

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

JAMES TODD FEDOR,	)	CASE NO. 5:13-CV-2468
	)	
Plaintiff,	)	
	)	JUDGE JOHN R. ADAMS
v.	)	
JANET NAPOLITANO, Secretary, Dept. of	)	
Homeland Security	)	
Defendant.	)	<u>ORDER</u>
	)	

This matter is before the court on Defendant Janet Napolitano’s<sup>1</sup> Motion to Dismiss for Lack of Subject-Matter Jurisdiction filed May 12, 2014. Doc. 7. Plaintiff’s response to Defendant Napolitano’s Motion to Dismiss for Lack of Subject-Matter Jurisdiction was due on or before June 11, 2014. Plaintiff has not responded to Defendant Napolitano’s motion.

For the following reasons the Court finds Defendant Napolitano’s brief in support of her motion to be well-taken. Because this Court lacks subject-matter jurisdiction, Defendant’s Complaint is hereby DISMISSED.

Plaintiff, James Fedor (“Plaintiff”), a former Supervisory Transportation Security Officer with the Transportation Security Administration (TSA), stationed in Pittsburgh, Pennsylvania, brought this action alleging hostile work environment and retaliation due to his decision to report

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<sup>1</sup> The Court acknowledges that the current Secretary of the Department of Homeland Security, Jeh Johnson, is the proper party by operation of law.

illegal gambling by TSA employees. (Doc. 1.) Although the duration of Plaintiff’s employment by the TSA and manner in which it ended are unclear from the Complaint, Plaintiff describes the reason does not state in his complaint how or when his employment in Pittsburgh ended, according to Defendant he resigned. (Doc. 7.) Although Plaintiff does not identify a jurisdictional statute or identify the legal basis of his claims, he describes his cause of action as “[h]ostile work environment and reprisal due to whistleblower actions.” (Doc. 1.) Plaintiff’s choice of language suggests a violation of the Whistleblower Protection Act of 1989 (“WPA”), 5 U.S.C. § 2302(b)(8).<sup>2</sup> Similarly absent from Plaintiff’s Complaint are the dates and details necessary to support his allegation that he reported observing instances of illegal gambling by Transportation Security Officers during work hours and was instructed to ignore the incidents or resign before he was terminated rather than continue to draw attention to the gambling. (Doc.1.) Plaintiff’s general statements allege he suffered a hostile work environment resulting from the presence of illegal gambling, work reassignments, and a belief that he was “constantly under surveillance.” (Doc. 1.) Plaintiff has not filed a response to Defendant’s timely Motion to Dismiss for lack of subject-matter jurisdiction.

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<sup>2</sup> (b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority - . . .

(8) take or fail to take, a personnel action with respect to any employee or applicant for employment because of –

(A) any disclosure of information by an employee or applicant which the employee reasonably believes evidences-

(i) any violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs . . .

Federal courts are courts of limited jurisdiction. *Norton v. Larney*, 266 U.S. 511, 515 (1925). When jurisdiction is challenged, the plaintiff bears the burden to prove subject-matter jurisdiction exists. *Moir v. Greater Cleveland Reg'l Transit Auth.*, 895 F.2d 266, 269 (6<sup>th</sup> Cir. 1990). Because the subject matter of Plaintiff's Complaint arise out of his employment with the Department of Homeland Security, the protections and procedures provided by 5 U.S.C. § 2302(b)(8) apply only to action taken after the November 27, 2012 effective date of section 109<sup>3</sup> of the Whistleblower Protection Enhancement Act of 2012 (WPEA). Prior to that time whistleblower activity by an employee of the Transportation Security Administration was exempt from the WPA and governed by Administration specific procedures in compliance with the Civil Service Reform Act of 1978 (CSRA); *Spruill v. Merit Systems Protection Bd.*, 978 F.2d 679 (F. Cir. 1992). TSA Management Directive 1100.75-5, Doc. 7, Exhibit 1, TSA HRM Letter No.1800-01. Regardless of whether Plaintiff was entitled to the protections of the WPA, the whistleblower provisions of the CSRA, or an alternate TSA standard, any challenge Plaintiff wished to bring as a result of adverse personnel action would at some stage have been subject to review by the Merit Systems Protection Board, under the CSRA. Pursuant to 5 USC 7703, judicial review of the decisions of that board is limited to the United States Court of Appeal for the Federal Circuit/or a Circuit Court of Competent Jurisdiction.

Plaintiff has not provided dates for the events he describes, identified what he believes to be governing law, or opposed Defendant's description of the applicable law and procedure. For these reasons the Court concludes from the material in the record that regardless of whether Plaintiff's claims were properly subject to the pre-WPEA administrative framework or the post-

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<sup>3</sup> Section 109 is titled "Prohibited Personnel Practices Affecting the Transportation Security Administration."

WPEA appeal procedure, this action is barred for lack of subject matter jurisdiction due to Plaintiff's failure to exhaust existing administrative remedies.

Defendant Napolitano's motion to dismiss is GRANTED and all claims against Defendant Thomas Davis are, hereby, DISMISSED.

IT IS SO ORDERED.

Dated: March 31, 2015

/s/ John R. Adams

JOHN R. ADAMS  
UNITED STATES DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF OHIO