

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30715
Summary Calendar

CHARLES J. JENKINS,

Plaintiff-Appellant,

VERSUS

UNITED STATES OF AMERICA, ET AL.,

Defendant-Appellee.

Appeal from the United States District Court
For the Eastern District of Louisiana

(CA 93 3583 M 5)

(June 20, 1995)

Before SMITH, Emilio M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

Charles Jenkins ("Jenkins") appeals the dismissal of his claims against the United States Postal Service. We AFFIRM.

FACTS

On April 8, 1974, Jenkins injured his right knee during the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

course of his employment as a letter carrier with the U.S. Postal Service. The Office of Workers' Compensation Programs (OWCP) accepted Jenkins's claim for synovitis of the right knee. The OWCP also accepted, on several occasions, that Jenkins sustained recurrences of disability that were causally related to the 1974 injury. Following knee surgery in 1979, Jenkins worked in a limited-duty capacity.

On September 3, 1987, Jenkins filed a notice of occupational disease and claim for compensation for "work related stress-depression." He stated that he first became aware of his condition and its relationship to his employment in 1980, at which time he was advised by his doctor not to work because of stress, depression, and anxiety. Jenkins's doctor's report indicated that he felt harassed by his employer, that his reassignment to inside duties gave him claustrophobia, and that he had difficulty adjusting to working the night shift.

The OWCP initially denied this claim for compensation because Jenkins had failed to establish that his depression was causally related to his employment. Jenkins appealed to the Employees' Compensation Appeals Board, which remanded the case to the OWCP, with instructions to combine Jenkins's traumatic injury and emotional injury files in order to determine whether there was a psychological or emotional component to Jenkins's physical injury. On October 11, 1990, the OWCP accepted Jenkins's claim for compensation for disability resulting from an employment-related emotional illness. He received a payment from the OWCP for

\$40,858.94 for compensation owed, was placed on the OWCP's periodic compensation rolls, and continues to receive Federal Employees Compensation Act (FECA) benefits for wage loss and medical expenses.

On July 30, 1991, Jenkins sent a letter to the U.S. Department of Labor seeking back pay for the period from January 1, 1980, to August 15, 1987. He asserted that, in addition to the amount he had received from the OWCP, he was owed an additional \$83,571.59. On October 11, 1991, the OWCP responded that Jenkins had already been compensated for all relevant periods of entitlement. On October 13, 1992, Jenkins sent a letter to the U.S. Postal Service, demanding that it pay the \$83,571.59. On December 24, 1992, Jenkins amended his claim, seeking an additional ten million dollars because "extreme and outrageous" conduct by "Employer/Supervisors" had caused Jenkins to suffer additional emotional distress. The Postal Service responded on December 30, 1992, that Jenkins's claim for compensation during the applicable period had already been processed in accordance with the FECA.

On October 29, 1993, Jenkins filed the instant suit pursuant to the Federal Tort Claims Act (FTCA) and the due process clauses of the Fifth and Fourteenth Amendments, alleging that, upon his return to limited duty in 1979, he was subjected to a pattern of harassment, humiliation, and improper discipline by his supervisors which resulted in mental and emotional stress. The district court granted the defendants' motion to dismiss under FED. R. CIV. P. 12(b)(1), determining that Jenkins's claims were barred because the

sole remedy available to him was under the FECA.

DISCUSSION

This court reviews a Rule 12(b)(1) dismissal for lack of subject-matter jurisdiction *de novo*. *Hobbs v. Hawkins*, 968 F.2d 471, 475 (5th Cir. 1992). The dismissal will not be upheld unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Id.*

A. Federal Tort Claims Act

Jenkins contends that the FECA exclusive remedy provision does not bar this suit brought under the FTCA.

The FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty. 5 U.S.C. § 8102. Because it is intended to serve as a substitute for, rather than a supplement to a tort suit, the remedy of the FECA is the exclusive remedy against the United States for an injury within its coverage. *Bailey v. United States*, 451 F.2d 963, 965 (5th Cir. 1971); 5 U.S.C. § 8116(c). Thus, an individual who has received compensation benefits under the FECA is barred from suing the United States for that injury under the FTCA. *Grijalva v. United States*, 781 F.2d 472, 474 (5th Cir.), *cert. denied*, 479 U.S. 822 (1986); *see also Benton v. United States*, 960 F.2d 19, 21 (5th Cir. 1992) (exclusive remedy provision of the FECA also bars claims for injuries which derive from a physical injury compensable under FECA). Moreover, the action of the Secretary of Labor in

denying or granting compensation under the FECA is final and conclusive and may not be reviewed by a court of law. 5 U.S.C. §§ 8128(b)(1) & 2; see *Gill v. United States*, 641 F.2d 195, 197 (5th Cir. 1981).

The record reflects that Jenkins pursued a FECA remedy for his on-the-job emotional injury and received compensation for this claim. In his complaint, he seeks further compensation for this injury, alleging that he has been subject to harassment, humiliation, and improper discipline. However, the Secretary of Labor's determination that Jenkins's emotional injury falls within the ambit of the FECA is expressly "unreviewable by this or any other court." *Gill*, 641 F.2d at 197. Thus, Jenkins is barred from bringing this FTCA action by the exclusive remedy provision of the FECA.

B. Constitutional and civil rights claims

Jenkins also argues that the district court erred in "not allowing [him] to proceed with his constitutional and civil rights claims when those claims were not covered by FECA." To the extent that Jenkins is seeking damages from his supervisors for alleged due process violations in a *Bivens*¹-type action, his claims are precluded.

In *Bush v. Lucas*, 462 U.S. 367, 390 (1983) the Supreme Court held that the Civil Service Reform Act (CSRA) was the exclusive remedy for a federal civil service employee who alleged that he was

¹ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

improperly demoted for exercising his First Amendment rights. The Court noted that "[f]ederal civil servants are now protected by an elaborate, comprehensive scheme that encompasses substantive provisions forbidding arbitrary action by supervisors and procedures--administrative and judicial--by which improper action may be addressed." *Id.* at 385. In *Rollins v. Marsh*, 937 F.2d 134, 138 (5th Cir. 1991), this court extended the preclusive effect of *Bush* to include violations of other constitutional rights.

Congress has created a comprehensive and remedial scheme for aggrieved postal workers like Jenkins. See 39 U.S.C. §§ 1001-1011, 1201-1209; see *Pereira v. U.S. Postal Service*, 964 F.2d 873, 875 (9th Cir. 1992). All actions taken by the defendants in the instant case were personnel decisions arising out of Jenkins's relationship with the Federal Government. Jenkins cannot maintain an action for violation of his constitutional rights based on these alleged acts. See *Morales v. Dep't of Army*, 947 F.2d 766, 769 (5th Cir. 1991).

CONCLUSION

Accordingly, the dismissal of Jenkins's claims is AFFIRMED.