IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARY H. VAUGHAN, Plaintiff, v. PATHMARK STORES, INC., Defendant.	:	CIVIL ACTION NO. 99-18

MEMORANDUM

R.F. KELLY, J. JANUARY 19, 2000

Before this Court is a motion for summary judgment filed by Defendant Pathmark Stores, Inc. ("Pathmark"). Plaintiff Mary Vaughan ("Vaughan"), a former employee of Pathmark filed suit under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq., and under Title VII, 42 U.S.C. § 2000e et seq., alleging disability and racial discrimination. Plaintiff has also alleged violations of the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. § 955 et seq., for racial and disability discrimination. For the following reasons, Defendant's Motion for Summary Judgment will be granted.

BACKGROUND

Plaintiff began working part-time as a bagger for Pathmark in 1978. She eventually was promoted to cashier at Defendant's Cheltenham store. In 1988, Plaintiff was diagnosed with carpal tunnel syndrome and filed a Worker's Compensation claim in connection with the condition. Defendant then placed

Plaintiff in the customer service area of the supermarket. As a result of this arrangement provided by Defendant, Plaintiff's workers' compensation benefits were suspended.

Plaintiff continued to work as a customer service representative for six years. In June of 1994, however, Pathmark sent Vaughan for an independent medical examination ("IME"). The IME report concluded that Vaughan was not suffering from carpal tunnel syndrome and recommended that she had the capacity to function fully. (Def.'s Mot. For Summ. J., Ex. D). Pathmark then notified Vaughan that she would be returned to her original position of cashier. Vaughan contested the re-assignment and did not return to work after that date.[1] A white female filled the customer service position that Plaintiff had held.

Defendant then filed a Petition to Terminate/Review Plaintiff's workers' compensation benefits, claiming that Plaintiff had fully recovered from her work-related injury as of June 15, 1994. Plaintiff contested that petition. Furthermore, Plaintiff filed a petition for penalties, claiming that Defendant

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[1] By letter, dated June 30, 1994, Pathmark advised Plaintiff that she had been released to full duty and that Pathmark has no documentation stating that Vaughan could not run a cash register. (Pl.'s Answer to Def.'s Summ. J. Mot., Ex. D). The letter further stated that Vaughan's decision not to perform the cashier position is considered "job-abandonment." Id. Plaintiff obtained a note from her doctor, which she submitted to Defendant on July 1, 1994, indicating that she had not recovered from her carpal tunnel syndrome and was not able to return to her job as cashier. (Pl.'s Answer to Def.'s Summ. J. Mot., Ex. E).

failed to reinstate her benefits as of June 30, 1994. In September of 1997, Judge Marc A. Weinberg reinstated Plaintiff's benefits as of June 30, 1994 up to an including January 1, 1997, when Plaintiff obtained new employment as a school crossing guard.

On July 10, 1996, Plaintiff received a letter stating that she was terminated as of March 23, 1996. On or about August 1, 1996, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), and on October 5, 1998, the EEOC issued a Dismissal and Notice of Rights advising Plaintiff that she had the right to file suit within 90 days of receipt of the same. Plaintiff brought this action on January 4, 1999.

STANDARD OF REVIEW

"Summary judgment is appropriate when, after considering the evidence in the light most favorable to the nonmoving party, no genuine issue of material fact remains in dispute and `the moving party is entitled to judgment as a matter of law.'" Hines v. Consolidated Rail Corp., 926 F.2d 262, 267 (3d Cir. 1991) (citations omitted). "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). The moving party carries

the initial burden of demonstrating the absence of any genuine issues of material fact.[2] Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1362 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Once the moving party has produced evidence in support of summary judgment, the nonmovant must go beyond the allegations set forth in its pleadings and counter with evidence that demonstrates there is a genuine issue of fact for trial. Id. at 1362-63. Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

DISCUSSION

Both Title VII and the ADA require a timely charge of discrimination to have been filed with the EEOC before a federal court may adjudicate the claim. Melincoff v. East Norriton Physician Svc., No. CIV. A. 97-4554, 1998 WL 254971, *7 (E.D. Pa. April 20, 1998). Generally, a plaintiff must file a charge of employment discrimination with the EEOC within 180 days of the alleged act of discrimination. EEOC v. Commercial Office

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[2] "A fact is material if it could affect the outcome of the suit after applying the substantive law. Further, a dispute over a material fact must be 'genuine,' i.e., the evidence must be such 'that a reasonable jury could return a verdict in favor of the non-moving party.'" Compton v. Nat'l League of Professional Baseball Clubs, 995 F. Supp. 554, 561 n.14 (E.D. Pa.) (citations omitted), aff'd, 172 F.3d 40 (3d Cir. 1998).

Products Co., 486 U.S. 107, 110 (1988). However, the applicable limitations period differs in a "deferral state," such as Pennsylvania, which has its own anti-discrimination laws and enforcement agency.[3] Seredinski v. Clifton Precision Products Co., 776 F.2d 56, 61 (3d Cir. 1985). In such jurisdictions, an employment discrimination charge must be filed with the EEOC within 300 days of when the alleged unlawful employment practice occurred. Id. (citing 42 U.S.C. § 2000e-5(e)).

In the instant action, Defendant argues that Plaintiff's allegations of discrimination under the ADA and Title VII are based on Pathmark's removal of Vaughan from her customer service position in June of 1994 along with the contemporaneous reassignment of Vaughan to her former position as a cashier. (Def.'s Ex. G, Pl.'s Compl. at ¶¶ 15-18, 29-32). Defendant further argues that "[s]ince the alleged discrimination occurred in June of 1994, plaintiff was required to file her EEOC charge by April 25, 1995 (300 days from June 29, 1994)." (Def.'s Mem. Of Law in Supp. of Summ. J. at 5). Thus, Defendant contends that Vaughan's August 1, 1996 filing of her charge of discrimination was untimely, barring Plaintiff from litigating any claims of

[3] It is well-settled that Pennsylvania is a deferral state, as the jurisdiction of the Pennsylvania Human Relation Commission ("PHRC") substantially overlaps with the EEOC's. Howze v. Jones & Laughlin Steel Corp., 750 F.2d 1208, 1210 (3d Cir. 1984).

discrimination that occurred in June of 1994 or before October 6, 1995, and summary judgment is appropriate on her Title VII and ADA claims. Id.

In response, Plaintiff argues that her EEOC filing was timely since it was filed less than a month after Plaintiff was notified by Defendant that she had been terminated by Defendant in March of 1996. According to Plaintiff, she may pursue her claim, under the continuing violation theory, for conduct that began prior to the filing period if she can demonstrate that the act is part of an ongoing practice or pattern of discrimination. Rush v. Scott Specialty Gases, Inc., 113 F.3d 476, 481 (3d Cir. 1997).

In Delaware State College v. Ricks, 449 U.S. 250 (1980), a professor who had been denied tenure by the Board of Trustees of Delaware State College brought an action under both Title VII and 42 U.S.C. § 1981, alleging national origin discrimination. The federal district court in Delaware dismissed the claims as untimely, but the Third Circuit Court of Appeals reversed the district court's decision. Subsequently, the Supreme Court granted certiorari and reversed the federal appellate court's decision, holding that the allegations of the complaint did not support the professor's "continuing violation" argument that discrimination motivated the College not only in denying him tenure but also in terminating his employment. In

concluding that the limitations periods started to run when the tenure decision was made and the professor was notified, the Court reasoned as follows:

> Determining the timeliness of Ricks' EEOC complaint, and this ensuing lawsuit, requires us to identify precisely the "unlawful employment practice" of which he complains. Ricks now insists that discrimination motivated the College not only in denying him tenure, but also in terminating his employment on June 30, 1975. In effect, he is claiming a "continuing violation" of the civil rights laws with the result that the limitations periods did not commence to run until his 1-year "terminal" contract expired. This argument cannot be squared with the allegations of the complaint. Mere continuity of employment, without more, is insufficient to prolong the life of a cause of action for employment discrimination. If Ricks intended to complain of a discriminatory discharge, he should have identified the alleged discriminatory acts that continued until, or occurred at the time of, the actual termination of his employment. But the complaint alleges no such facts.
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> Indeed, the contrary is true. It appears that termination of employment at Delaware State is a delayed, but inevitable, consequence of the denial of tenure. In order for the limitations periods to commence with the date of discharge, Ricks would have had to allege and prove that the manner in which his employment was terminated differed discriminatorily from the manner in which the College terminated other professors who also had been denied tenure. But no suggestion has been made that Ricks was treated differently from other unsuccessful tenure aspirants. Rather, in accord with the College's practice, Ricks was offered a 1-year "terminal" contract, with explicit notice that his employment would end upon its expiration.

> In sum, the only alleged discrimination occurred – and the filing limitations periods therefore commenced – at the time the tenure decision was made and communicated to Ricks. That is so even thought one of the effects of the denial of tenure – the eventual loss of a teaching position – did not occur until later.

Ricks, 449 U.S. at 257-58 (citations and footnotes omitted).

Like in Ricks, Pathmark correctly argues that Vaughan's only allegation of discrimination stems from her June 1994 removal from the light duty position of Service Center Clerk. (Def.'s Ex. G, Pl.'s Compl. at ¶¶ 15-18, 29-32). As a result, the limitations period began to run when the decision to reassign Vaughan to her former position as a cashier was made and she was notified, making the filing of Plaintiff's EEOC charge untimely. See Ricks, 449 U.S. at 257-58; see also Bronze Shields v. New Jersey Dep't of Civil Serv., 667 F.2d 1074, 1084 (3d Cir. 1981) ("The only act of which plaintiffs complain was the promulgation of the eligibility roster on May 3, 1975. Plaintiffs' EEOC charge was filed more than a year later, in June 1976, far more than 180 days after the list's promulgation, and therefore was untimely."), cert. denied, 458 U.S. 1122 (1982).

Plaintiff also contends that equitable tolling is appropriate in this case. Equitable tolling functions to toll or stop the running of the statute of limitations where a claim's accrual date has already passed in light of established equitable considerations. Oshiver v. Levin, Fishbein, Sedran, & Berman, 38

F.3d 1380, 1390 (3d Cir. 1994). The Third Circuit Court of Appeals has recognized numerous situations in which equitable tolling may be appropriate: (1) when a claimant received inadequate notice of the right to file suit; (2) where a motion for appointment of counsel is pending; (3) where the court has misled the plaintiff into believing that he or she has done everything required; (4) where the defendant has actively misled the plaintiff respecting the plaintiff's cause of action; (5) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; or (6) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum. Seitzinger v. Reading Hosp. & Med. Ctr., 165 F.3d 236, 240 (3d Cir. 1999). In this regard, Plaintiff admits that she focused her attentions on the wrong forum – the Workers' Compensation Bureau, but charges Pathmark with misleading her into believing that she was in the proper forum by filing a Petition for Termination/Review of Plaintiff's workers' compensation benefits in that forum, forcing Plaintiff to respond accordingly. Plaintiff adds that upon learning that she was terminated, she took prompt action by filing with the appropriate administrative agencies, and, thus, argues that her filings were timely under these circumstances.

Despite Plaintiff's claims, there is no evidence of record showing that Pathmark was in any way responsible for

Vaughan's failure to file a complaint within the statutory period.[4] See School District of Allentown v. Marshall, 657 F.2d 16, 20-21 (3d Cir. 1981) (lack of knowledge or ignorance of the law was not enough to invoke equitable tolling where school district was in no way responsible for plaintiff's failure to file complaint within statutory period). Moreover, by pursuing her workmen's compensation benefits, Plaintiff was not asserting the same statutory claim in a different forum, nor giving notice to respondent of that statutory claim, but was asserting an independent claim. See Int'l Union of Elec., Radio & Mach. Workers v. Robbins & Myers, 429 U.S. 229, 238 (1976) (discharged employee's utilization of collective-bargaining grievance procedures did not toll running of statute of limitations period

[4] In support of Pathmark's contention that Plaintiff knew about a possible discrimination claim in 1994, when Pathmark removed her from the light duty position as a service center clerk and reassigned her to cashier duties, Pathmark points to a handwritten journal kept by Plaintiff. Def.'s Reply Brief, Ex. A. In that journal, Plaintiff made entries, between August 2 and August 4, 1994, indicating that she had contacted attorneys regarding what she noted as a valid discrimination claim. Id. In response, Plaintiff does not dispute the above, but, instead, asserts that she was the subject of a "tangible employment action" when she was notified that she was terminated and suggests that since she was not terminated until March of 1996, her subsequent filing with the EEOC in August of 1996 was timely. In doing so, however, Plaintiff fails to acknowledge that her reassignment to cashier in June of 1994 also qualifies as a "tangible employment action." See Burlington Indus., Inc. v. Ellerth, ___ U.S. ___, 118 S. Ct. 2257, 2268 (1998) ("A tangible employment action constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.").

for filing charge with EEOC).

With respect to Plaintiff's PHRA claim, Defendant correctly points out that "[j]ust as Vaughan's federal actions are time-barred, her cause of action under the PHRA is also time-barred for failing to timely file a complaint with the PHRC." Def.'s Mem. In Supp. of Summ. J. at 30 (citing Copes v. Children's Hosp. Of Philadelphia, No. Civ. A. 99-1331, 1999 WL 554611, at *3 (E.D. Pa. June 11, 1999) and Silfa v. Meridian Bank, No. CIV. A. 98-4293, 1999 WL 199851, *7 (E.D. Pa. April 8, 1999)). In this regard, the Third Circuit has acknowledged that "[t]he Pennsylvania courts have strictly interpreted this requirement, and have repeatedly held that `persons with claims that are cognizable under the Human Relations Act must avail themselves of the administrative process of the Commission or be barred from the judicial remedies authorized in Section 12(c) of the Act.'" Woodson v. Scott Paper Co., 109 F.3d 913, 925 (3d Cir.), cert. denied, 522 U.S. 914 (1997). Here, Plaintiff failed to file an administrative complaint with the PHRC within the required 180-day period after the alleged discriminatory act. PA. STAT. ANN. tit. 43, § 959(h). Accordingly, Plaintiff's PHRA claim will be dismissed.

Finally, Defendant has alternatively argued that summary judgment should be granted on Plaintiff's case based on contentions that Plaintiff cannot establish a prima facie case of

disability or racial discrimination, and, even assuming that Plaintiff could establish a prima facie case, Plaintiff cannot raise a genuine issue of material fact to rebut Pathmark's legitimate, non-discriminatory reasons for its actions. In response, Plaintiff filed a Rule 56(f) Affidavit, alleging that there are material issues of fact which dictate that Defendant's Motion for Summary Judgment be denied, but that additional discovery is needed in order to determine (1) what Defendant's policy was with regard to employees who held light duty positions, (2) what other employees were required to go back to jobs that their doctors said they could not perform, (3) how other employees with carpal tunnel syndrome were treated, (4) what happened in 1994 that caused Pathmark's to direct Vaughan to obtain a medical exam, (5) what kind of reasonable accommodations were available to employees of Defendant, (6) what policy was in effect when Vaughan was removed from the customer service department and replaced by a white female, and (7) what procedures were in effect to deal with employees who had medical restrictions. (Pl.'s Answer to Def.'s Summ. J. Motion, Ex. H at ¶¶ 12-13, 17-21). However, even though Plaintiff was given additional time to conduct the above discovery, she has failed to meet her burden and supplement the record with any evidence

obtained during the expanded discovery process.[5] See Karas v. Jackson, 582 F. Supp. 43, 45 (E.D. Pa. 1983) ("Plaintiff may not rest his response to a summary judgment motion on the bare allegations in his pleadings.").

Based on the above, Defendant's Motion for Summary Judgment is granted. An order will follow.

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Defendant.	:	

[5] Defendant filed its summary judgment motion on September 3, 1999, approximately one month before discovery was scheduled to be completed. On September 24, 1999, Plaintiff filed a Motion for a Continuance and Extension of the Scheduling Order. Next, Plaintiff filed her summary judgment response on September 28, 1999, having previously received an extension of time to do so. On October 25, 1999, this Court did extend the discovery deadline until January 4, 2000.

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ORDER

AND NOW, this 19th day of January, 2000, upon consideration of Defendant's Motion for Summary Judgment, and all responses thereto, it is hereby ORDERED that Defendant's Motion is GRANTED.

BY THE COURT:

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ROBERT F. KELLY, J.