

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

APR 10 2013

**Clerk, U.S. District and
Bankruptcy Courts**

Herbert Ellsworth Gregory,)
)
 Plaintiff,)
)
 v.)
)
 United States General Services Administration,)
)
 Defendant.)

13- 471

MEMORANDUM OPINION

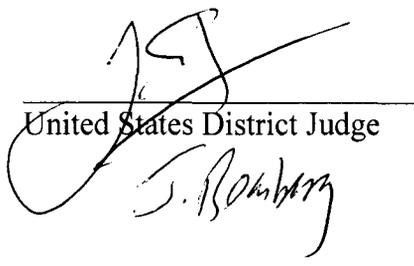
This matter is before the Court on plaintiff's *pro se* complaint and application to proceed *in forma pauperis*. The Court will grant plaintiff's *in forma pauperis* application and will dismiss the case for lack of subject matter jurisdiction. See Fed. R. Civ. P. 12(h)(3) (requiring dismissal "at any time" jurisdiction is found wanting).

Plaintiff, a resident of Alexandria, Virginia, sues the General Services Administration for allegedly rescinding a conditional job offer. Citing *Kloeckner v. Solis*, 133 S.Ct. 596 (2012), plaintiff claims that jurisdiction lies in this court because the Merit Systems Protection Board ("MSPB") denied his "mixed case appeal." Compl. at 8-11. However, plaintiff has not alleged that the decision was based on his membership in a protected class and the attached administrative record belies such a claim. See Compl., Ex. 1 (MSPB Initial Decision describing appeal as "alleging that the agency had breached a contract with him, and he had been subjected to a suitability action"); *Kloeckner*, 133 S.Ct. at 604 (describing mixed cases as "those appealable to the MSPB and alleging discrimination" cognizable under the federal antidiscrimination laws). Consequently, the Civil Service Retirement Act, 5 U.S.C. §§ 8331 *et*

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seq., provides the exclusive remedy for adjudicating plaintiff's claim. *Fornaro v. James*, 416 F.3d 63, 66 (D.C. Cir. 2005). "That regime provides for adjudication of all claims by OPM, 5 U.S.C. § 8347(b), appeal of adverse decisions by OPM to the MSPB, *id.* § 8347(d)(1), and subsequent review of MSPB decisions in the Federal Circuit, *id.* § 7703(b)(1); 28 U.S.C. § 1295(a)(9)." *Id.* Since plaintiff claims to have exhausted those remedies, Compl. at 8-9, this action will be dismissed. A separate Order accompanies this Memorandum Opinion.


United States District Judge

DATE: April 3, 2013