

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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WILLIAM H. FLEMING,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 14-cv-03005-SHL-tmp
	)	
MEGAN J. BRENNAN, Postmaster	)	
General, U.S. Postal Service,	)	
	)	
Defendant.	)	

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REPORT AND RECOMMENDATION

Before the court is the Partial Motion to Dismiss filed by defendant Postmaster General for the U.S. Postal Service, Megan J. Brennan, on April 24, 2015. (ECF No. 28.) *Pro se* plaintiff William H. Fleming filed a response in opposition on June 9, 2015. (ECF No. 33.) For the reasons below, it is recommended that Brennan's motion be granted.

I. PROPOSED FINDINGS OF FACT

On December 22, 2014, Fleming filed a *pro se* complaint pursuant to Title VII of the Civil Rights Act of 1964 against the Postmaster General.<sup>1</sup> Fleming, a former United States Postal Service ("USPS") employee, alleges racial discrimination in the

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<sup>1</sup>Fleming's complaint identifies Patrick R. Donahoe as the defendant. However, Brennan was appointed Postmaster General on February 1, 2015, and is automatically substituted as the party defendant under Federal Rule Of Civil Procedure 25(d)(1). (ECF No. 10, at 1 n.1.)

distribution of job assignments and in the USPS's failure to provide his medical care for on-the-job injuries he suffered. (Compl. ¶¶ 9, 10, 12.) Fleming also alleges "harassment" and a violation of a contract "between the USPS and [himself] with doctor's approval." (Compl. ¶ 10.) Fleming requests compensation "for medical payments and pay sick leave for days missed because of on-the-job injuries." (Compl. ¶ 12.) Brennan argues in his present motion that Fleming's complaint should be partially dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1). Brennan argues that this court lacks subject matter jurisdiction over Fleming's claims pertaining to his on-the-job injuries because those claims fall under the Federal Employees Compensation Act ("FECA"), 5 U.S.C. §§ 1801-1893. In his response in opposition to Brennan's motion, Fleming does not address Brennan's legal arguments regarding his on-the-job injury claims. Instead, Fleming argues the court needs to hear this claim because, if not, "the U.S.P.S. will continue to do as it pleases and to continue to discriminate as often as it likes." (ECF No. 33, at 2.) Fleming suggests that the court view the USPS website to see the many cases pending against the USPS and argues that more oversight of the Equal Employment Opportunity Commission ("EEOC") is needed. (ECF No. 33, at 4.) Fleming also lists seventeen claims he alleges the EEOC has allowed the USPS to "get away with." (ECF No. 33, at 6-8).

## II. PROPOSED CONCLUSIONS OF LAW

### A. Standard of Review

"A Rule 12(b)(1) motion can either attack the claim of jurisdiction on its face, in which case all allegations of the plaintiff must be considered as true, or it can attack the factual basis for jurisdiction, in which case the trial court must weigh the evidence and the plaintiff bears the burden of proving that jurisdiction exists." DLX, Inc. v. Kentucky, 381 F.3d 511, 516 (6th Cir. 2004). A facial challenge to a complaint amounts to an assertion that the facts as stated do not provide a basis for federal jurisdiction. Williamson v. Tucker, 645 F.2d 404, 412 (5th Cir. 1981). In the present case, Brennan's 12(b)(1) motion to dismiss attacks the claim of jurisdiction on its face.

"Pro se complaints are to be held to less stringent standards than formal pleadings drafted by lawyers, and should therefore be liberally construed." Williams v. Curtin, 631 F.3d 380, 383 (6th Cir. 2011) (internal quotation marks omitted). Pro se litigants, however, are not exempt from the requirements of the Federal Rules of Civil Procedure. Wells v. Brown, 891 F.2d 591, 594 (6th Cir. 1989); see also Brown v. Matauszak, 415 F. App'x 608, 613 (6th Cir. 2011) ("[A] court cannot create a claim which [a plaintiff] has not spelled out in his pleading") (internal quotation marks omitted); Payne v. Sec'y of Treasury,

73 F. App'x 836, 837 (6th Cir. 2003) (affirming *sua sponte* dismissal of complaint pursuant to Fed. R. Civ. P. 8(a)(2) and stating, "[n]either this court nor the district court is required to create Payne's claim for her"); cf. Pliler v. Ford, 542 U.S. 225, 231 (2004) ("District judges have no obligation to act as counsel or paralegal to *pro se* litigants."); Young Bok Song v. Gipson, 423 F. App'x 506, 510 (6th Cir. 2011) ("[W]e decline to affirmatively require courts to ferret out the strongest cause of action on behalf of *pro se* litigants. Not only would that duty be overly burdensome, it would transform the courts from neutral arbiters of disputes into advocates for a particular party. While courts are properly charged with protecting the rights of all who come before it, that responsibility does not encompass advising litigants as to what legal theories they should pursue.")

#### **B. Lack of Subject Matter Jurisdiction**

FECA establishes a workers' compensation program for federal employees who are injured while performing their duties. See 5 U.S.C. § 8102(a). FECA vests the Secretary of Labor with the power to resolve any disputes regarding the scope of the act, 5 U.S.C. § 8145, and the Secretary's decision as to coverage is not subject to judicial review. 5 U.S.C. § 8128(b); see Hayden v. United States, No. 2:08-CV-108, 2009 WL 128859, at \*2 (E.D. Tenn. Jan. 16, 2009). Under FECA, federal employees

are "guaranteed the right to receive immediate, fixed benefits, regardless of fault and without need for litigation, but in return, they lose the right to sue the government." Lockheed Aircraft Corp. v. United States, 460 U.S. 190, 193-94 (1983). "[O]nce an injury falls within the coverage of FECA, its remedies are exclusive and no other claims can be entertained by the court." Jones v. Tenn. Valley Auth., 948 F.2d 258, 265 (6th Cir. 1991).

Fleming's claims pertaining to any on-the-job injuries he may have suffered as an USPS employee fall within the purview of FECA. Therefore, the court lacks subject matter jurisdiction over those claims, and it is recommended that they be dismissed. See Lockett v. Potter, No. 106 CV 1879, 2007 WL 496361, at \*3 (N.D. Ohio Feb. 12, 2007) (dismissing for lack of subject matter jurisdiction plaintiff's Title VII claim that USPS discriminated against him by denying him workers' compensation benefits because FECA provides the exclusive remedy for federal workplace injuries); Jackson v. Mitchell, No. 05-2289-MA/P, 2005 WL 1923160, at \*1 (W.D. Tenn. July 28, 2005) (dismissing Title VII claims of federal employee who alleged that he sustained a work injury and that the USPS failed to pay his medical bills or damages in part because FECA is the exclusive remedy for on-the-job injury claims); see also Nicastro v. Runyon, 60 F. Supp. 2d 181, 186 (S.D.N.Y. 1999) (finding that the court lacked

jurisdiction over any claim concerning plaintiff's workers' compensation, even when plaintiff attacked a denial of FECA benefits as discriminatory, because judicial review of claims regarding on-the-job injury compensation is expressly precluded under FECA).

**III. RECOMMENDATION**

For the reasons above, it is recommended that Brennan's partial motion to dismiss be granted.<sup>2</sup>

Respectfully submitted,

s/ Tu M. Pham  
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TU M. PHAM  
United States Magistrate Judge

June 23, 2015  
\_\_\_\_\_  
Date

**NOTICE**

**WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THIS REPORT AND RECOMMENDED DISPOSITION, ANY PARTY MAY SERVE AND FILE SPECIFIC WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND RECOMMENDATIONS. ANY PARTY MAY RESPOND TO ANOTHER PARTY'S OBJECTIONS WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2); L.R. 72.1(g)(2). FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.**

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<sup>2</sup>The remaining claims include Fleming's claims of discrimination in making job assignments, harassment, and the alleged violation of a "contract between USPS and [Fleming] with doctor's approval." Brennan notes that Fleming does not seek compensation in his prayer for relief regarding those claims, and therefore "those claims may be ripe for dismissal for failure to state a claim." (ECF No. 28, at 4.) The court does not construe this single reference in Brennan's motion to a "failure to state a claim" as seeking dismissal of the remaining claims under Rule 12(b)(6) at this time.