

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOZEF PULAWSKI

:

v.

:

3:00CV2068(AHN)

UNITED STATES OF AMERICA

:

RULING ON APPLICATION FOR MODIFICATION TO CLAIM FOR DAMAGES

Plaintiff, Jozef Pulawski ("Pulawski"), brings this claim under the Federal Tort Claims Act ("FTCA"). Plaintiff claims he was injured in a collision with a U.S. Postal Service vehicle. Pending before the court is the plaintiff's application for modification to his claim for damages. For the following reasons, that application [doc. # 21] is DENIED.

BACKGROUND

The plaintiff alleges that on February 24, 2000, a Postal Service vehicle struck him while he was riding his bicycle in New Britain, Connecticut. The Postal Service employee operating the vehicle was on duty at the time of the accident. On August 7, 2000, Mr. Pulawski filed an administrative claim with the Postal Service. He claimed \$100,100.00 damages: \$100,000 for personal injuries and \$100 for property damage.

The Postal Service denied the claim on September 28, 2000. Mr. Pulawski commenced this present action on October 27, 2000, seeking the damages identified in his administrative

claim. He now seeks to modify the amount of damages to \$350,000.

DISCUSSION

Prior to filing a suit against the United States under the FTCA, a prospective plaintiff first must file an administrative claim with the appropriate federal agency. See 28 U.S.C. § 2675(a). In a suit brought under the FTCA, the plaintiff may not seek or recover damages in excess of the amount sought in the administrative claim "except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim." 28 U.S.C. § 2675(b).

The Second Circuit construes strictly section 2675(b)'s requirement of new evidence or intervening facts. See O'Rourke v Eastern Air Lines, Inc., 730 F.2d 842, 856 (2d Cir. 1984); Mallard v. Meniffee, No. 99 Civ. 0923 SAS, 2000 WL 557262 (S.D.N.Y. May 8, 2000); MacDaniel v. United States, No. 3:97CV667(AHN), 1999 U.S. Dist. LEXIS 21483 (D. Conn. Aug. 20, 1999). In O'Rourke, the court reversed the lower court's grant of the plaintiff's motion to amend the damages clause in

an FTCA claim. The court stated that a modification was warranted only where "an unexpected change occurred either in the law or in a medical diagnosis." O'Rourke, 730 F.2d at 856. The court found the pleading requirements of § 2675(b) to be much "narrower" than the liberal pleading requirements of Federal Rule of Civil Procedure 15. The changed circumstances "must be truly unexpected and unforeseen and thus not reasonably capable of detection at the time the administrative claim was filed." Mallard, 2000 WL 557262 at *6. Pulawski fails to meet the heightened standard of § 2675(b).

In MacDaniel, the plaintiff suffered a herniated disc and severe degeneration of her spinal condition subsequent to the denial of her administrative claim. MacDaniel, 1999 U.S. Dist. LEXIS 21483, at *4. This condition eventually required back surgery. Id. This court found that the ultimate diagnosis "was not merely cumulative and confirmatory of her earlier diagnoses, but was an unforeseen and unexpected worsening of her condition." Id., at *5.

Unlike the plaintiff in MacDaniel, Mr. Pulawski's medical records indicate that his ultimate diagnosis was, at most, "cumulative and confirmatory of [his] earlier diagnoses." The plaintiff here has not offered any evidence of a diagnosis or

condition that differs in any substantial way from that existing or discoverable at the time he initially made his administrative claim. Prior to and at the time he filed the administrative claim, Mr. Pulawksi suffered from cervical sprain, lumbar sprain and tendonitis of the left shoulder. These are the same conditions reported by Dr. Pepperman in his February 24, 2001 letter to plaintiff's attorney. Mr. Pulawski also experienced dizziness and headaches prior to filing the administrative claim. Dr. Lewandowski, a neurologist, later treated him for these symptoms, but they cannot be construed as intervening facts or conditions not reasonably discoverable at the time he made the administrative claim because Mr. Pulawski had in fact experienced them prior to filing the claim with the Postal Service.

Mr. Pulawski also seeks to adjust the amount of damages on the basis that he is unable to return to work. He claims \$110,000 in future lost wages. As noted above, Mr. Pulawski's medical condition does not differ significantly from his condition at the time he initially made the administrative claim. Furthermore, there is no evidence to support the claim that Mr. Pulawski is unable to work. His own physician found him capable of returning to work without any restrictions. See Letter, dated February 27, 2001, from Dr. Pepperman to

Timothy Brignole, Pl.'s Application for Modification to Claim for Damages, Tab 4.

Mr. Pulawski's current symptoms and diagnoses do not differ materially from those reported at the time he made his administrative claim. He fails to offer any newly discovered evidence or intervening facts that would justify a modification to his damages claim. Accordingly, the plaintiff is precluded from modifying his claim for damages.

CONCLUSION

For the foregoing reasons, the plaintiff's application for modification to claim for damages [doc. # 21] is DENIED.

SO ORDERED this 24th day of April, 2002 at Bridgeport, Connecticut.

Alan H. Nevas
United States District Judge

