

OCT 28 2010

Clerk, U.S. District & Bankruptcy
Courts for the District of ColumbiaUNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROBERT R. MATTHEWS,

Plaintiff,

v.

Civil Action No. 10 1830

SECRETARY OF VETERANS AFFAIRS,

Defendant.

MEMORANDUM OPINION

This matter is before the Court on plaintiff's application to proceed *in forma pauperis* and *pro se* complaint. The application will be granted and the complaint will be dismissed.

Plaintiff alleges that he unsuccessfully "sought consultation with [a] Veterans Health Administration orthopedic Resident . . . for [a] Service-connected disability," but his efforts "resulted [in a] complete failure of treatment and diagnosis causing undue personal injury." Compl. at 1. It appears that plaintiff's sole means of recovery comes under the Federal Tort Claims Act ("FTCA"), *see* 28 U.S.C. § 1346(b)(1).

The FTCA provides that the "United States shall be liable [for tort claims] in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 2674(a). It requires that a claimant present his claim to the appropriate federal agency prior to filing a civil action in a federal district court. *McNeil v. United States*, 508 U.S. 106, 113 (1993); 28 U.S.C. § 2675(a) (requiring claimant to present claim "for money damages for injury or loss of property . . . caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment . . . to the appropriate Federal agency" from which written notice of the denial of the claim has been forwarded to the claimant before a suit may be filed). It does not appear that plaintiff has exhausted his

administrative remedies by having presented his claim first to the appropriate agency and, absent exhaustion, this Court lacks subject matter jurisdiction. *See McNeil*, 508 U.S. at 113.

The Court will dismiss this action for lack of subject matter jurisdiction. An Order consistent with this Memorandum Opinion is issued separately on this same date.



United States District Judge

DATE:

10/20/10