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App. 1

NOTE: This disposition is nonprecedential.

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

JUSTIN PAUL DREILING,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2022-2292

Appeal from the United States Court of Federal
Claims in No. 1:22-cv-00223-SSS, Judge Stephen S.
Schwartz.

Decided: March 16, 2023

JUSTIN PAUL DREILING, Lumber Bridge, NC, pro se.

ELIZABETH ANNE SPECK, Commercial Litigation
Branch, Civil Division, United States Department of
Justice, Washington, DC, for defendant-appellee. Also
represented by BRIAN M. BOYNTON, PATRICIA M. MCCAR-
THY, DOUGLAS K. MICKLE; SETH I. HELLER, Office of the
Chief Counsel, United States Food and Drug Admin-
istration, Silver Spring, MD.

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Before MOORE, *Chief Judge*, PROST
and HUGHES, *Circuit Judges*.

MOORE, *Chief Judge*.

Staff Sergeant Justin Paul Dreiling appeals a decision of the United States Court of Federal Claims dismissing for lack of jurisdiction his claim for an injunction directing the Food and Drug Administration to disclose information about the COVID-19 vaccines. For the following reasons, we *affirm*.

BACKGROUND

SSG Dreiling filed a claim in the Court of Federal Claims alleging the FDA was violating 21 C.F.R. § 601.51(e) by not releasing accurate and complete information on the COVID-19 vaccines. Appx. 5–7. SSG Dreiling alleged he could not make a well-informed decision about whether to be vaccinated without the information and thus remained unvaccinated pending his requests for more complete disclosures. *Id.* He further alleged this put him at risk of involuntary separation and caused him irreparable harm. *Id.* SSG Dreiling requested the Court of Federal Claims grant him injunctive relief by ordering the FDA to immediately release the required data. Appx. 8. The government moved to dismiss for lack of subject matter jurisdiction and failure to state a claim. Appx. 9–17. The Court of Federal Claims granted the motion to dismiss for lack of jurisdiction because 21 C.F.R. § 601.51(e) is not money mandating. Appx. 2–3. SSG

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Dreiling appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(3).

DISCUSSION

The Court of Federal Claims' jurisdiction under the Tucker Act is limited to cases involving a money-mandating statute or agency regulation. *See* 28 U.S.C. § 1491(a)(1); *United States v. King*, 395 U.S. 1, 2–3 (1969); *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc). We review decisions to dismiss a complaint for lack of subject matter jurisdiction de novo. *Boaz Hous. Auth. v. United States*, 994 F.3d 1359, 1364 (Fed. Cir. 2021).

SSG Dreiling does not allege 21 C.F.R. § 601.51(e) is money mandating but argues the Court of Federal Claims' jurisdiction is not limited to monetary claims. SSG Dreiling argues the plain language of 28 U.S.C. § 1491(a)(1) gives the Court of Federal Claims jurisdiction over equitable claims in addition to monetary claims. This argument is based on SSG Dreiling's belief that the Supreme Court has, for nearly a century and a half, misunderstood its own precedent in *United States v. Jones*, 131 U.S. 1 (1889) and wrongly interpreted the Court of Federal Claims jurisdictional statute.

The Supreme Court has repeatedly held the Court of Federal Claims' jurisdiction is limited to monetary claims against the government. *See, e.g., Jones*, 131 U.S. at 19; *King*, 395 U.S. at 2–3; *United States v. Testan*, 424 U.S. 392, 400–02 (1976); *United States v.*

Mitchell, 463 U.S. 206, 216–17 (1983). SSG Dreiling argues that *Jones* does not hold that the court lacks jurisdiction over equitable claims but only that it lacks jurisdiction to enforce the relief of equitable claims. This argument is unavailing. *Jones* expressly addressed whether the jurisdictional statute “authorize[d] suits of the kind like the present, which are brought, not for the recovery of money, but for equitable relief.” *Jones*, 131 U.S. at 14. It answered that question in the negative. *Id.* at 18–20. Lest there was any doubt, the Supreme Court’s subsequent case law has made clear that the Court of Federal Claims’ jurisdiction has always “been limited to money claims against the United States Government” and does not include claims for equitable relief. *King*, 395 U.S. at 2–3.

The Supreme Court’s interpretation is binding. The Court of Federal Claims therefore did not err in holding it lacked jurisdiction to hear SSG Dreiling’s claim. We *affirm*.

AFFIRMED

COSTS

No costs.

App. 5

NOTE: This order is nonprecedential.

United States Court of Appeals
for the Federal Circuit

JUSTIN PAUL DREILING,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2022-2292

Appeal from the United States Court of Federal
Claims in No. 1:22-cv-00223-SSS, Judge Stephen S.
Schwartz.

ON PETITION FOR HEARING EN BANC

Before MOORE, *Chief Judge*, NEWMAN, LOURIE, DYK,
PROST, REYNA, TARANTO, CHEN, HUGHES, STOLL,
CUNNINGHAM, and STARK, *Circuit Judges*.

PER CURIAM.

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ORDER

Justin Paul Dreiling filed a petition for hearing en banc. The petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for hearing en banc is denied.

FOR THE COURT

December 19, 2022

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court

In the United States Court of Federal Claims
No. 22-223C
(Filed: September 12, 2022)
NOT FOR PUBLICATION

JUSTIN PAUL DREILING, *
Plaintiff, *
v. *
THE UNITED STATES, *
Defendant. *

OPINION AND ORDER

Plaintiff Justin Paul Dreilin —proceeding *pro se*— seeks an injunction directing the Food and Drug Administration to disclose certain information about COVID-19 vaccines. *See* Compl. at 4 (ECF 1). The government has moved to dismiss. *See* Def.’s Mot. to Dismiss (ECF 6); Pl.’s Resp. (ECF 7); Def.’s Reply (ECF 8). The motion is **GRANTED**, and the case is **DISMISSED**.

Plaintiff’s Complaint faces “less stringent standards than formal pleadings drafted by lawyers,” *Haines v. Kerner*, 404 U.S. 519, 520 (1972), but it still must meet this Court’s mandatory jurisdictional requirements, *Harris v. United States*, 113 Fed. Cl. 290, 292 (2013); *accord Henke u. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995). The burden is on Plaintiff to

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establish jurisdiction. *Ibrahim v. United States*, 112 Fed. Cl. 333, 336 (2013).

The Tucker Act gives this Court “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 liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1). Plaintiff argues—creatively—that the text is not limited to *money* judgments, and that this Court’s jurisdiction therefore extends to his claim for injunctive relief. Pl.’s Resp. at 1–4. But that argument has been foreclosed by the Supreme Court for nearly a century and a half. *United States v. King*, 395 U.S. 1, 3 (1969); *Glidden Co. v. Zdanok*, 370 U.S. 530, 557 (1962) (plurality); *United States v. Sherwood*, 312 U.S. 584, 588 (1941); *United States v. Jones*, 131 U.S. 1 (1889); see also *Kanemoto u. Reno*, 41 F.3d 641, 645 (Fed. Cir. 1994).

The parties disagree over whether Plaintiff needs to submit a request under the Freedom of Information Act (“FOIA”) before he can pursue his claims in court. Def.’s Mot. to Dismiss at 7–9; Pl.’s Resp. at 4–6; Def.’s Reply at 3–4. Because this Court lacks jurisdiction, I do not reach that issue. See *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1868)). At any rate, even if Plaintiff is correct that a regulation requires disclosure without a FOIA request, attempts to “compel agency action unlawfully withheld

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or unreasonably delayed” arise under the Administrative Procedure Act, *see* 5 U.S.C. § 706(1), and are outside this Court’s jurisdiction. *Smalls v. United States*, 87 Fed. Cl. 300, 308 (2009) (collecting cases).

For the foregoing reasons, the case is **DISMISSED**, without prejudice, for lack of jurisdiction. *See Aerolineas Argentinas v. United States*, 77 F.3d 1564, 1572 (Fed. Cir. 1996) (“[I]n the absence of subject matter jurisdiction there can be no preclusive findings or conclusions on the merits, and dismissal for lack of jurisdiction is without prejudice.”).

The Clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

s/ Stephen S. Schwartz
STEPHEN S. SCHWARTZ
Judge

28 U.S.C. § 1491

Claims against United States generally; actions involving Tennessee Valley Authority

(a)(1) The United States Court of Federal Claims shall have 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 liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute

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with, a contractor arising under section 7104(b)(1) of title 41, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act.

(b)(1) Both the United States Court of Federal Claims and the district courts of the United States shall have jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement. Both the United States Court of Federal Claims and the district courts of the United States shall have jurisdiction to entertain such an action without regard to whether suit is instituted before or after the contract is awarded.

(2) To afford relief in such an action, the courts may award any relief that the court considers proper, including declaratory and injunctive relief except that any monetary relief shall be limited to bid preparation and proposal costs.

(3) In exercising jurisdiction under this subsection, the courts shall give due regard to the interests of national defense and national security and the need for expeditious resolution of the action.

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(4) In any action under this subsection, the courts shall review the agency's decision pursuant to the standards set forth in section 706 of title 5.

(5) If an interested party who is a member of the private sector commences an action described in paragraph (1) with respect to a public-private competition conducted under Office of Management and Budget Circular A-76 regarding the performance of an activity or function of a Federal agency, or a decision to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A-76, then an interested party described in section 3551(2)(B) of title 31 shall be entitled to intervene in that action.

(6) Jurisdiction over any action described in paragraph (1) arising out of a maritime contract, or a solicitation for a proposed maritime contract, shall be governed by this section and shall not be subject to the jurisdiction of the district courts of the United States under the Suits in Admiralty Act (chapter 309 of title 46) or the Public Vessels Act (chapter 311 of title 46).

(c) Nothing herein shall be construed to give the United States Court of Federal Claims jurisdiction of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action against, or founded on conduct of, the Tennessee Valley Authority, or to amend or modify the provisions of the Tennessee Valley Authority Act of 1933 with respect to actions by or against the Authority.
