In the United States Court of Federal Claims

NOT FOR PUBLICATION
No. 03-1677C
(Filed February 27, 2009)

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*
WILLIAM P. GREENE, *
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Plaintiff, *
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v. *
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THE UNITED STATES, *
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Defendant. *
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MEMORANDUM OPINION AND ORDER

Plaintiff, William P. Greene, acting *pro se*, brought this action against the United States regarding his involuntary separation from the United States Army Reserve. In this final stage of the case, plaintiff has filed a motion for reconsideration pursuant to Rule 59(a)(1) of the Rules of the United States Court of Federal Claims ("RCFC") of the Court's decision related to certain student loan claims and a motion to transfer alleged due process claims back to the district court for consideration. Plaintiff has also requested an additional document from the government. The government has moved for judgment in its favor. For the following reasons, the Court **DENIES** Mr. Greene's motion for reconsideration and **DENIES** his motion to transfer. The Court also **DENIES** Mr. Greene's discovery request. Finding that Mr. Greene has no remaining monetary claims, the Court **GRANTS** the government's motion for judgment in its favor and dismisses the case with prejudice.

I. BACKGROUND

A full recitation of the facts surrounding Mr. Greene's initial complaint is set out in the Court's first decision in this case. *Greene v. United States*, 65 Fed. Cl. 375, 376-78 (2005). Mister Greene, who currently works as an accountant, is a former officer in the United States Army Reserve. *Id*. at 376; Mot. in Resp. to this Court's Order Dated Nov. 16, 2007 at 3. He was involuntarily separated from the military for substandard performance of duty and given an honorable discharge on September 24, 1996. *See Greene*, 65 Fed. Cl. at 376; *see also* Compl. ¶ 39.

In 1996, Mr. Greene filed a complaint in the U.S. District Court for the District of Connecticut. *Greene*, 65 Fed. Cl. at 377. Initially, the district court dismissed Mr. Greene's complaint for failure to exhaust all administrative remedies, as Mr. Greene had not filed an application with the Army Board for Correction of Military Records ("ABCMR"). On March 31, 1997, Mr. Greene proceeded to file an application for correction of his military record with the ABCMR. *Id*. He attached his dismissed district court complaint to his application. *Id*. On November 24, 1998, the ABCMR issued its decision, where it concluded that Mr. Greene "failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice." Admin. R. at 303.

As a result of the ABCMR's decision, Mr. Greene again filed a complaint with the district court in Connecticut. *Greene*, 65 Fed. Cl. at 377. The district court dismissed Mr. Greene's complaint for lack of subject matter jurisdiction because it found that it was "highly likely" that the relief Mr. Greene sought translated into monetary damages in excess of $10,000, which under the Tucker Act must be brought in our court. *Id.* (discussing *Greene v. United States Army Reserve*, 222 F.Supp.2d 198, 201 (D. Conn. 2002)). The district court also found that it did not have jurisdiction over Mr. Greene's claims sounding in tort as these claims arose from alleged injuries occurring in "the course of activity incident to military service." *Greene*, 222 F.Supp.2d at 201 (citations omitted). On October 12, 2002, Mr. Greene filed a motion in the district court to have his case reopened and transferred to this court. *Greene*, 65 Fed. Cl. at 378.

The district court granted plaintiff's motion, and pursuant to 28 U.S.C. § 1681, transferred the case here. *See id*. In a complaint filed in this Court, by leave, on September 3, 2003, Mr. Greene sought: 1) reinstatement in the Army Reserve; 2) back pay with applicable interest; 3) student loan repayment; 4) promotion to the rank of Captain with a guarantee of promotion to the ranks of Major through Colonel upon meeting the applicable requirements; 5) removal of all disciplinary records from his military personnel file; 6) reinstatement of his security clearance; 7) a company commander position; 8) the opportunity to attend the military intelligence advanced course; 9) the opportunity to perform active duty tours of his choosing; 10) the opportunity to perform a four-year Active Guard and Reserve tour with the unit of his choice; 11) punitive damages of ten million dollars; and 12) a criminal investigation and prosecution for the offenses committed by the Army regarding the administrative processing of his case. Compl. 19-20.

The United States moved to dismiss Mr. Greene's complaint pursuant to RCFC 12(b)(6) for failure to state a claim upon which relief could be granted or, in the alternative, for judgment on the administrative record pursuant to former RCFC 56.1.[1] The Court in its 2005 opinion, dismissed all of Mr. Greene's back pay claims for failure to state a claim upon which relief may be granted, with the exception of back pay related to Mr. Greene's retroactive promotion to the rank of First Lieutenant and for drills performed between July 1991 and January 1992. *Greene*, 65 Fed. Cl. at 385. The Court also dismissed sua sponte for want of subject matter jurisdiction

[1] As of June 20, 2006, RCFC 56.1 has been replaced by RCFC 52.1.

Mr. Greene's claims for punitive damages. *Id*. The Court granted the government's motion for judgment on the administrative record with regard to Mr. Greene's claims for student loan repayment and denied the government's motion for judgment on the administrative record for his claims arising from his retroactive promotion to the rank of First Lieutenant and for drills performed between July 1991 and January 1992. *Id*.

Plaintiff then moved for reconsideration of the Court's decision regarding his student loan claims and moved for reconsideration of the Court's purported "'dismissal of due process violations.'" Mem. Op and Order (Apr. 2, 2007) at 1. He also requested back pay based on additional calculations that he submitted to the Court, above the amount already paid to him by the government. *Id*. Based upon this request, the government moved for leave to submit a supplemental audit and for an order that Mr. Greene supply any further documentation in support of his remaining back pay claims within sixty days. *Id.* at 1-2.

The Court, in its April 2, 2007 Memorandum Opinion and Order, denied Mr. Greene's motion for reconsideration of the student loan repayment issue and his motion for reconsideration of the alleged due process violations he averred were contained in his complaint. *Id*. at 2. The Court construed plaintiff's motion for reconsideration of his supposed due process claims as a motion to transfer the claims back to the Connecticut district court. *Id*. at 7. Mister Greene also was ordered to submit any additional evidence or arguments he had in support of his claims for additional back pay within sixty days. Mem. Op. and Order (Apr. 2, 2007) at 2.

Mister Greene should have provided the Court with any additional evidence in support of his case by June 1, 2007. Rather, Mr. Greene, on June 6, 2007, filed a motion with this Court for an enlargement of time to file documents in support of his back pay claims. In response, the Court granted to Mr. Greene until June 18, 2007, to file these documents. Order (June 12, 2007). Keeping in mind Mr. Greene's *pro se* status, the Court, on July 13, 2007, accepted, by leave of the Judge, a motion asking the Court to accept supplemental evidence from Mr. Greene purportedly supporting his back pay claims. Mot. to File Pl.'s Leave and Earnings Statements and Pay Tables as Evidence in Supp. of Back Pay Calculations (filed July 13, 2007).

The government filed a response to Mr. Greene's filing on August 29, 2007, in which defendant did not object to the filing of Mr. Greene's additional material. Def.'s Resp. to Pl.'s Mot. to File Pl.'s Leave and Earning Statements as Evidence in Supp. of Back Pay Calc. at 1. As such, on October 9, 2007, the Court granted Mr. Greene's motion and included the materials contained in his July 13, 2007 filing as a supplement to the administrative record. The government, also in its response moved for judgment in its favor. *Id.* at 3.

Next, on September 13, 2007, the Court received from Mr. Greene what appeared to be a motion to compel defendant to produce documents related to a portion of plaintiff's claim regarding the collection of $602.02. Mot. [] for Produc. of Docs. by Def[]. In this motion to compel, Mr. Greene requested a "Report of Survey" that apparently relates to the Army's prior collection of $602.02. *Id.* at 2. The Court denied this request as the Court was under the

impression that the government had already reimbursed Mr. Green for the amount in question. Order (Sept. 14, 2007). Mr. Greene's second request was for "'a copy of the law that granted the Defendants [sic] the right to collect interest on monies collected from Plaintiff.'" *See* Order (Nov. 16, 2007) at 1. The Court determined that Mr. Greene's request was beyond the legitimate discovery allowed under RCRC 26(b) and denied his request. *Id.* at 2.

The Court, in its November 16, 2007 Order granted Mr. Greene one last chance to file a brief articulating the reasons he believes he is owed additional amounts from the government. *Id.* at 3. In response to the Court's November 16, 2007 Order, Mr. Greene submitted a "Motion in Response to this Court's Order Dated November 16, 2007," which was filed by leave of the Court on December 20, 2007. In what was supposed to be Mr. Greene's final submission in the case, he outlined five issues that he believed remained outstanding in his case. Mister Greene argued in his motion that (1) the Court should reconsider its decision granting the government's motion for judgment on the administrative record regarding his student loan claims; (2) he has yet to receive the $602.02 that the government claimed it sent to plaintiff; (3) plaintiff should be awarded interest on his back pay; (4) the Court should not have ruled on the due process claims he avers were in his initial complaint; and (5) the government should provide him with a "Report of Survey." Pl.'s Mot. in Resp. to this Court's Order Dated Nov. 16, 2007 at 1-3.

The Court, on December 19, 2007, held a conference by telephone to discuss the pending matters in Mr. Greene's case. Order (Dec. 18, 2007). As a result of this conference, the Court allowed Mr. Greene to file a motion to transfer back to the district court the due process claims he alleges were contained in his complaint. Order (Dec. 20, 2007). Mister Greene, however filed, not one, but two motions. The first, filed by leave of the Judge on January 22, 2008, was in response to the Court's December 20, 2007 Order and was Mr. Greene's motion to transfer the due process claims he avers were contained in his complaint back to the district court. The government filed a response opposing Mr. Greene's motion to transfer. Def.'s Resp. to Pl.'s Mot. to Transfer Due Process Claims to Dist. Crt.

Mister Greene also submitted a second unsolicited motion for reconsideration of the Court's decision granting the government's motion for judgment on the administrative record concerning Mr. Greene's student loan claims. Because this motion provided no grounds to justify the court's reconsideration of this decision -- perhaps because at least one page from the document was missing -- the Court ordered the clerk to return the document to Mr. Greene. Order (Jan. 22, 2008). The Court also reminded Mr. Greene that a motion for reconsideration under RCFC 59(a) is not a vehicle to provide an unhappy litigant with an additional opportunity to persuade the Court to accept his argument. *Id.* (discussing *Citizens Fed. Bank, FSB v. United States*, 53 Fed. Cl. 793, 794 (2002)). The Court also noted that it would be frivolous for Mr. Greene to submit a motion that does not attempt to meet the standards of RCFC 59(a). Order (Jan. 22, 2008) at 2. Despite the Court's warning, on February 12, 2008, Mr. Greene resubmitted his "Motion to Reconsider Claims for Student Loan Repayment Under Rule 59(a)(1)."

II. DISCUSSION

A. Jurisdiction and Applicable Standards of Review

Pro se plaintiffs receive more latitude in their pleadings and courts do not hold them to the rigid standards and formalities imposed upon parties who benefit from representation by counsel. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Haines v. Kerner*, 404 U.S. 519, 520 (1972). But such plaintiffs are not immunized from having to plead facts underlying a valid claim. *Paalan v. United States*, 57 Fed. Cl. 15, 16 (2003). Consequently, these plaintiffs must still "comply with the applicable rules of procedural and substantive law." *Walsh v. United States*, 3 Cl. Ct. 539, 541 (1983), *citing Faretta v. California*, 422 U.S. 806, 835 n.46 (1975).

Congress, via the Tucker Act, has placed within this Court's jurisdiction "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) (2000). The Tucker Act, however, is only a "jurisdictional statute; it does not create any substantive right enforceable against the United States for money damages." *United States v. Testan*, 424 U.S. 392, 398 (1976). Therefore, in order to pursue a substantive right, a plaintiff must plead an independent contractual relationship, constitutional provision, federal statute, or executive agency regulation that provides a substantive right to money damages for the Court to exercise jurisdiction.[2] *See Todd v. United States*, 386 F.3d 1091, 1094 (Fed. Cir. 2004); *Roth v. United States*, 378 F.3d 1371, 1384 (Fed. Cir. 2004). The statute of limitations for any such claim is six years from the date of accrual. 28 U.S.C. § 2501 (2006). The statute of limitations requirement is a jurisdictional requirement that may not be waived by the parties. *John R. Sand & Gravel Co. v. United States*, 457 F.3d 1345, 1354-55 (Fed.Cir. 2006), *aff'd*, 128 S.Ct. 750 (2008).

Rule 59(a)(1) affords this Court the discretion to reconsider its decisions in regard to all or any of the parties and on all or part of the issues, for any of the reasons recognized under law or equity by federal courts. RCFC 59(a)(1). A motion for reconsideration, however, does not constitute an opportunity for an "unhappy litigant . . . to sway" a court. *Froudi v. United States*, 22 Cl. Ct. 290, 300 (1991). Nor may any party -- including one appearing *pro se* -- prevail on such a motion by raising an issue for the first time when the party could have done so when the issue was first available to be litigated. *Lamle v. Mattel*, 394 F.3d 1355, 1359 n.1 (Fed. Cir. 2005). To prevail on a motion for reconsideration, then, a party must indicate 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, the party must show either: a) an intervening change in controlling law; b) the

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[2] Although Mr. Greene did not clearly identify a money-mandating statute supporting his back pay claims, he did allege that the government owed him money for military service for which he had not been paid. *Greene*, 65 Fed. Cl. at 379. The necessary basis for his back pay claim under the Tucker Act is found in 37 U.S.C. § 206(a). *Id.*

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).

To transfer a case to a coordinate court, a court must find that it lacks jurisdiction, the transfer is in the interest of justice, and the transferee court is a forum in which an action could have been brought at the time a claim was filed. *Rodriguez v. United states*, 862 F.2d 1558, 1559-60 (Fed. Cir. 1988); 28 U.S.C. § 1631. Once a court has transferred a case to a coordinate court, the coordinate court can only transfer the case back to the original forum in exceptional circumstances after considering the law-of-the-case doctrine. *Id.* at 1560. While there is no "per se rule against return of a transferred case by the transferee court . . . a decision on jurisdiction of a coordinate court establish[es] law of the case, and that decision is not to be disturbed absent exceptional circumstances." *Id*. Thus, a coordinate court's findings are the "law of the case" unless those findings were "'clearly erroneous and would work a manifest injustice.'" *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988) (quoting *Arizona v. California*, 460 U.S. 605, 618 n.8 (1983)).

As noted, the law-of-the-case doctrine applies to transfer decisions of district courts to our court and vice versa. *See Id*. at 817. "[T]he policies supporting the [law-of-the-case] doctrine apply with even greater force to transfer decisions than to decisions of substantive law; transferee courts that feel entirely free to revisit transfer decisions of a coordinate court threaten to send litigants into a vicious circle of litigation." *Id*. at 816. It would "undermine public confidence in our judiciary" should courts engage in "a perpetual game of jurisdictional ping-pong." *Id*. at 818. Of course, "the law-of-the-case doctrine 'merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power.'" *Id*. at 817 (citing *Messinger v. Anderson*, 225 U.S. 436, 444 (1912)). "[C]ourts will rarely transfer cases over which they have clear jurisdiction, and close questions, by definition, never have clearly correct answers." *Id*. "Under law-of the-case principles, if the transferee court can find the transfer decision plausible, its jurisdictional inquiry is at an end." *Id*. at 819.

As noted above, there is no *per se* rule against a transferor court returning the case to the transferee court. *Rodriguez*, 862 F.2d at 1560. A court cannot disregard the obligation to examine its own jurisdiction. *View Eng'g Inc. v. Robotic Vision Sys., Inc.*, 115 F.3d 962, 963 (Fed. Cir. 1997). If the transferee court finds the transferor court's findings to be "'clearly erroneous'" or a "'manifest injustice'" it may disregard the law-of-the-case doctrine to transfer the case back to the transferor court. *Rodriguez*, 862 F.2d at 1560 (citation omitted). Thus, a decision to transfer will not be disturbed absent "exceptional circumstances." *Id*.

B. The Motion to Reconsider the Student Loan Repayment Claim

Mister Greene has again moved in both his December 20, 2007 and February 12, 2008 motions for the Court to reconsider its decision granting the government's motion for judgment on the administrative record regarding his student loan repayment issue. On April 2, 2007, the Court denied an almost identical motion for reconsideration regarding the student loan issue.

Order (Apr. 2, 2007) at 2. Attached to Mr. Greene's most recent motion for reconsideration were seven exhibits that purport to show the Court why it was wrong in its earlier decision granting the government's motion. Mot. to Reconsider Claims for Student Loan Repayment Under Rule 59(a)(1) (Feb. 12, 2008) at 5-26.

The Court, however, has already reviewed these documents. Mr. Greene's first exhibit is a copy of Chapter 5.1 of Army Regulation 135-7. This document was first submitted by the government to the Court on April 27, 2006 and was considered by the Court in its April 2, 2007 Memorandum Opinion and Order.[3] Appx. to Def.'s Resp. to Order, Dated Mar. 28 2006 at 12. Exhibit 2 of Mr. Greene's motion is a "Report of Separation and Record of Service," which is already a part of the administrative record. Admin. R. at 52. Mr. Greene first filed Exhibit 3 as an attachment to his first motion for reconsideration. Pl.'s Mot. to Reconsider Claims for Student Loan Repayment (Sept. 2, 2005) at 4-9. Plaintiff claims this exhibit is "a printout from NELNET the student loan holder." Pl.'s Mot. to Reconsider Claims for Student Loan Repayment Under Rule 59(a)(1) (Feb. 12, 2008) at 2. The Court considered this document in its earlier denial of Mr. Greene's motion for reconsideration. *See* Mem. Op. and Order (Apr. 2, 2007) at 4.

The fourth exhibit submitted by Mr. Greene is a May 23, 1995 letter from the Office of the Inspector General of the Army to Mr. Greene notifying him that an "inquiry" was being "conduct[ed]" into his "outstanding issues" regarding the Student Loan Repayment Program ("SLRP") and his drill pay for August 1992. This document was previously available to the Court, as it is a part of the administrative record. Admin. R. Add. at 292. Plaintiff's fifth exhibit, a September 15, 1993 memorandum he authored, was also part of the administrative record, Admin. R. at 284, and was already considered by the Court in the April 2, 2007 opinion. *See* Mem. Op. and Order (Apr. 2, 2007) at 4. Mister Greene's sixth exhibit is a copy of a memorandum sent to him advising Mr. Greene that he had incorrectly filled out six SLRP Annual Repayment Applications. This exhibit, already in the record, *see* Admin. R. at 104, was considered by the Court in its April 2, 2007 opinion. Mem. Op. and Order (Apr. 2, 2007) at 5. The seventh and final exhibit attached to Mr. Greene's motion for reconsideration appears to be a copy of his SLRP annual application with supplemental filings. Mister Greene has previously submitted Exhibit 7 to the Court, as the Court also considered the application and its attachments in its April 2, 2007 Opinion.[4] *See* Mem. Op. and Order (Apr. 2, 2007) at 5.

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[3] The government submitted this regulation to the Court after the Court ordered defendant to submit a response to Mr. Greene's motion for reconsideration that included "a discussion of the terms and conditions of the student loan repayment program as it existed at the time of plaintiff's service, whether such claims are within the Correction Board's jurisdiction, and when the statute of limitations period would have begun for such claims." *See* Order (Mar. 28, 2006); *See also* App. to Def.'s Resp. to Order, Dated Mar. 28, 2006 at 12.

[4] The copy of the student loan application now submitted by Mr. Greene varies slightly from the earlier copy submitted by plaintiff. In Mr. Greene's initial submission of this document,

Plaintiff argues in his most recent motion for reconsideration that the SLRP is controlled by regulation -- AR 135-7, specifically -- and, thus, his claim to damages in not precluded by *Schism v. United States*, 316 F.3d 1259 (Fed. Cir. 2002). Mot. to Reconsider Claims for Student Loan Repayment Under Rule 59(a)(1) at 1-3. Mister Greene appears to misunderstand the Court's April 2, 2007 Memorandum Opinion and Order. In that decision, the Court noted that the Supreme Court has long recognized that "'common-law rules governing private contracts have no place in the area of military pay.'" Mem. Op. and Order (Apr. 2, 2007) at 5 (citing *Bell v. United States*, 366 U.S. 393, 401 (1961)). Only statutes, not contracts, govern entitlements to compensation. *Bell*, 366 U.S. at 401. In fact -- as the Court has mentioned on numerous occasions in this case -- statutory law exclusively controls military compensation and benefits, thereby precluding implied-in-fact contract claims for such benefits in court. *See Schism*, 316 F.3d at 1264. Thus, Mr. Greene is correct in claiming that his student loan repayment issues are governed by statute and regulation, specifically AR 135-7.

Mister Greene, however, has asserted that he had a contractual entitlement to the student loan payments, which are governed by regulation. *See* Mem. Op. and Order (Apr. 2, 2007) at 5. Pursuant to AR 135-7, any entitlement Mr. Greene would have had to the SLRP would have terminated once he was commissioned as an officer, as the benefits of AR 135-7 only applied to enlisted personnel. *See Id.* at 6. Mr. Greene's entitlement to the SLRP terminated when he was commissioned as an officer on February 25, 1988. Admin. R. at 50; Mem. Op. and Order (Apr. 2, 2007) at 6. It also appears that Mr. Greene's entitlement to repayment would have accrued at each anniversary date of his enlistment. *see* AR 135-7, § 5.1(b). On this basis, Mr. Greene's six claims for loan repayment would have accrued on September 22 of the years 1982 through 1987. *See* Mem. Op. and Order (Apr. 2, 2007) at 6.

As discussed in the Court's earlier decisions in this case, a six-year statute of limitations applies to claims under the Tucker Act and this period is not tolled while a claimant pursues remedies before a correction board. 28 U.S.C. § 2501; *Martinez v. United States*, 333 F.3d 1295, 1303-05, 1311-14 (Fed. Cir. 2003). Though Mr. Greene is correct that Army regulations control the SLRP, he still would have needed to file a lawsuit within six years of the accrual of his student loan claims to have a valid claim. As the last of Mr. Greene's claims under the SLRP would have accrued on September 22, 1987, he needed to file his lawsuit within six years of that date under the limitations period. *See* Mem. Op. and Order (Apr. 2, 2007) at 6. But even his initial suit filed in the United States District Court for the District of Connecticut would have

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he failed to include the first page of loan two of six but did include this page in his most recent submission. *See* App. to Pl.'s Mot. to Reconsider Claims for Student Loan Repayment (Sept. 5, 2005) at 15-25; *See also* Pl.'s Mot. to Reconsider Claims for Student Loan Repayment Under Rule 59(a)(1) (Feb. 12, 2008) at App. 7. It also appears that Mr. Greene failed to attach the second page of loan six of six to his most recent filing, as this page was attached to his first filing. *See* App. to Pl.'s Mot. to Reconsider Claims for Student Loan Repayment (Sept. 2, 2005) at 15-25; *See also* Pl.'s Mot. to Reconsider Claims for Student Loan Repayment Under Rule 59(a)(1) (Feb. 12, 2008) at App. 7.

been nearly two years and nine months too late to recover payment under the SLRP. *See* Admin. R. Add. at 238-39 (complaint filed June 20, 1996).

Mister Greene has not shown either a change in applicable law or that previously unavailable evidence bearing on this matter has since become available. *See Griswold*, 61 Fed. Cl. at 460-61. Nor can it be said that a manifest injustice would occur absent reconsideration of his claim for repayment of student loans, *see id.*, as the limitations period for his claim has long run. His motion for reconsideration of this claim is again **DENIED**.

C. Mister Greene's Non-interest Monetary Claims

Mister Greene's remaining non-interest monetary claim is for $602.02 that he contends the government owed him as the final portion of his back pay claims conceded by the government. As of the December 19, 2007 status conference in this case, Mr. Greene had not received the check, although the government claims it sent the check to him. During the December 19, 2007 status conference, it was agreed that Mr. Greene would send a form by facsimile to government counsel to request a replacement check, and government counsel would forward the form to the appropriate office so that a replacement check would be issued. *See* Order (Dec. 20, 2007). Mister Greene's claim for the $602.02 appears to be moot as the government has already conceded that it owes plaintiff this amount and the parties have agreed to a procedure to remit payment to Mr. Greene.

D. The Payment of Interest on Mr. Greene's Back Pay Claims

The Court has already ruled that Mr. Greene is not entitled to interest on his back pay claims. Order (Nov. 16, 2007) at 2-3. This Court may only award interest on a claim against the United States under a valid contract or federal statute that expressly provides for the payment of interest. 28 U.S.C. § 2516(a) (2000); *see Library of Congress v. Shaw*, 478 U.S. 310, 317 (1986) (superceded by statute for other reasons); *see also Werner v. United States*, 226 Ct. Cl. 462, 466 n.5 (1981). As discussed in the Court's November 16, 2007 Order, 37 U.S.C. § 206(a) -- the money-mandating statue that provides Mr. Greene with the necessary basis for his back pay claims under the Tucker Act -- does not expressly provide for the payment of interest.[5] *See* 37 U.S.C. § 206(a) (2000). Moreover, precedents of our Court have found that no statutory provision establishes a right to interest in military pay cases. *See Anderson v. United States*, 54 Fed.Cl. 620, 629 (2002); *Ulmet v. United States*, 19 Cl. Ct. 527, 536-37 (1990). Because no

[5] Curiously, both active and reserve members of the armed services are subject to the 'no interest rule' because no federal statute allows for the payment of interest on military pay claims. A federal statute, however, entitles federal civilian employees to prejudgment interest on pay claims. *Compare* 37 U.S.C. § 204 (entitling active duty members of the military to pay), *and* 37 U.S.C. § 206(a) (providing compensation scheme for non-active duty members of the armed forces), *with* 5 U.S.C. § 5596(b) (entitling federal civilian employees to interest on Back Pay Act claims).

explicit waiver of sovereign immunity allows for recovery of back pay interest in this case, Mr. Greene is not entitled to the payment of interest on his back pay claims.

E. Due Process Claims

Mister Greene next alleges that the "[C]ourt has overstepped its jurisdiction by ruling on due process claims in this case that are not monetary in nature . . . ." Mot. in Resp. to this Court's Order Dated Nov. 16, 2007 at 3. The Court has already denied one motion by Mr. Greene to transfer back to the district court the due process violations he averred were contained in his complaint. Mem. Op. and Order (Apr. 2, 2007) at 7. Keeping in mind Mr. Greene's *pro se* status, the Court allowed him to file one last motion to transfer back to the district court the due process claims he alleges his complaint contains. *See* Order (Dec. 20, 2007).

In his motion, Mr. Greene argues that the Army Reserve allegedly violated his due process rights though improper applications of "AR 135-91," "AR 27-10," "AR 135-175," and "USC 1552."[6] Mot. to Transfer to D. Ct. for Adj. of the Remaining Claims of Due Process Violations Under 28 USC 1631 at 2. Mister Greene then highlights complaint paragraphs 5, 6, 7, 15, 16, 17, 18, 22, 32, 33, 34, 35, 36, 38, 40, 41, 42, and 43 as specific examples of allegations that the defendant violated his rights to due process under the law. *Id*. These factual allegations, as noted in the Court's April 2, 2007 Memorandum Opinion and Order do not appear to involve the Due Process Clause. Mem. Op. and Order (Apr. 2, 2007) at 7. The Court, in its December 20, 2007 Order had expected Mr. Greene to "identify with specificity the allegations in the complaint that support any due process claims, and the relief sought for these alleged violations." Order (Dec. 20, 2007). Mister Greene, in his most recent motion to transfer, did not identify the relief that he seeks for these violations. *See* Mot. to Transfer to D. Ct. for Adj. of the Remaining Claims of Due Process Violations Under 28 USC 1631. Furthermore, while the plaintiff identified eighteen paragraphs in his complaint that purport to contain violations of his due process rights, he fails to explain how these allegations support such claims beyond summarizing in his motion the paragraphs contained in his complaint. *Id*. at 2.

As discussed in the Court's April 2, 2007 Memorandum Opinion and Order, the Connecticut district court has already determined that Mr. Greene's complaint contained no claims within its jurisdiction. Mem. Op. and Order (Apr. 2, 2007) at 7. The Court can only transfer the alleged due process claims back to the district court if it finds its decision to transfer to be "'clearly erroneous'" or a "'manifest injustice.'" *Rodriguez*, 862 F.2d at 1560 (citation omitted). The district court's decision to transfer the case was not clearly erroneous. In transferring Mr. Greene's case to this Court, the district court found that it lacked subject matter

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[6]The Court notes that just because a litigant disagrees with the outcome of an administrative hearing does not mean that the government has violated the Due Process Clause of the United States Constitution. *See Bergman v. Dept. of Commerce*, 3 F.3d 432, 434 (Fed. Cir. 1993) (noting that, "[i]n this pursuit of what [the plaintiff] believes would be justice, he does not seem to realize that he has had justice.").

jurisdiction over Mr. Greene's complaint, finding first that it did not have jurisdiction over his Tucker Act claims, which were above the limit of district court jurisdiction. *Greene*, 222 F.Supp.2d at 201. The district court then found that it did not have jurisdiction over Mr. Greene's claims sounding in tort as it found these claims cannot be based on "injuries arising out of the course of activity incident to military service." *Id*. at 201 (citations omitted). The Court finds the district court's interpretation of Mr. Greene's complaint to be a reasonable interpretation. It was not clearly erroneous, nor did the court commit manifest injustice. Mister Greene's motion to transfer his "due process" claims back to the Connecticut district court is **DENIED**.

F. Report of Survey

This discovery request appears to be related to the $602.02 that the government concedes it owes Mr. Greene. Mot. in Resp. to this Court's Order Dated Nov. 16, 2007 at 3 (noting that plaintiff has previously requested this document); Mot. [] for Produc. of Docs. by Def[.] at 1-2 (discovery request for a "report of survey" related to $602.02). This discovery request appears to be identical to a request the Court received from Mr. Greene on September 13, 2007. Although the Court initially granted this motion on September 13, 2007, the following day the Court relieved the government of its obligation to produce the "Report of Survey" based on the representation that the government had already reimbursed plaintiff the $602.02 to which the request related. Order (Oct. 9, 2007). Because Mr. Greene alleges he never received the reimbursement, the government agreed to allow Mr. Greene to file paperwork in order to receive a second check for the $602.02. *See* Order (Dec. 20, 2007). As such, Mr. Greene's motion to compel the government to produce the "Report of Survey" is **DENIED** because it is moot.

G. Mr. Greene has no Remaining Monetary Claims

After reviewing the records and auditing the information and calculations supplied by Mr. Greene, defendant has paid to Mr. Greene the following sums it conceded he was owed: $3195.05, *see* Def.'s Status Rep. (Aug. 17, 2005); $63.60, *see* Def.'s Supp. Status Rep. (Aug. 26, 2005); $236.46, *see* Def.'s Resp. to Pl.'s Mot. to Submit Pl.'s Back Pay Calc., Def.'s Mot. for Leave to Submit a Supp. Audit, and Def.'s Mot. for Further Proceedings within 60 Days (July 14, 2006) at 2; $2.10, *see* Def.'s Resp. to Pl.'s Mot. to File Pl.'s Mot. to File Pl.'s Leave and Earnings Statements (Aug. 29, 2007) at 3; and $602.02, *see id; see also* Order (Dec. 20, 2007). All but this last $602.02 had been received by the plaintiff, and the government has agreed to provide a replacement check for this amount. *See* Order (Dec. 20, 2007). Mister Greene has no remaining monetary claims. *See id.*; *see also* Mot in Resp. to this Court's Order Dated Nov. 16, 2007 (listing the $602.02 as the only remaining non-interest monetary claim). As the Court has determined that the government's assessment of money owed to Mr. Greene on his back pay claims was reasonable and adequately addressed Mr. Greene's complaint, this case should be dismissed in favor of the United States. *See Chapman Law Firm v. Greenleaf Construction Co.*, 490 F.3d 934, 940 (Fed. Cir. 2007).

CONCLUSION

Mister Greene's motion for reconsideration is **DENIED**. The Court also **DENIES** plaintiff's motion to transfer back to the district court in Connecticut the due process claims he avers were contained in his complaint and **DENIES** plaintiff's discovery request. The Court **GRANTS** the government's motion for judgment in its favor. The Clerk is directed to enter judgment in favor of the United States, **DISMISSING** the complaint with prejudice. No costs shall be awarded.

IT IS SO ORDERED.

VICTOR J. WOLSKI
Judge