NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

MATTHEW T. CRUMLEY,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2022-1232

Appeal from the United States Court of Federal Claims in No. 1:21-cv-00976-EGB, Senior Judge Eric G. Bruggink.

Decided: November 8, 2022

MATTHEW LEO EANET, Eanet, PC, Los Angeles, CA, for plaintiff-appellant.

EBONIE I. BRANCH, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for defendant-appellee. Also represented by BRIAN M. BOYNTON, ERIC P. BRUSKIN, PATRICIA M. MCCARTHY.

Before MOORE, *Chief Judge*, LOURIE and PROST, *Circuit Judges*.

PROST, *Circuit Judge*.

Matthew T. Crumley appeals an order of the U.S. Court of Federal Claims dismissing his complaint as barred by claim preclusion. We affirm.

BACKGROUND

I

On November 20, 2010, Mr. Crumley—then an active-duty officer in the U.S. Air Force—was performing Honor Guard duties at a funeral when he stepped on artificial turf that, unbeknownst to him, covered an open grave. Injured in the fall, Mr. Crumley sought medical and legal assistance at Hanscom Air Force Base. On December 21, 2010, Mr. Crumley received a Letter of Admonishment ("LOA") for allegedly disrespectful and uncooperative behavior during his interactions with Hanscom personnel. The LOA became the basis of an Unfavorable Information File ("UIF") placed in Mr. Crumley's official military personnel file. Mr. Crumley also received a Referral Education/Training Report ("Training Report") dated August 2011, which noted his "disrespectful and unprofessional behavior" toward Hanscom personnel "for which he received a[n] [LOA]." App'x[1] 65.

In 2011, the Air Force conducted a reduction in force ("RIF"). In the September to October 2011 timeframe, the RIF Retention Board non-selected Mr. Crumley for retention. He received an honorable discharge effective March 1, 2012.

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[1] "App'x" refers to Mr. Crumley's Appendix.

II

On December 21, 2012, Mr. Crumley applied to have the Air Force Board for the Correction of Military Records ("Board") remove the LOA, UIF, and negative language in the Training Report from his records. The Board denied Mr. Crumley's application. Mr. Crumley then sought review by a special board under 10 U.S.C. § 1558. The special board likewise denied Mr. Crumley's requested relief.

On March 28, 2016, Mr. Crumley brought an action in the Court of Federal Claims for wrongful discharge—seeking reinstatement, correction of his military records, and back pay. *Crumley v. United States*, 133 Fed. Cl. 607, 609, 613 (2017) ("*Crumley II*").[2] He alleged that the LOA, UIF, and Training Report suffered from various procedural defects and that the RIF Retention Board improperly considered them. *Id.* at 612. The government moved for judgment on the administrative record, and the Court of Federal Claims granted it. The court determined that "[t]he procedural defects [that Mr.] Crumley has alleged are immaterial to the . . . special board's decision." *Id.* According to the court:

> [Mr.] Crumley had notice, multiple chances to respond, a clear understanding of the contents of the LOA, UIF, and [Training] Report, and suffered no substantial deprivation of rights as a result. Accordingly, [he] has failed to show that the . . . special board's decision was arbitrary, capricious, contrary to law, or unsupported by substantial evidence. The RIF [Retention] [B]oard properly

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[2] The Court of Federal Claims had previously dismissed an earlier-filed complaint for lack of jurisdiction because Mr. Crumley had not yet sought special-board review. *Crumley v. United States*, 122 Fed. Cl. 803 (2015) ("*Crumley I*").

> considered the LOA, UIF, and [Training] Report and was well within its discretion to non-select [Mr.] Crumley for retention.

Id. at 613. Mr. Crumley appealed the Court of Federal Claims' judgment to this court, and we affirmed. *Crumley v. United States*, 738 F. App'x 1020 (Fed. Cir. 2018) ("*Crumley III*") (nonprecedential).

III

In July 2019, Mr. Crumley again applied for Board correction of his military records. He asserted that, while litigating *Crumley II*, he learned that the Training Report "never actually became a part of" his official military personnel file and was therefore "erroneously considered by the RIF Retention Board." App'x 78. The Air Force Evaluation/Recognition Programs Administrator prepared an advisory opinion dated May 25, 2020, that recommended denying the application, and on May 26, 2020, the Board informed Mr. Crumley that he had thirty days to comment on the advisory opinion or provide additional evidence supporting his request. Mr. Crumley maintains that he timely commented on the advisory opinion via written correspondence dated June 25, 2020 (still within the thirty-day window). Appellant's Br. 20 (citing App'x 94–97). Regardless, on June 3, 2020—before the comment window closed—the Board considered his application in an executive session and voted against correcting the record. And, on July 15, 2020, the Board issued its final decision, denying Mr. Crumley's application for the reasons set forth in the advisory opinion while maintaining that it had not received comments from Mr. Crumley regarding the advisory opinion.

In February 2021, Mr. Crumley brought another action in the Court of Federal Claims—again for wrongful discharge, and again seeking reinstatement and back pay. This time, however, he alleged—as examples of procedural defects justifying his requested relief—both that (1) the

Training Report was never in his official military personnel file, so the RIF Retention Board improperly considered it; and (2) the Board prematurely denied his July 2019 application by failing to wait for and consider his timely comments on the advisory opinion. The government moved under Court of Federal Claims Rule 12(b)(6) to dismiss the complaint as barred by claim preclusion based on the final judgment in *Crumley II*.

The Court of Federal Claims agreed with the government and dismissed the complaint as barred by claim preclusion. It first set forth the three requirements for claim preclusion—that (1) the parties are identical or in privity; (2) the first suit proceeded to a final judgment on the merits; and (3) the second claim is based on the same set of transactional facts as the first (i.e., the claims share a common "nucleus of operative facts"). *Crumley v. United States*, No. 21-976C, 2021 WL 4438547, at *4 (Fed. Cl. Sept. 28, 2021) ("*Crumley IV*") (citing *Ammex, Inc. v. United States*, 334 F.3d 1052, 1055 (Fed. Cir. 2003)). Because Mr. Crumley did not dispute that the first two requirements were met, the court focused on the third: whether the instant claim shared a common nucleus of operative facts with that in *Crumley II*. The court concluded that it did:

> In both cases, [Mr.] Crumley alleged facts that relate to the same series of events, which occurred at the same time and which are all related in origin. The facts alleged here and in *Crumley II* are based upon the RIF [Retention] Board's review of his military record, including the LOA, UIF, and Training Report, the [RIF Retention Board]'s decision to non-select him for retention, and the [Board]'s denial of his request for relief from discharge. Further, in both cases, plaintiff sought the same relief: reinstatement, correction of his military records, and back pay.

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