

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7126
Summary Calendar

KATHERINE L. CHILDERS,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
(CA-1:92-0045(R)(R))

(December 9, 1993)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Ms. Childers alleged that she was falsely suspended on December 6, 1989, for suspicion of stealing money from her cashier's station at a navy exchange store in Gulfport, Mississippi. Although reinstated about six weeks later, she was then harassed by fellow employees until she was forced to resign two months after that. Her complaint reflects a series of charges

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

in search of a cause of action. The district court dismissed on grounds related to the sovereign immunity of the United States and we affirm.

None of Childers' attempts to get around sovereign immunity will work. In her complaint, she alleged that she was "falsely accused/charged, slandered [and] libeled" by her supervisory officers and fellow employees. The court held that these claims were barred from review in federal court by the exclusivity provision of the Longshoreman and Harbor Workers Compensation Act, which furnishes the remedy for employees of non-appropriated fund instrumentalities of the United States. 5 U.S.C. § 8171, incorporating 33 U.S.C. § 901 et seq.¹

Confronted with the failure of her claim against co-employees, Ms. Childers then asserted that her employer was responsible for the allegedly intentional injury she suffered. This characterization of her complaint faces two hurdles. First, she never alleged that her employer had anything to do with her travails. Instead, the complaint is replete with allegations only against co-employees. But even if her employer were responsible for the false charges and harassment, she has no cognizable claim. Intentional acts by an employer fall outside the scope of LHWCA unless they are imbued with specific intent to injure the employee. Sample v. Johnson, 771 F.2d 1335 (9th Cir. 1985). See also,

¹ Section 933(i) of the LHWCA provides in part that "[t]he right to compensation or benefits under this chapter shall be the exclusive remedy to an employee when he is injured . . . by the negligence or wrong of any other person or persons in the same employee: Provided, That this provision shall not affect the liability of any person other than an officer or employee of the employer."

Johnson v. Odeco Oil & Gas, 864 F.2d 40 (5th Cir. 1989). Lacking any allegations of specific intent by her agency employer to commit these torts against her, the complaint cannot fall under any exception to LHWCA.

Finally, even if Ms. Childers stated a claim against her employer, compensation would be determined by the Federal Tort Claims Act, as the employer is an agency of the United States. The Tort Claims Act specifically bars recovery for torts of assault, battery, false imprisonment, false arrest, abuse of process or malicious prosecution. 28 U.S.C. § 2680(h). These include precisely the allegations of the complaint. Childers alleges, however, that her arrest and malicious prosecution were committed by officers "who are empowered to seize evidence, execute searches or make arrests," and so the exception of § 2680(h) statutorily does not apply. She now alleges that the security personnel who charged her were "officers" under the statute. Again, her argument falls short. She has been contending that her employer, not individuals, perpetrated wrongs against her in order to avoid the LHWCA exclusivity. Moreover, this court has held that security employees of a military exchange do not have the authority to conduct searches and seizures or to make arrests for violations of federal law. Solomon v. United States, 559 F.2d 309, 310 (5th Cir. 1977).

As the district court held, if torts were committed here, they fell within the scope of LHWCA or are barred by sovereign immunity.

For the foregoing reasons the judgment of the district court is AFFIRMED.