

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-3547

KEITH DANIELS,
Appellant

v.

UNITED STATES OF AMERICA

On Appeal from the U.S. District Court, E.D. Pa.
(D.C. No. 2:23-cv-02493)
District Judge: Honorable Kelley B. Hodge

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
October 2, 2026

Before: SHWARTZ, CHUNG, and FISHER, *Circuit Judges*.

(Filed: October 6, 2026)

OPINION*

FISHER, *Circuit Judge*.

Keith Daniels filed an administrative claim with the Department of Veterans Affairs alleging negligent performance of surgery. The VA concluded that there was no evidence

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

of a negligent or wrongful act by an employee of the VA and denied Daniels's claim. Daniels then filed this lawsuit against the United States in the Eastern District of Pennsylvania, alleging medical negligence before, during, and after his surgery. The District Court granted summary judgment in favor of the United States, holding that Daniels failed to exhaust his pre- and post-surgery negligence claims, and offered no evidence that the standard of care was breached during the surgery. We will affirm.¹

Suits against the United States are precluded under the Federal Tort Claims Act² unless the plaintiff has “first presented the claim to the relevant Federal agency and the claim has been finally denied.”³ While the plaintiff “need not propound every possible theory of liability” to exhaust the claim, he or she “cannot present one claim to the agency and then maintain suit on the basis of a different set of facts.”⁴ To properly present his or her claim, the plaintiff must “(1) give[] the agency written notice of his or her claim sufficient to enable the agency to investigate and (2) place[] a value on his or her claim.”⁵

¹ The District Court exercised jurisdiction under 28 U.S.C. §§ 1331 (federal question), 1346(b)(1) (Federal Tort Claims Act). We exercise jurisdiction under 28 U.S.C. § 1291 (final decisions of district courts). We review summary judgment orders de novo. *Daubert v. NRA Grp., LLC*, 861 F.3d 382, 388 (3d Cir. 2017).

² 28 U.S.C. §§ 1346(b), 2671–80.

³ *Lightfoot v. United States*, 564 F.3d 625, 626 (3d Cir. 2009) (citing 28 U.S.C. § 2675(a)).

⁴ *Roma v. United States*, 344 F.3d 352, 362 (3d Cir. 2003) (quoting *Deloria v. Veterans Admin.*, 927 F.2d 1009, 1011–12 (7th Cir. 1991)).

⁵ *Id.* at 362–63 (quoting *Tucker v. U.S. Postal Serv.*, 676 F.2d 954, 959 (3d Cir. 1982)).

Daniels did not present his pre- and post-surgical negligence claims to the VA. In his administrative claim, he stated that the surgery “was not done properly,” “failed,” and caused damage that resulted in a corrective procedure.⁶ As the District Court correctly held, “Daniels did not present the United States with an administrative claim asserting that the wrong surgery was performed.”⁷ Nor did Daniels present a claim asserting that his post-operative care was inadequate. Instead, his claim focused solely on the surgical procedure itself. And the District Court correctly noted that determining whether a surgery is necessary requires reviewing “the diagnostic records” and “standard of care for diagnosing and treating subtalar arthritis,” whereas reviewing whether the surgery was properly performed requires “records related to surgery itself and the relevant standard of care for subtalar joint fusion surgery.”⁸

Daniels argues that he did present his pre- and post-surgical negligence claims because they formed a singular “surgical episode” when combined with the surgical negligence. In doing so, Daniels aims to distinguish his case from our decision in *Roma v. United States*.⁹ There, Roma, a municipal firefighter, responded to a fire on a naval base and later filed an administrative claim alleging that he was injured because a federal employee negligently instructed him to take off his breathing apparatus.¹⁰ That did not

⁶ App. 156.

⁷ *Id.* at 11.

⁸ *Id.*

⁹ 344 F.3d at 352.

¹⁰ *Id.* at 358–59.

exhaust Roma’s subsequent district court claim alleging that the United States negligently failed to prevent the fire.¹¹ Because the “facts concerning how the fire started . . . [were] entirely distinct from the conduct involved in supervising the firefighting operations,” Roma’s administrative claim “did not provide any notice to the United States” that it must investigate whether negligence caused the fire itself.¹²

Despite Daniels’s efforts to distinguish *Roma*, his administrative claim is similar. It was narrowly focused on a particular issue—the performance of surgery—that would not provide notice that a broader investigation was necessary.¹³ Investigating whether a surgery was necessary—as opposed to the more limited scope of why it failed—requires investigating different facts, interviewing different actors, and assessing and reviewing an entirely separate timeline. Daniels asserts, without citation, that his claims do “not involve separate actors, separate time frames, or a separate triggering event.”¹⁴ This is inconsistent with the record. Daniels met with a doctor other than his surgeon who recommended surgery, and investigating pre- and post-surgical care would require investigating a much broader timeline than just the surgery itself.

Daniels also directs us to two non-binding cases—*Abbott v. United States*¹⁵ and

¹¹ *Id.* at 363.

¹² *Id.*

¹³ *See id.*

¹⁴ Appellant’s Br. 10.

¹⁵ 78 F.4th 887 (6th Cir. 2023).

*Weiner v. United States*¹⁶—for the assertion that the District Court “extends *Roma* beyond its holding.”¹⁷ But these cases address the same basic point that we and the District Court have already addressed: to be exhausted, a claim need not articulate the precise cause of action or include every factual detail, but it must put the agency on notice to investigate the facts at issue and involve the same operative facts.¹⁸

Daniels argues that because his administrative claim states that the “surgery failed and was not done properly, a reasonable agency investigator [would] not limit review to the placement of hardware.”¹⁹ But in light of the rest of his claim—exclusively describing the performance of surgery, focusing on the use of two screws instead of one—a reasonable investigator would focus on the standard of care for the surgery itself. And absent any facts that would put the VA on notice to investigate whether the pre- and post-surgery standard of care was breached, Daniels has not exhausted these claims.²⁰

The District Court properly granted summary judgment on the claim that Daniels did exhaust—his surgical negligence claim. Summary judgment is appropriate if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”²¹ A genuine factual dispute is “any reasonable disagreement over an outcome-

¹⁶ 2014 WL 7404135 (E.D. Pa. Dec. 30, 2014).

¹⁷ Appellant’s Br. 13.

¹⁸ See *Abbott*, 78 F.4th at 898–99; *Weiner*, 2014 WL 7404135, at *5–6.

¹⁹ Appellant’s Br. 18.

²⁰ See *Roma*, 344 F.3d at 362.

²¹ Fed. R. Civ. P. 56(a).

determinative fact.”²² “[T]he non-moving party must rebut the motion with facts in the record and cannot rest solely on assertions made in the pleadings, legal memoranda, or oral argument.”²³

Here, Daniels has presented no facts that the standard of care was breached during his surgery. In fact, his own expert witness testified that the standard of care was not breached by the use of two screws instead of one, or by misplacement of the screws. Summary judgment was therefore appropriate.

For the foregoing reasons, we will affirm.

²² *In re Energy Future Holdings Corp.*, 990 F.3d 728, 737 (3d Cir. 2021).

²³ *Berkeley Inv. Grp., Ltd. v. Colkitt*, 455 F.3d 195, 201 (3d Cir. 2006).