



**Farnan, District Judge.**

Presently before the Court is Defendant's Motion To Dismiss. (D.I. 12.) For the reasons set forth below, the Court will grant the Motion.

**BACKGROUND**

Plaintiffs initiated their Complaint pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-80. (D.I. 1.) In their Complaint, Plaintiffs allege that they were driving on Interstate 695 in Maryland when they were struck by a government vehicle driven by Airman Darius J. Parker of the United States Air Force ("USAF"). Plaintiffs allege that Airman Parker negligently collided with them when he changed lanes without signaling.

On or about December 26, 2001, Plaintiffs filed their Claims for Damage, Injury, or Death on Standard Form 95 with the USAF. On October 28, 2002, the USAF issued a final denial of their claims. The Plaintiffs then filed the instant lawsuit on June 9, 2003. Before the Court is the Government's Motion to Dismiss for failure to file within the limitations periods provided by 28 U.S.C. § 2401(b).

**DISCUSSION**

The Government contends that Plaintiffs' lawsuit should be dismissed because they did not file within sixty days following the USAF's final denial of their claim. In response, Plaintiffs

contend that the Government erroneously concludes that their lawsuit should be dismissed based upon the provisions of 28 U.S.C. § 2401(b). Plaintiffs contend that the plain language of Section 2401(b) is disjunctive rather than conjunctive, and thus, because they filed a claim with the USAF within two years from the accrual of their claim, their action is not barred by the limitation periods of Section 2401(b).

Because Plaintiffs' suggested reading of Section 2401(b) has been rejected by numerous circuits and is contrary to the legislative history of the FTCA, the Court will grant the Government's Motion. Section 2401(b) of the FTCA provides:

A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

28 U.S.C. § 2401(b).

Although phrased in the disjunctive, Section 2401(b) provides that a plaintiff's action will be barred if he or she fails to satisfy either of Section 2401(b)'s limitation provisions. Ramming v. United States, 281 F.3d 158, 162 (5th Cir. 2001); Dyniewicz v. United States, 742 F.2d 484, 485 (9th Cir. 1984); Miller v. United States, 741 F.2d 148, 150 (7th Cir. 1984); Schuler v. United States, 628 F.2d 199 (D.C. Cir. 1980) (en banc); Brown v. United States Post Office, 2002 WL 511466 (E.D. Pa. April 4, 2002); White v. United States Dept. of Navy, 1990 WL

2337 (E.D. Pa. Jan. 12, 1990); Myszkowski v. United States, 553 F. Supp. 66, 67-68 (N.D. Ill. 1982). This construction is supported by the legislative history of Section 2401(b). The House Committee Report to Section 2401(b) provides that a claimant:

must file a claim in writing to the appropriate Federal agency within 2 years after the claim accrues, and to further require the filing of a court action within 6 months of notice by certified or registered mail of a final decision of the claim by the agency to which it was presented.

H.R. Rep. No. 1532, 89th Cong., 2d Sess. 5 (1966) (quoted in Schuler, 628 F.2d at 202) (emphasis added). The Senate Report similarly evidences an intent to require a claimant to satisfy both of Section 2401(b)'s limitation periods. The Senate Report provides, "A claim would have to be filed with the agency concerned within 2 years after it accrues and any tort action must be brought within 6 months after final denial of the administrative claim." S. Rep. No. 1327, 89th Cong., 2d Sess. 1 (1966) (emphasis added).

It is undisputed that Plaintiffs filed the instant action more than six months following the final denial by the USAF. Accordingly, the Court concludes that Plaintiffs' action is barred by the limitation provision of Section 2401(b), and therefore, the Court will grant the Government's Motion.

An appropriate Order will be entered.

