

21-2259

Michael A. Tulipat  
9140 Champney Avenue  
Las Vegas, NV 89148

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

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MICHAEL A. TULIPAT,  
*Plaintiff-Appellant*

v.

UNITED STATES,  
*Defendant-Appellee*

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2021-2259

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Appeal from the United States Court of Federal Claims  
in No. 1:21-cv-01260-CFL, Senior Judge Charles F. Lettow.

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**JUDGMENT**

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THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

**AFFIRMED**

FOR THE COURT

January 13, 2022

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

NOTE: This disposition is nonprecedential.

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

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**MICHAEL A. TULIPAT,**  
*Plaintiff-Appellant*

v.

**UNITED STATES,**  
*Defendant-Appellee*

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2021-2259

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Appeal from the United States Court of Federal Claims  
in No. 1:21-cv-01260-CFL, Senior Judge Charles F. Lettow.

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Decided: January 13, 2022

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MICHAEL A. TULIPAT, Las Vegas, NV, pro se.

SONIA MARIE ORFIELD, Commercial Litigation Branch,  
Civil Division, United States Department of Justice, Wash-  
ington, DC, for defendant-appellee. Also represented by  
BRIAN M. BOYNTON, STEVEN JOHN GILLINGHAM, MARTIN F.  
HOCKEY, JR.

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Before DYK, PROST, and TARANTO, *Circuit Judges*.

PER CURIAM.

Michael A. Tulipat appeals the dismissal of his action by the Court of Federal Claims for failure to prosecute. We affirm.

#### BACKGROUND

Mr. Tulipat served in the U.S. Marine Corps from June 2001 to May 2002, at which time he was separated from the service with a “General (Under Honorable Conditions)” discharge on the basis of “Personality Disorder.” App’x 20–21, 24.<sup>1</sup> Mr. Tulipat later petitioned the Naval Discharge Review Board (“NDRB”) to upgrade his discharge to “Honorable,” change the basis of his separation, and remove two non-judicial punishments from his record that had been imposed on him for misconduct. App’x 21; see App’x 38. The NDRB, as well as the Board for Correction of Naval Records (“BCNR”), considered Mr. Tulipat’s requests and ultimately modified his narrative reason for separation from “Personality Disorder” to “Secretarial Authority” but declined to provide any further relief. See App’x 20–21 (BCNR decision).

Subsequently, in May 2020, Mr. Tulipat petitioned the U.S. Court of Appeals for the Ninth Circuit for review of the BCNR decision. App’x 1. The Ninth Circuit dismissed Mr. Tulipat’s case on April 16, 2021, on the basis that it did not have original jurisdiction to review a decision of the BCNR. App’x 44. In dismissing, the Ninth Circuit directed that Mr. Tulipat’s petition be transferred to the Court of Federal Claims “for whatever consideration that court deems appropriate.” App’x 44.

On April 21, 2021, the Court of Federal Claims issued a “Notice” to the parties that acknowledged receipt of the

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<sup>1</sup> “App’x” refers to the appendix filed with the government’s response brief.

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record from the Ninth Circuit and provided specific instructions to Mr. Tulipat regarding how to proceed, as a pro se litigant or otherwise. App'x 45–46. In particular, the Notice informed Mr. Tulipat that he was required “[to] file a transfer or amended complaint” with the Court of Federal Claims “[w]ithin 28 days after service of the Notice.” App'x 46. The Notice also cautioned that “failure to comply with the enclosed instructions, within the time provided, may result in the case being dismissed for failure to prosecute.” App'x 45 (emphasis removed and capitalization normalized). Mr. Tulipat’s case was then randomly assigned to Judge Charles F. Lettow. App'x 47.

On July 27, 2021, over three months after the case had been transferred from the Ninth Circuit, the Court of Federal Claims dismissed the case sua sponte under Rule 41(b) of the Rules of the Court of Federal Claims “for failure to prosecute.” App'x 48. The court explained that Mr. Tulipat had failed to file a complaint even though “[i]nformation regarding the transfer and further instructions were served on [Mr. Tulipat] via United States mail on April 21, 2021,” with those instructions including a requirement that Mr. Tulipat file his complaint “on or before May 19, 2021.” App'x 48.

Mr. Tulipat appealed. We have jurisdiction to consider this appeal under 28 U.S.C. § 1295(a)(3).

#### DISCUSSION

In relevant part, Rule 41(b) of the Rules of the Court of Federal Claims provides that “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, the court may dismiss on its own motion.” We review a Rule 41(b) dismissal for an abuse of discretion. *Claude E. Atkins Enters., Inc. v. United States*, 899 F.2d 1180, 1183 (Fed. Cir. 1990). Under this standard, “the trial court’s exercise of discretion will not be disturbed on appeal unless . . . we are left with a definite and firm conviction that the

court below committed a clear error of judgment.” *Id.* (cleaned up).

Mr. Tulipat does not contest that he received the trial court’s Notice, which required him to file a complaint with the trial court by a certain date. Instead, he argues that the trial court should have provided him with “[a] warning that [his] case was *about* to be dismissed and time to respond.” Appellant’s Br. 2 (emphasis added). In support, Mr. Tulipat contends that he “was in a stressful position as a [recruit] in police academy” and that the trial court dismissed his case without “understand[ing] the totality of the circumstances.” Appellant’s Br. 2.

Recognizing that Mr. Tulipat was and is proceeding pro se, we nonetheless conclude that the trial court acted within its discretion in dismissing Mr. Tulipat’s case sua sponte. The trial court clearly and specifically warned Mr. Tulipat that failure to file his complaint in a timely fashion could result in dismissal of his case. And at the time of dismissal, over two months had elapsed since the deadline to file a complaint. Further, at the time of dismissal, Mr. Tulipat had not offered any explanation for his untimeliness. Nor had he sought an extension of time. Indeed, after the case was transferred from the Ninth Circuit, Mr. Tulipat made no filings whatsoever with the trial court until his notice of appeal to this court. On this record, the trial court did not abuse its discretion in dismissing under Rule 41(b).

Mr. Tulipat separately argues that the trial court’s decision was wrong because Judge Lettow “served in the U.S. Army” and “may have bias towards individuals” suing the government. Appellant’s Br. 2. We reject this argument at least because Mr. Tulipat fails to cite any evidence indicating bias in the record.

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CONCLUSION

We have considered Mr. Tulipat's remaining arguments but find them unpersuasive. For the reasons above, we affirm the decision of the Court of Federal Claims dismissing this action.

**AFFIRMED**

COSTS

No costs.

20-71431

Michael A. Tulipat  
9140 Champney Avenue  
Las Vegas, NV 89148

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UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

APR 16 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MICHAEL A. TULIPAT,

No. 20-71431

Petitioner,

Department of Defense

v.

ORDER

SECRETARY OF THE NAVY; et al.,

Respondents.

Before: CLIFTON, MURGUIA, and BRESS, Circuit Judges.

Respondents' motion to dismiss this petition for review for lack of jurisdiction is granted because the court of appeals does not have original jurisdiction to review a decision of the Board for Correction of Naval Records (Docket Entry No. 13). *See* 10 U.S.C. § 1552. The Clerk will transfer this petition for review and all pending motions to the United States Court of Federal Claims, Howard T. Markey National Building, 717 Madison Place, N.W., Washington D.C. 20439, (202) 357-6400, for whatever consideration that court deems appropriate. *See* 28 U.S.C. § 1631. Respondents may raise any jurisdictional or other defenses in that court.

**TRANSFERRED.**

**In the United States Court of Federal Claims**

No. 21-1260

(Filed: July 27, 2021)

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**MICHAEL A. TULIPAT,**

Plaintiff,

v.

**UNITED STATES,**

Defendant.

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ORDER OF DISMISSAL

Plaintiff originally filed a petition of review in the United States Court of Appeals for the Ninth Circuit. *See* ECF No. 1. The petition was subsequently dismissed for lack of jurisdiction, and the case was transferred to this court on April 16, 2021. *Id.* Information regarding the transfer and further instructions were served on plaintiff via United States mail on April 21, 2021. Plaintiff was instructed to file a transfer complaint on or before May 19, 2021, but has failed to do so.

Rule 41 of the Rules of the Court of Federal Claims provides that “[i]f the plaintiff fails to prosecute or to comply with . . . a court order, the court may dismiss on its own motion.” RCFC 41(b). Therefore, because plaintiff has failed to file a transfer complaint by the specified date, the complaint is DISMISSED for failure to prosecute. The clerk is directed to enter judgment in accordance with this disposition.

No costs.

It is so **ORDERED**.

s/ Charles F. Lettow

Charles F. Lettow  
Senior Judge

**In the United States Court of Federal Claims**

No. 21-1260 C  
Filed: July 27, 2021

**MICHAEL A. TULIPAT**

v.

**JUDGMENT**

**UNITED STATES**

Pursuant to the court's Order, filed July 27, 2021,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 41(b), that the case is dismissed for failure to prosecute. No costs.

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.

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