

In the United States Court of Federal Claims

No. 15-803V

(Filed under seal October 17, 2023)

(Reissued November 14, 2023)†

NOT FOR PUBLICATION

* * * * *

SAMUEL WEBB,

Petitioner,

v.

THE UNITED STATES,

Respondent.

* * * * *

ORDER

On June 30, 2023, petitioner Samuel Webb filed a document entitled “Motion for Reconsideration of Rule 60 Order.” ECF No. 156. Within one week—on July 6, 2023—the government filed a response to this motion, which it justified as being filed “within thirty (30) days pursuant to RCFC Appendix B, Vaccine Rule 36.” Def.’s Resp. to Pl.’s Mot. for Recons. at 1, ECF No. 157. The provision invoked by respondent, however, concerns only responses to motions for review of a special master’s ruling on a motion for reconsideration or relief from a judgment or order, and has no application when reconsideration or relief motions are decided by a judge of our court. *See* Appendix B to Rules of the United States Court of Federal Claims (RCFC), Rule 36(b)(4).

Nineteen days later, without receiving a reply by Mr. Webb to the government’s response, the Court denied Mr. Webb’s motion. Order (July 25, 2023), ECF No. 158 at 2. After noting that a reconsideration motion under RCFC 59 would have been untimely, the Court treated Mr. Webb’s motion as having been timely brought under RCFC 60(b), as it was filed within one year of the order from which relief was sought. *Id.* at 1–2 (citing RCFC 60(c)(1)). Petitioner’s motion was

† As neither party has requested redactions pursuant to Rule 18(b) of Appendix B to the Rules of the United States Court of Federal Claims (Vaccine Rules), the order is released for public access with one typographical correction.

denied on the merits, as it was based on a mischaracterization of language in the decision, and the government's response was not a factor in the denial. *See id.*

The next day—July 26, 2023—the Clerk's office received a document titled "Notice of Caveat of Rule 60 Motion's Order of Dismissal," apparently submitted by Mr. Webb to his prison's mail room on July 17, 2023. On July 31, 2023, the Clerk's office received an additional document titled "Necessitated Reply (or Plain Statement) to Response to Reconsideration Motion," apparently submitted by Mr. Webb to his prison's mail room on July 14, 2023. Neither document was filed when received, as not being of a recognizable form for filing and as concerning a motion upon which the Court had already ruled.

Unlike the reconsideration rule, which allows responses to motions "only at the court's request," *see* RCFC 59(f), the rule regarding motions for relief from orders does not discuss whether and when a response (or reply) may be filed, *see* RCFC 60. Accordingly, as our rules do not otherwise provide a deadline, the Court concludes that RCFC 7.2 governs. Under this rule, "a response or an objection to a written motion must be filed within 14 days after service of the motion," RCFC 7.2(a)(1) --- a deadline which was met by the government. Any reply by Mr. Webb was due "within 7 days after service of the response or objection." RCFC 7.2(a)(2). Adding three days for service by mail, under RCFC 6(d), the deadline for filing Mr. Webb's reply was July 16, 2023.

Mindful that "the filing of certain *pro se* prisoner pleadings is determined to occur when they are given to prison officials for delivery to the court," *McLarnon v. United States*, No. 2022-1134, 2022 WL 3711203, at *2 n.1 (Fed. Cir. Aug. 29, 2022) (citing, *inter alia*, *Bernaugh v. United States*, 168 F.3d 1319, 1998 WL 537723, at *1–2 (Fed. Cir. 1998) (table); *Houston v. Lack*, 487 U.S. 266, 272 (1988)), a timely reply had to be delivered to the prison mail room by July 16, 2023. The second paper received from Mr. Webb, his "Necessitated Reply," seemingly met this deadline by two days and should be filed by the Clerk as the reply paper in support of his motion for relief from an order. The "Notice of Caveat," however, was submitted to the prison mail room a day too late to be considered part of a timely reply, and since the Court is not aware of any rule under which it can be filed, the Clerk is directed to return this document to Mr. Webb unfiled.

The filing of the reply paper does not affect the disposition of Mr. Webb's motion, which was denied due to its facial insufficiency and not due to anything stated in the government's opposition paper to which he is replying. *See* Order (July 25, 2023) at 1–2. The "mistake" alleged by Mr. Webb was no mistake at all, as the Court did not believe that a Vaccine Rule 5 conference was held after Mr. Webb amended his petition, contrary to petitioner's misconstruction of the language of the previous order. *Id.* at 2. The Court thus reaffirms the order, initially issued on July 25, 2023, denying Mr. Webb's RCFC 60 motion for relief.

IT IS SO ORDERED.

s/ Victor J. Wolski

VICTOR J. WOLSKI
Senior Judge