

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-5136  
Summary Calendar

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LANEY J. HARRIS,

Plaintiff-Appellant,

versus

MICHAEL P.W. STONE, and  
DEPARTMENT OF THE ARMY,

Defendants-Appellees.

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Appeal from the United States District Court for the  
Eastern District of Texas  
(92 CV 83)

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(June 22, 1993)

Before JOLLY, BARKSDALE, and E. GARZA, Circuit Judges.

PER CURIAM:\*

While a civilian employee at the Red River Depot, Harris was terminated from employment because of physical disability. He appealed the decision to the Merits Systems Protection Board (Board) and discovered that a PMPN was in the file that Red River sent to the Board. Red River agreed to withdraw the document from the file. After a hearing and without considering the PMPN, an

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

administrative law judge affirmed Red River's decision to discharge Harris; the judge also affirmed the determination that Red River had not violated the Act because the PMPN was necessary to allow Red River personnel to perform their duties.

Laney H. Harris then filed this complaint under § 552(a) of the Privacy Act of 1974 (Act) in the federal district court, asserting that officials at the Department of the Army's Red River Army Depot willfully, intentionally, and maliciously violated his privacy rights by releasing a Personal Medical Progress Note (PMPN) without his consent. The Army filed a motion to dismiss under Rule 12(b)(6) and, in the alternative, a motion for summary judgment under Rule 56. The district court granted both motions and dismissed the complaint.

We need not decide the propriety of the district court's grant of the defendant's Rule 12(b)(6) motion because its grant of summary judgment for the defendant was proper. A grant of summary judgment is reviewed de novo by this Court using the same substantive test employed by the district court. General Electric v. Southeastern Health Care, 950 F.2d 944, 948 (5th Cir. 1991).

Rule 56(e) requires that, when a proper motion for summary judgment is made, the non-moving party must set forth specific facts showing that there is a genuine issue for trial in order to avoid summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The mere allegation of a factual dispute between the parties will not defeat

an otherwise properly supported motion for summary judgment. A dispute about a material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Id. at 247-48.

The Act prohibits disclosure of a record without prior written consent or court order. 5 U.S.C. § 552 et seq. However, there is a "need to know" exception that permits disclosure to officers and employees of the Department of Defense (which includes the Army) who have a need for the record in the performance of their official duties. 5 U.S.C. § 552(b)(1); 32 C.F.R. § 505.3(a)(1). This exception authorizes intra-agency disclosure of a record for official purposes. Id. In this case, the PMPN was released by the Red River medical records custodian to the Red River labor relations specialist who forwarded the PMPN, with other documents, to the Board in response to its March 13, 1992 Acknowledgment Order. Harris has not shown a dispute regarding the "need to know" exception.

The PMPN's release also fell within the "routine use" exception to the Act. 5 U.S.C. § 552(b)(3). One such "routine use" provides for the disclosure of records in a proceeding before a court or adjudicative body such as the Board. 32 C.F.R. § 505.3(b)(11). Another routine use permits Army agencies to obtain information that is relevant to the hiring or retention of an employee. 32 C.F.R. § 505.3(b)(2). Based on the aforementioned provisions, disclosure of the PMPN was permissible.

Furthermore, although Harris contends that the PMPN was released maliciously and willfully, affidavits from both the Red River medical records custodian and the labor relations specialist aver to the contrary. Harris has not offered any evidence that raises a factual dispute. Summary judgment was proper, and the district court is

A F F I R M E D.