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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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10 Margaret Napier,

11 Plaintiff,

12 v.

13 United States of America,

14 Defendant.
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No. CV-17-01231-PHX-DLR

(Related Case No. CV-17-01232-PHX-DLR)

ORDER

16
17 Plaintiff Margaret Napier works for the United States Postal Service (USPS).
18 In December 2016, Plaintiff filed separate suits against her supervisors, Anna Christmas
19 and Jacque Terrillion, in Maricopa County Justice Court. (Case Nos. CC2016-225112,
20 CC2016-225114.) Plaintiff alleges that she slipped and fell while working at the Shaw
21 Butte Post Office, that the supervisors refused to let her leave work and seek medical
22 treatment for her injuries, and that she has not been reimbursed for medical bills she
23 ultimately incurred. She seeks damages in the amount of \$7,992.00, alleging that
24 Christmas and Terrillion must pay for her medical costs because they were negligent and
25 "failed to rescue" her. (Doc. 1-1 at 4.) In April 2017, the United States removed the
26 actions to this Court and substituted as defendant in each case given that Plaintiff seeks
27 damages against employees of the United States who were acting within the scope of their
28 employment. (Docs. 1, 4; *see* Case No. CV-17-01232-PHX-DLR.)

1 FECA requires the government to "pay compensation . . . for the disability or death of
2 an employee resulting from personal injury sustained while in the performance of [her]
3 duty." 5 U.S.C. § 8102(a). To qualify for compensation, the employee must apply to the
4 Secretary of Labor, who has authority to administer and decide all questions under FECA.
5 5 U.S.C. § 8145. Pursuant to § 8116, the liability of the United States for a workers'
6 compensation claim is governed exclusively by the FECA administrative scheme and
7 civil actions for tort or other claims arising from a work-related injury are barred.
8 Specifically, § 8116(c) provides as follows:

9 The liability of the United States under this subchapter . . . with respect to
10 the injury or death of an employee is exclusive and instead of all other
11 liability of the United States . . . to the employee . . . in a direct judicial
12 proceeding, in a civil action, or in admiralty, or by an administrative or
13 judicial proceeding under a workmen's compensation statute or under a
Federal tort liability statute.

14 In other words, the "remedies provided under FECA are exclusive of all other remedies
15 against the United States for job-related injury or death." *Figueroa v. United States*,
16 7 F.3d 1405, 1407 (9th Cir. 1993); *see Moe v. United States*, 326 F.3d 1065, 1068 (9th
17 Cir. 2003) (noting that "if compensation is available under FECA, all other statutory
18 remedies for claims arising under the same facts are preempted").

19 Here, Plaintiff does not dispute that FECA provides the exclusive remedy for her
20 injuries. (Doc. 9 at 4.) Rather, Plaintiff asserts that Terrillion violated FECA by denying
21 her leave from work to obtain medical treatment and Christmas upheld this decision.
22 (Docs. 1-1 at 4, 9 at 4-5.) Plaintiff further asserts that she applied to the Secretary of
23 Labor to pursue her FECA claim by providing a completed CA-1 form to Terrillion.
24 (Doc. 9 at 5.) Plaintiff states that she brought this action because USPS has violated
25 FECA. (*Id.*)

26 As explained above, however, the FECA administrative scheme is the exclusive
27 remedy for the work-related injuries Plaintiff sustained. It does not appear that Plaintiff
28 appealed or otherwise pursued her FECA claim beyond providing the initial form to

1 Terrillion, but this is not sufficient to waive sovereign immunity or confer subject matter
2 jurisdiction in this civil action. Moreover, even if Plaintiff had pursued the claim and
3 been denied compensation, § 8128(b) "explicitly provides that the courts do not have
4 jurisdiction to review FECA claims challenging the merits of benefit determinations[.]"
5 *Markham v. United States*, 434 F.3d 1185, 1187 (9th Cir. 2006).¹

6 FECA "was designed to protect the Government from suits under statutes, such as
7 the Federal Tort Claims Act, that had been enacted to waive the Government's sovereign
8 immunity. In enacting this provision, Congress adopted the principal compromise – the
9 'quid pro quo' – commonly found in workers' compensation legislation: employees are
10 guaranteed the right to receive immediate, fixed benefits, regardless of fault and without
11 need for litigation, but in return they lose the right to sue the Government." *Lockheed*
12 *Aircraft Corp. v. United States*, 460 U.S. 190, 193-94 (1983).

13 "As the party asserting a claim against the United States, [Plaintiff] has the burden
14 of 'demonstrating an unequivocal waiver of immunity.'" *Park Place*, 563 F.3d at 924
15 (quoting *Cunningham v. United States*, 786 F.2d 1445, 1446 (9th Cir. 1986)). Plaintiff
16 has failed to meet her burden, and the Court therefore is without subject matter
17 jurisdiction over this case. The United States' motion to dismiss under Rule 12(b)(1) is
18 granted.²

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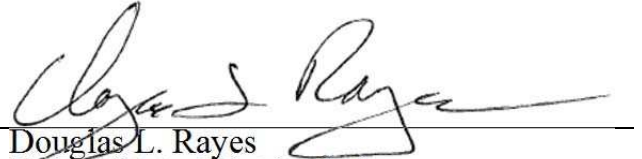
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23 ¹ Plaintiff asserts for the first time in her response that Terrillion and USPS
24 violated OSHA regulations and her FLMA rights. (Doc. 9 at 6-7.) Plaintiff, however,
25 did not include such claims in her complaint and seeks only compensatory damages for
26 medical costs she incurred. (Doc. 1-1.) Plaintiff's references to the FLMA and OSHA in
27 her response are not sufficient to preclude dismissal of her complaint. *See Marder v.*
Lopez, 450 F.3d 445, 448 (9th Cir. 2006) (the scope of review on a motion to dismiss
generally is limited to the contents of the complaint).

28 ² Given this ruling, the Court need not address the United States' alternative
arguments that Plaintiff has failed to exhaust her administrative remedies for any FTCA
claim and otherwise has failed to state a plausible claim to relief. (Doc. 5 at 5-6.)

1 **IT IS ORDERED** that the United States' motion to dismiss (Doc. 5) is
2 **GRANTED**. The motion to vacate the Rule 16 scheduling order and conference (Doc. 8)
3 is **DENIED** as moot. The Clerk is directed to terminate this action.

4 Dated this 16th day of June, 2017.

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Douglas L. Rayes
United States District Judge

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