

UNITED STATES SUPREME COURT

Clerk's Office
Supreme Court of the United States
One First Street, NE
Washington, DC 20543

CASE NO: _____

Out of

United States Court of Appeals for the
Federal Court of Claims Number: Case Number: 2021-2234

New Case Number: 1:21-CV-01506-C
(JUDGE TAPP 28th District of Kentucky)

DENNIS L. MAXBERRY, PETITIONER

v.

THE UNITED STATES, AGENCY/ DEFENDANT

PETITIONER APPENDIX ATTACHED TO BACK OF WRIT

Brief written by Pro Se Petitioner: Dennis L. Maxberry
PO Box 704
Chippewa Falls, WI 54729.
DennisMaxberry@Gmail.com
715-226-1216

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Appendix A

**Final Order from the United States Court of Appeals
for the Federal Circuit.**

State of Kentucky Judge Tapp

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

DENNIS LEE MAXBERRY,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2021-2234

Appeal from the United States Court of Federal Claims
in No. 1:21-cv-01506-DAT, Judge David A. Tapp.

ON MOTION

PER CURIAM.

O R D E R

Dennis Lee Maxberry appeals from the judgment of the United States Court of Federal Claims dismissing his complaint for failure to pay the docketing fee. He also moves for leave to proceed *in forma pauperis* (IFP). We dismiss.

Mr. Maxberry filed a complaint at the Court of Federal Claims alleging that he is "entitled to redress based on 18 USC Section 1028A Aggravated Identity Theft," seeking

“[u]pgrade [of his] discharge to Honorable and return [of his] property” and “Back Pay” and “Medical due to the PTSD and Brainwashing techniques.” Mr. Maxberry moved that court for leave to proceed *in forma pauperis*.

The Court of Federal Claims denied his motion. The court observed, among other things, that Mr. Maxberry had filed over 30 complaints, that many prior courts have denied his requests for IFP, that the Seventh Circuit had sanctioned him for pursuing a frivolous appeal, and that his “current Complaint is indecipherable.” *Maxberry v. United States*, No. 21-1506C, slip op. at 1–2 (Fed. Cl. July 13, 2021) (collecting cases). When Mr. Maxberry did not timely pay the filing fee, the case was dismissed.

Given that Mr. Maxberry has also moved to proceed IFP before this court, it is appropriate to assess whether his appeal is frivolous. See 28 U.S.C. § 1915(e)(2)(B)(i) (stating that “the court shall dismiss the case at any time if the court determines that . . . the . . . appeal is frivolous”); *Mallard v. U.S. Dist. Ct. for S. Dist. of Iowa*, 490 U.S. 296, 307–08 (1989) (explaining that while § 1915 “authorizes courts to dismiss a ‘frivolous or malicious’ action, . . . there is little doubt they would have [the] power to do so even in the absence of this statutory provision”).

It is well established that “[c]ourts have discretion to limit a party’s permission to proceed *in forma pauperis* where they have exhibited a history of frivolous or abusive filings.” *Straw v. United States*, Nos. 2021-1600, -1602, 2021 WL 3440773, at *5 (Fed. Cir. Aug. 6, 2021) (collecting cases). Here, the Court of Federal Claims concluded that Mr. Maxberry’s history of frivolous and abusive filings clearly warranted denying his motion for IFP.

Mr. Maxberry does not dispute the district court’s findings or present any cogent argument for how the Court of Federal Claims erred in dismissing his complaint for failure to prosecute. Instead, his opening brief and other papers appear to argue various points in support of the

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allegations raised in his underlying complaint. Because Mr. Maxberry's appeal has no arguable basis in law or fact, we find that dismissal of the appeal is appropriate.

Accordingly,

IT IS ORDERED THAT:

- (1) The appeal is dismissed.
- (2) Any pending motions are denied as moot.
- (3) Each side shall bear its own costs.

FOR THE COURT

November 17, 2021
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

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Appendix B

Final Order from the United States Federal Court of
Claims

State of Kentucky Judge Tapp

In the United States Court of Federal Claims

No. 21-1506C
Filed: August 9, 2021

DENNIS L. MAXBERRY,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

Dennis L. Maxberry, Chippewa Falls, WI, pro se.

Mariana Teresa Acevedo, United States Department of Justice, Washington, DC, for Defendant.

ORDER

TAPP, Judge.

Proceeding *pro se*, Plaintiff Dennis L. Maxberry (“Mr. Maxberry”), seeks redress from this court for “Aggravated Identity Theft.” (Compl., ECF No. 1). Along with his Complaint, Mr. Maxberry filed an application to proceed *in forma pauperis*, (IFP Mot., ECF No. 2). See 28 U.S.C. § 1915. On July 13, 2021, the Court denied the IFP motion, detailing Mr. Maxberry’s history of abusing that privilege. (ECF No. 9, at 2). As a result, Mr. Maxberry was ordered to pay the required \$402 filing fee by July 27, 2021. (ECF No. 9). Mr. Maxberry failed to meet this deadline and his latest submissions to this Court have been defective.¹ Because the Court finds that it lacks subject-matter jurisdiction over the claims stated in Mr. Maxberry’s Complaint, and because Mr. Maxberry has failed to comply with an order directing him to pay the filing fee, the Court must dismiss this case for lack of subject-matter jurisdiction, RCFC 12(h)(3), and failure to prosecute, RCFC 41(b).

I. Background

Mr. Maxberry claims that the events surrounding his discharge from the United States Army constituted a violation of 18 U.S.C. § 1028A. Section 1028A criminalizes the act of knowingly transferring, possessing, or using, without lawful authority, “a means of identification of another person.” How the disjointed incidents described in Mr. Maxberry’s self-narrated

¹ The clerk’s office has marked the letters and memos received from Mr. Maxberry as defective because no provision in the Court’s rules allowed for such filings.

Complaint relate to the conduct described in § 1028A is less clear. The Complaint, through fractured paragraphs, incomplete sentences, and slippery timelines, evokes the 1974 Speedy Trial Act, personal family disputes, “PTSD and Brainwashing techniques,” and a sundry other incidents. (Compl.) At times it seeks to implicate the Boy Scouts, at others the officers involved in the Iran Contra Affair. (*Id.* at 2, 6). Having examined the tangled threads of Mr. Maxberry’s Complaint the Court can hold that all allegations included in the Complaint, even if held true and properly founded, would be beyond the jurisdiction of this Court.

II. Analysis

A. Lack of Subject-Matter Jurisdiction

~~Determining the court’s jurisdiction over the claim is a threshold inquiry in every case.~~ *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94-95 (1998). The Court of Federal Claims’ jurisdiction is defined by the Tucker Act as extending to claims “against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon and 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). The Tucker Act does not create a substantive right enforceable against the United States; it merely opens the door for those plaintiffs that can adequately identify and plead their claim in connection with a separate substantive law that “can fairly be interpreted as mandating compensation by the Federal Government.” *United States v. Mitchell*, 463 U.S. 206, 216-17 (1983) (quoting *United States v. Testan*, 424 U.S. 392, 400 (1976)). The plaintiff bears the burden of establishing the court’s subject-matter jurisdiction. *Riles v. United States*, 93 Fed. Cl. 163, 165 (2010). In considering whether the court has jurisdiction over a claim, the court will take the undisputed facts alleged in the complaint as true. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). If this Court determines, at any time, that it lacks subject-matter jurisdiction, it “must dismiss the action.” RCFC 12(h)(3). Although *pro se* litigants are not relieved from the burden of meeting the court’s jurisdictional requirements, *pro se* complaints, “however inartfully pleaded” must be held to “less stringent standards than formal pleadings drafted by lawyers.” *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (quoting *Haines v. Kener*, 404 U.S. 519, 520-21 (1972)). Even under this less-stringent standard applicable to *pro se* plaintiffs, the Court lacks subject-matter jurisdiction here.

Mr. Maxberry’s claim must be dismissed for lack of subject-matter jurisdiction because 18 U.S.C. § 1028A cannot be interpreted as “mandating compensation by the Federal Government.” The Court “has no jurisdiction to adjudicate any claims whatsoever under the federal criminal code.” *Joshua v. United States*, 17 F.3d 378, 379 (Fed. Cir. 1994); *Carter v. United States*, No. 20-1452, 2020 WL 8474618, at *2 (Fed. Cir. 2020) (finding that claims sounding in tort or criminal conduct are outside the Court of Federal Claims’ jurisdiction); *see also* RCFC 12(h)(3).

B. Failure to Prosecute

RCFC 77.1(c) mandates prepayment of certain fees for appearing before the Court. This includes the filing fee of \$402.00 for filing a complaint or petition. U.S. Court of Federal Claims, *Schedule of Fees* (May 26, 2021), <http://www.uscfc.uscourts.gov/fee-schedule> (last visited Aug. 5, 2021). In certain circumstances, the Court can, but is not required to, allow a party “to proceed without paying the requisite fees if ‘the person is unable to pay such fees or give security therefor.’” *Chamberlain v. United States*, 655 Fed. App’x 822, 825 (Fed. Cir. 2016)

(quoting 28 U.S.C. § 1915(a)(1)). Should the Court find that a party before it *is* obligated to pay the requisite fees, as the Court did here, failure to respond to the Court's orders to pay such fees constitutes adequate grounds for dismissing the claim for failure to prosecute. RCFC 41(b).

On July 13, 2021, the Court issued an order denying Mr. Maxberry's IFP motion and requiring him to submit the Court's \$402 filing fee by July 27. (ECF No. 9). In doing so, the Court paid special attention to Mr. Maxberry's history of initiating cases on unsound claims, including the fact that Mr. Maxberry was previously fined by the Seventh Circuit to the amount of \$1,000 for pursuing a "frivolous appeal." *Maxberry v. Keller Graduate Sch. of Mgmt.*, Nos. 14-1231 & 14-1232, 2014 U.S. App. LEXIS 15970, *1 (11th Cir. Apr. 17, 2014). Even Mr. Maxberry's other untimely and defective communications with the Court, seeming to indicate Mr. Maxberry's intentions to seek further financial assistance for payment of fees or an extension of time, fail to convince the Court that Mr. Maxberry can pursue this litigation diligently. *Kadin Corp. v. United States*, 782 F.2d 175, 176-77 (Fed. Cir. 1986) (finding that even though "dismissal is a harsh sanction," it is the correct respond to "disregard for the rules and regulations of the court"). The Court notes that Mr. Maxberry's case would still be dismissed for lack of subject-matter jurisdiction, even if he had paid the requisite fees. Therefore, the Court is not inclined to review any additional filings from Mr. Maxberry that are not in compliance with this Court's rules and regulations. Given Mr. Maxberry's history, interests of justice dictates that this case be closed before Mr. Maxberry is mired further in financial difficulty in pursuit of yet another improper claim. The Court declines to exacerbate this situation further by enlarging the time for Mr. Maxberry to marshal his financial resources only to squander them on a claim the Court lacks authority to adjudicate.

III. Conclusion

For the stated reasons, this case must be **DISMISSED** for lack of subject-matter jurisdiction, under RCFC 12(h)(3) and for failure to prosecute and disobedience of the Court's Orders under RCFC 41(b). The Clerk's Office is directed to enter judgment accordingly and to **REJECT** any future filings received in this matter from the plaintiff that are not in compliance with the Court's rules.

IT IS SO ORDERED.



David A. Tapp
DAVID A. TAPP, Judge

In the United States Court of Federal Claims

No. 21-1506 C

Filed: August 9, 2021

DENNIS L. MAXBERRY

v.

JUDGMENT

UNITED STATES

Pursuant to the court's Order, filed August 9, 2021,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 41(b), that plaintiff's complaint is dismissed for lack of subject-matter jurisdiction and for failure to prosecute and disobedience of the Court's orders.

Lisa L. Reyes
Clerk of Court

By: *Debra L. Samler*

~~Deputy Clerk~~

NOTE: As to appeal to the United States Court of Appeals for the Federal Circuit, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is \$505.00.

Appendix C

U.S. Attorney denying the use of their Services



DEPARTMENT OF THE ARMY
ARMY BOARD FOR CORRECTION OF MILITARY RECORDS
251 18TH STREET SOUTH, SUITE 385
ARLINGTON, VA 22202-3531

October 05, 2021

AR20210010892, Maxberry, Dennis Lee

Mr. Dennis Lee Maxberry
P. O. Box 704
Chippewa Falls, WI 54729

Dear Mr. Maxberry:

This is in response to your December 5, 2020 request to the Army Board for Correction of Military Records (ABCMR) for reconsideration of more than 15 ABCMR Docket Numbers. This case was recently considered by the ABCMR on January 29, 2021 in Docket Number AR20200001125, November 13, 2020 in Docket Number AR20200003533, and administratively closed on March 20, 2020 in Docket Number AR20190004215.

The staff of the ABCMR reviewed your request for reconsideration, examined the original ABCMR decision, and reviewed the evidence which you submitted in support of your previous applications. From that review, we determined that you did not provide new evidence and/or argument with this request. As a result, we are returning this request for reconsideration without action. The ABCMR will not consider any further requests for reconsideration of this matter without new evidence.

Sincerely,

Dennis Dingle
Director
Signed by: DINGLE,DENNIS,WILLIAM.1073592077

Enclosure

Appendix D

The Waiver that the Respondents are denying exist

PREHEARING

CASE NO: 4003 83042

PART III - SERVICE HISTORY FROM OMP
SECTION A - Period of Service Under Review (Continued)

6. Time Lost Data:

Status	Time(s)	Day(s)
AWOL	0	0
All Done	0	0
Civil Conf.	0	0
Other	0	0
Totals	0	0

Remarks: NONE

7. Article 15 Data: () NONE

Date: 780520
Offense(s): Possession of one-half ounce marijuana (#80514)

8. Court-Martial Data:

- a. SCM: () NONE
Date: _____ Offense(s): _____
- b. SPCM: (X) NONE
Date: _____ Offense(s): _____
- c. GCM: (X) NONE
Date: _____ Offense(s): _____

SECTION B - Other Service Data
(X) NONE

PART IV - DISCHARGE HISTORY
SECTION A - Analyst's Assessment

1. Summary of Facts & Circumstances Concerning Discharge:

- 780515: The applicant was notified of proposed discharge action and advised of his rights.
- 780522: The separation physical examination qualified the applicant for separation.
- 780525: The report of the the mental status evaluation was normal. Behavior: hostile. Mood: Level: Depression: No psychiatric disorder.
- 780616: The applicant was provided opportunity to consult with counsel, he consented to discharge and did not submit a statement.
- Undated: The discharge authority approved a General Discharge.
- 780623: The applicant was discharged.

2. Issues of Propriety and/or Equity on DD Form 293 or Incorporated By Reference:

(X) As follows:

- (1) "the Under honorable conditions Discharge wasn't reasonable because I had been given an Article 15 for having dope when all I had was paper roll like as in a joint."
- (2) "The Under honorable Discharge was unreasonable because I only received one promotion when, where as I was a very dependable person."
- (3) "The Under honorable Discharge was given to people who was not up to there potential at work. I was asked did I want one because I didn't want to leave my MOS as stock Control Accounting Specialist; and become a Paralegal and not receive my bonus."

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**Additional material
from this filing is
available in the
Clerk's Office.**