

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 10 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KEVIN T. AUBART,

Plaintiff-Appellant,

v.

RYAN D. McCARTHY, Acting Secretary
of the Army,

Defendant-Appellee.

No. 19-16676

D.C. No. 1:17-cv-00611-LEK-KJM

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Leslie E. Kobayashi, District Judge, Presiding

Submitted December 2, 2020**

Before: WALLACE, CLIFTON, and BRESS, Circuit Judges.

Kevin T. Aubart, a civilian military employee, appeals pro se from the district court's summary judgment in his 28 U.S.C. § 1346(a)(2) action alleging entitlement to reimbursement for his commuting costs after the Army changed his duty station. We have jurisdiction under 28 U.S.C. § 1291. We review de novo.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Oswalt v. Resolute Indus., Inc., 642 F.3d 856, 859 (9th Cir. 2011). We affirm.

The district court properly granted summary judgment because Aubart failed to raise a genuine dispute of material fact as to whether he was entitled to reimbursement. *See* Dep't of Def., *The Joint Travel Regulations*, App. A, A1-33 (defining Permanent Duty Station as a “[b]uilding or other place (base, military post, or activity) where an employee regularly reports for duty”); *see also* *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997) (“A conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact.”).

We reject as meritless Aubart's contentions that his First Amendment rights were violated by the district court's order regarding communication with army personnel and that the district court improperly disregarded certain declarations.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.