

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

GIRARD C. CHAMNESS,
Plaintiff-Appellant,

v.

JOHN MCHUGH, SECRETARY OF THE ARMY,
Defendant-Appellee.

2012-1547

Appeal from the United States District Court for the District of Columbia in case no. 09-CV-2287, Judge Beryl A. Howell.

ON MOTION

Before SCHALL, *Circuit Judge.*

ORDER

The Secretary of the Army ("Secretary") moves for summary affirmance of the United States District Court for the District of Columbia's grant of summary judgment in its favor. Girard C. Chamness opposes. The Secretary replies.

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“It is settled law that claims for military pay and allowances are actionable under the Tucker Act.” *Heisig v. United States*, 719 F.2d 1153, 1155 (Fed. Cir. 1983). In addition to seeking correction of his military records, Chamness seeks “receipt of all back pay and allowances.” Chamness also waived “any right or entitlement to recover monetary damages greater than \$10,000 in this action. Accordingly, Chamness’s claim was properly before the district court and is appropriately before this court on appeal. *See Heisig*, 719 F.2d at 1156 n.8.

Summary disposition of a case “is appropriate, *inter alia*, when the position of one party is so clearly correct as a matter of law that no substantial question regarding the outcome of the appeal exists.” *Joshua v. United States* 17 F.3d 378, 380 (Fed. Cir. 1994). The government has not shown that the instant case warrants the granting of summary affirmance.

Upon consideration thereof,

IT IS ORDERED THAT:

- (1) The motion for summary affirmance is denied.
- (2) Chamness’s opening brief in this court is due within 30 days of the date of filing of this order.

FOR THE COURT

/s/ Jan Horbaly
Jan Horbaly
Clerk