law conferring a substantive right for money damages against the United States. See Todd v. United States, 386 F.3d 1091, 1094 (Fed. Cir. 2004).

The Tucker Act does not grant this Court jurisdiction to review decisions of boards of contract appeals. See 28 U.S.C. § 1491(a). Furthermore, a plaintiff seeking to invoke this Court’s jurisdiction “must present a claim for ‘actual, presently due money damages from the United States.’” Nat’l Air Traffic Controllers Ass’n v. United States, 160 F.3d 714, 716 (Fed. Cir. 1998) (quoting United States v. King, 395 U.S. 1, 3 (1969)). “It is not enough that the court’s decision may affect the disposition of a monetary claim pending elsewhere, or that the court’s decision will ultimately enable the plaintiff to receive money from the government.” Id. (citing King, 395 U.S. at 4). A plaintiff may not seek equitable relief unless it relates to a claim for monetary relief pending before the Court. Id. (citing Katz v. Cisneros, 16 F.3d 1204, 1208 (Fed. Cir. 1994)).

In the present case, Mr. Filipczyk does not seek reimbursement for travel expenses but asks instead that the Court review the Board’s finding that it lacked subject matter jurisdiction to hear his claim. Mr. Filipczyk argues that the Court has jurisdiction to address his claim under 28 U.S.C. § 1491(a)(2) and RCFC 52.2(a)(1), both of which state that the Court may “remand appropriate matters to any administrative or executive body or official.” § 1491(a)(2); RCFC 52.2(a)(1). However, these provisions limit the Court’s remand power to cases “within its jurisdiction.” § 1491(a)(2); RCFC 52.2(a)(1); Hornback v. United States, 405 F.3d 999, 1002 (Fed. Cir. 2005) (internal citations omitted). Given that Mr. Filipczyk’s claim does not seek monetary damages, this Court does not have subject matter jurisdiction to here it. Accordingly, Defendant’s motion to dismiss for lack of subject matter jurisdiction is GRANTED. The Clerk shall dismiss Plaintiff’s complaint without prejudice.

IT IS SO ORDERED.

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THOMAS C. WHEELER  
Judge