

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

LEMUEL CLAYTON BRAY

KAZUKO HAYASHI-BRAY,

Plaintiffs,

vs.

THE UNITED STATES GOVERNMENT,

Defendant,

Case No.: 17-CV-206-F

REBUTTAL TO THE RESPONSE TO THE
MOTION FOR EQUITABLE TOLLING OF
THE STATUTE OF LIMITATIONS

1. The Plaintiff, Mr. Bray claims a “legal disability” under the section the Defendant’s cited, in the **Defendant’s denial letter of September 8, 2016**, and as noted in the **Plaintiff’s request for reconsideration dated February 23, 2017; Title 28, Section 2401 (a) of 3 years from January 1, 2016 instead of (b) and further claims a “Misrepresentation of Facts” under the citation of Title 41 in Title 28, Section 2401 (a); Section §7101 (9) definitions of Title 41.** This falls under Fed. R. Civ. P. 7 and DCWD LR 7.1(b).

2. The Defendant’s Attorney has responded prematurely without gathering the referenced evidence in possession of the Defendant. And has not apparently conferred with the DVA GC Office handling this claim up to this point about the referenced letters in the Complaint on page 2 beginning line 6 and the motion page 1, lines 12 & 13.

3. Considering the Holiday period, the Plaintiffs would not have objected to an extension of time for the response to the motion to that of the response to the Complaint of 60

1 days and believed that no response was necessary from the Defendant for 60 days on the jointly
2 filed Complaint and Motion. Obviously, the response to Complaint needs to precede the
3 response to the Motion while considering the Defense of SOL has already been raised by the
4 DVA GC's Office letter referred to in paragraph one of this rebuttal and since no response has
5 been received to the letter for reconsideration, it seemed to Plaintiff Mr. Bray to be time saving
6 to present the issue to the Court, with the DVA GC apparently being overwhelmed. Attorney
7 Ann Gavin-Lawrence, assigned to the reconsideration, had only gotten up to October of 2016
8 when called in late August of 2017 regarding the **Plaintiff's letter for reconsideration dated**
9 **February 23, 2017.** Phone number: 202 461 4900.

11 4. Specific to: **II Argument A**, Page 2 of the Response: The Plaintiff notes that
12 this case is filed against the UNITED STATES GOVERNMENT, requiring service to 3 DOJ
13 offices including the U S Attorney's Office. Appropriate Proofs of service were submitted to the
14 Clerk for the Summons, including the accompanying Motion and, were, as noted by the U S
15 Attorney, served simultaneously with the Complaint and the Motion. The proofs of service
16 should be available to the U S Attorney in the electronic documents now scanned by the Clerk's
17 Office. The Plaintiffs were not aware that a separate proof of service needed to be filed for each
18 filing in the envelope being served and respectfully asks the Court to consider this error a
19 harmless error. And notes that the United States Government has an extended time to respond of
20 60 days compared to that of a Private Party.

22 5. The Motion for Equitable Tolling of the Statutes of Limitations was in
23 response to the letter of September 8, 2016, Denial by the Department of the Navy and the
24 Department of Veterans Affairs of the SF-95 Claims by the General Counsel's Office of the

1
2 Department of Veterans Affairs (DVA GC) letter dated, September 8, 2016 responding for both
3 the DVA and the Navy. The Motion was submitted to save time and paper in expecting the
4 defense raised in the DVA GC's letter. A request for reconsideration was sent to the DVA GC,
5 pointing out the claim of "legal disability" presented above countering the DVA GC's letter,
6 which is in the possession of the DOJ, DVA GC's office. (In other words, in the Defendants
7 possession) We suggest the U S Attorney ask for any extension needed to obtain the evidence in
8 the various offices of the U S Government, mainly the DVA. We do not object to a response to
9 the Motion for Equitable Tolling of the Statute of Limitations being filed with the response to the
10 complaint in 60 days from the last Defendants office receipt of the summons and with the
11 responder having all the evidence in hand. We hold The Paperwork Reduction Act of 1980 (Pub.
12 L. No. 96-511, 94 Stat. 2812, codified at 44 U.S.C. §§ 3501 – 3521) binding and seek not to file
13 hard copy duplicates needed to be scanned and added to an RBA file already bloated to 4,529
14 pages, much of it duplication, (over 9 reams of paper single sided) with an additional 500-1,000
15 pages to be added in items that have been deceptively removed.
16

17
18 6. The Record Before the Agency (RBA) is in the possession of the DVA GC
19 subject to Plaintiff Mr. Bray's CAVC Case No. 17-2990, Appeal of a May 11, 2017 BVA
20 Decision. The appeal Attorney at the DVA GC's Office is Lavinia Derr, Phone 202 632 6924.
21 The DVA GC attorney working on correcting the RBA is Deborah A. Pride, Ph 202 632 6944.

22 **TITLE 28, U.S.C. §2401. "Time for commencing action against United**
23 **States:** (a) Except as provided by chapter 71 of title 41, every civil action commenced against
24 the United States shall be barred unless the complaint is filed within six years after the right of

1 action first accrues. The action of any person under legal disability or beyond the seas at the time
2 the claim accrues may be commenced within three years after the disability ceases."

3 **TITLE 41, Section §7101 "...(9) MISREPRESENTATION OF FACT.** The term
4 "misrepresentation of fact" means a false statement of substantive fact, or conduct that leads to a
5 belief of a substantive fact material to proper understanding of the matter in hand, made with
6 intent to deceive or mislead."

7 **CONCLUSION:**

8 The Plaintiffs respectfully request the Court to hold in abeyance a decision on the
9 Motion for Equitable Tolling of the Statute of limitations as provided in the Statutes above until
10 the U S Attorney has gathered the evidence from the Defendant's various offices, reviewed it,
11 provided it is done in a timely cooperative manner, AND SUBMITTED IT TO THE COURT in
12 electronic form. Though the Plaintiffs have it in electronic form, DCWD EM/ECF
13 PROCEDURES MANUAL, II., D., iii. Prohibits Pro Se parties from using the system.

14
15
16 Dated this Third Day of January 2018.

17
18 
19 Lemuel C Bray and Kazuko Hayashi Bray

20 In Pro Se
21 2833 Main Street
22 Torrington, WY 82240-1929
23 lembay@gmail.com
24 Ph 307 316 8568
25 Fax 307 316 0936