

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

KENTON CECIL,

Plaintiff,

v.

Civil Action No. 2:09-0791

UNITED STATES OF AMERICA,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending are the United States' motions to strike plaintiff's demand for a jury trial and to dismiss plaintiff's claims for prejudgment interest and attorney fees, each filed August 9, 2010.

In July 2009, plaintiff initiated this action against the United States under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680 ("FTCA"), alleging that he was injured in a motor vehicle accident due to the negligence of a United States Postal Service employee. (Compl. ¶¶ 9-11). In his complaint, plaintiff demands a jury trial and, in addition to compensatory relief, seeks prejudgment interest and attorney fees. (Id. at 4).

Although the FTCA removes the sovereign immunity of the

United States from suits in tort and, with certain exceptions, renders the United States liable in tort as a private individual would be under like circumstances, the statute contains a number of limitations. Notably, there is no right to a jury trial under the FTCA, 28 U.S.C. § 2402, and a plaintiff may not recover prejudgment interest in an FTCA action, 28 U.S.C. 2674.

Moreover, inasmuch as the statute does not contain an express authorization for an award of attorney fees, a court may not award attorney fees against the United States under the FTCA.

See Gaddis v. United States, 381 F.3d 444, 464 (5th Cir. 2004);

Anderson v. United States, 127 F.3d 1190, 1191-92 (9th Cir.

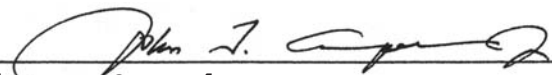
1997); Joe v. United States, 772 F.2d 1535, 1536-37 (11th Cir.

1985). Accordingly, plaintiff's demand for a jury trial and his request for prejudgment interest and attorney fees must be dismissed.

Pursuant to the foregoing analysis, it is ORDERED that the United States' motion to strike plaintiff's demand for a jury trial be, and it hereby is, granted. It is further ORDERED that the United States' motion to dismiss plaintiff's claims for prejudgment interest and attorney fees be, and it hereby is, granted.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record and any unrepresented parties.

DATED: October 7, 2010



John T. Copenhaver, Jr.
United States District Judge