

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50531
Conference Calendar

ANTONIO D. PESINA,

Plaintiff-Appellant,

versus

SHEILA E. WIDNALL,
Sec. of Air Force,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-93-CA-1056
- - - - -

(January 25, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

Pretermittting the question whether Antonio D. Pesina's June 20th letter was a request for reconsideration which tolled the limitations period, the district court did not err in concluding that it lacked subject-matter jurisdiction. The Federal Tort Claims Act provides that a tort claim brought thereunder

shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

final denial of the claim by the agency to which it was presented.

28 U.S.C. § 2401(b) (West 1994). "[T]he administrative claim must be filed with the agency within two years after it accrues and the federal court complaint must be filed within six months after the agency's final denial; otherwise, the claim is barred." McCallister v. United States By United States Dep't of Agric., Farmers Home Admin., 925 F.2d 841, 843 (5th Cir. 1991).

Federal law determines when a claim accrues within the meaning of § 2401(b). Ware v. United States, 626 F.2d 1278, 1284 (5th Cir. 1980). Under federal law, a cause of action accrues and the statute of limitations begins to run "from the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured." Rodriguez v. Holmes, 963 F.2d 799, 803 (5th Cir. 1992) (§ 1983 claim) (internal quotations and citation omitted). Pesina concedes that he became aware of his alleged claim in February 1988, but he did not file his administrative claim until June 1993; by that time the statute of limitations had run. Accordingly, the district court did not err by dismissing the case for lack of subject-matter jurisdiction.

Pesina's appeal presents no issue of arguable merit; thus the appeal is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2. The appeal is

DISMISSED.