

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

<hr/>	:	CIVIL NO.
ANN DOCKINS,	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
FLOUR DANIEL/GTI, INC.,	:	
Defendant.	:	98-3035
<hr/>	:	

ORDER AND MEMORANDUM

ORDER

AND NOW, to wit, this 8th day of February, 2000, upon consideration of Defendant's Motion for Judgment on the Pleadings with Respect to Plaintiff's Claims for Race and Age Discrimination (Doc. No. 11, filed August 5, 1999), Judgment on the Pleadings with Respect to the Plaintiff's Answer to Defendant's Motion for Plaintiff's Claims for Race and Age Discrimination (Doc. No. 14, filed August 25, 1999), and Reply Memorandum in Support of Defendant's Motion For Judgment on the Pleadings with Respect to Plaintiff's Claims for Race and Age Discrimination (Doc. No. 15, filed September 3, 1999), for the reasons stated in the attached Memorandum, it is **ORDERED** that Defendant's Motion for Judgment on the Pleadings with Respect to Plaintiff's Claims for Race and Age Discrimination is **GRANTED**. This Order is **WITHOUT PREJUDICE** to Plaintiff's right to proceed on her remaining claim of retaliation.

It is **FURTHER ORDERED** that a preliminary pretrial telephone conference will be scheduled in due course.

MEMORANDUM

Currently before the Court is the motion for judgment on the pleadings of Fluor Daniel, GTI (“FD” or “defendant”), made pursuant to rule 12(c) of the Federal Rules of Civil Procedure. The motion seeks judgment on the pleadings as to plaintiff’s claims of race and age discrimination, but does not address plaintiff’s retaliation claim. For the reasons that follow, the Court grants the defendant’s motion.

I. BACKGROUND

Plaintiff Ann Dockins (“plaintiff”) filed her Complaint on June 12, 1998. The factual allegations in the Complaint, taken as true for purposes of the pending motion, and supplemented by undisputed facts set forth in plaintiff’s response to defendant’s motion for judgment on the pleadings, are as follows:

Plaintiff was hired in February, 1986, by Ground Water Technology Government Services, Inc. (“Ground Water”) to work in the accounting department. In 1993, plaintiff filed a complaint with the Pennsylvania Human Relations Commission (“PHRC”), alleging discrimination on the basis of race and age by Mike Medvidik, a supervisor at Ground Water. In June, 1995, plaintiff settled the 1993 PHRC claim, and returned to work at Ground Water. In May, 1996, Ground Water merged with defendant.

In May, 1996, Medvidik was assigned as a supervisor in the accounting department where plaintiff worked. Plaintiff claims Medvidik denied her training and reassigned some of her job responsibilities in retaliation for the filing of the 1993 PHRC complaint. More specifically, plaintiff was on disability leave from September, 1996, to December, 1996, and from February 3, 1997 to March 3, 1997. While plaintiff was on disability leave, Medvidik hired a temporary

employee, gave her the training that he denied plaintiff, and hired this temporary employee on a full time basis, making her the lead person in the accounting department. In addition, Medvidik gave other employees in plaintiff's department the training that he allegedly denied plaintiff. In March, 1997, plaintiff complained about Medvidik to Amy Poulson, defendant's Human Resources Manager, and to defendant's head of corporate human resources,¹ but no action was taken.

On March 21, 1997, plaintiff filed a complaint with the PHRC, alleging retaliation for plaintiff's filing of the 1993 PHRC complaint. Plaintiff filed her Complaint in this Court on June 12, 1998, asserting claims for retaliation and discrimination on the basis of race and age.² Defendant filed an Answer to the Complaint on July 20, 1998, and an Amended Answer on May 3, 1999. Defendant filed a Motion for Judgment on the Pleadings with Respect to Plaintiff's Claims for Race and Age Discrimination on August 5, 1999. Plaintiff filed a response to defendant's motion on August 25, 1999; defendant filed a reply on September 3, 1999.

¹Plaintiff states that this person's name is "Joline," last name unknown.

²In her Complaint, plaintiff also refers to alleged incidents of retaliation by defendant against her son, Jay Dockins, who was also employed by defendant. Plaintiff alleges that her son suffered adverse employment decisions in retaliation for plaintiff's filing of the 1993 PHRC complaint.

Jay Dockins filed a separate action against defendant in this Court for those alleged retaliatory acts. In an Order dated August 17, 1999, Judge Robreno of this Court granted defendant's motion for summary judgment, and entered judgment for defendant and against Jay Dockins. To the extent that plaintiff seeks to complain in this action of the treatment of her son by defendant, she does not have standing to assert such a claim. See Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc., 120 S.Ct. 693, 704 (2000).

II. STANDARD OF REVIEW

A motion for judgment on the pleadings, made pursuant to Federal Rule of Civil Procedure 12(c), is treated under the same standard as a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). See Shelly v. Johns-Manville Corp., 798 F.2d 93, 97 n.4 (3d Cir. 1986); Regalbuto v. City of Philadelphia, 937 F. Supp. 374, 376 (E.D.Pa. 1995). A motion for judgment on the pleadings will only be granted where the moving party has established that no material issue of fact remains to be resolved, and that the movant is entitled to judgment as a matter of law. See Institute for Scientific Info., Inc. v. Gordon and Breach, Science Publishers, Inc., 931 F.2d 1002, 1005 (3d Cir. 1991). In determining whether a material issue of fact exists, the court must view the facts and inferences to be drawn from the pleadings in the light most favorable to the non-moving party. See Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 406 (3d Cir. 1993).

III. DISCUSSION

Defendant has moved for judgment on the pleadings as to plaintiff's claims of race and age discrimination. Defendant argues that, because the 1997 PHRC complaint did not allege discrimination on the basis of race or age, plaintiff may not raise those claims in this Court. Plaintiff responds that the claims of discrimination on the basis of age and race are fairly included in the scope of the 1997 PHRC complaint, because that complaint alleges retaliation for filing the 1993 PHRC complaint, and the 1993 PHRC complaint raised claims of discrimination on the basis of age and race. Accordingly, plaintiff argues that defendant had adequate notice that the 1997 PHRC complaint included claims of discrimination on the basis of age and race.

A plaintiff under Title VII must file a timely charge with the Equal Employment Opportunity Commission (“EEOC”) before initiating suit in federal court. See Love v. Pullman, 404 U.S. 522, 523 (1972). Parties alleging that their employer has violated their civil rights must file a complaint with the EEOC within 180 days of the violation, or within 300 days of the violation if the aggrieved party has already instituted proceedings with a State or local agency, such as the PHRC. See 42 U.S.C.A. § 2000e-5(e)(1). The purpose of this requirement is to permit notice to the charged party and to provide an avenue for voluntary compliance and settlement, without resort to litigation. See Glus v. G.C. Murphy, 562 F.2d 880, 888 (3d Cir. 1977). An aggrieved party who files a complaint with the PHRC can request that his complaint be cross-filed with the EEOC under a worksharing agreement between the two agencies. See Woodson v. Scott Paper Co., 109 F.3d 913, 924-25 (3d Cir. 1997); Berkoski v. Ashland Regional Medical Ctr, 951 F. Supp. 544, 549 (M.D.Pa. 1997). If the aggrieved party makes a request for cross-filing, then he will be deemed to have satisfied the procedural filing requirements of both the PHRC and the EEOC. See id. In this case, the PHRC referred the 1997 PHRC complaint to the EEOC.

The Third Circuit has held that the requirement that an aggrieved party file a complaint with the EEOC before filing suit in federal court is an integral part of Title VII’s statutory scheme. See Ostapowicz v. Johnson, 541 F.2d 394, 398 (3d Cir. 1976). “These preliminary steps [filing charges with the EEOC and receiving from the EEOC a notice of the right to sue] are essential parts of the statutory plan, designed to correct discrimination through administrative conciliation and persuasion if possible, rather than by formal court action. While preliminary requirements for a Title VII action are to be interpreted in a nontechnical fashion, the aggrieved

person is not permitted to bypass the administrative process. Conciliation rather than formal court proceedings remains the preferred method of settling disputes.” Id.

In this case, the 1997 PHRC complaint alleges only retaliation for filing the 1993 PHRC complaint, but makes no mention of any racial or age-based discrimination. For instance, paragraph three of the 1997 PHRC complaint says, “The Complaint allege(s) that the respondent is continuously retaliating against [plaintiff].” Paragraph three, subparagraph A. then sets forth nine factual allegations comprising the retaliation of which plaintiff was complaining. In paragraph three, subparagraph C., the plaintiff completes the 1997 PHRC complaint by stating, “Based on the foregoing, I allege that the respondent refuses to train me in retaliation for my having filed a previous complaint.” Indeed, upon receiving the 1997 PHRC complaint from the PHRC, the EEOC docketed the complaint as one for retaliation only.

In Tjoutuku v. Gardner, Civ. A. No. 93-4900, 1994 WL 194496 (E.D.Pa. May 12, 1994), the court addressed the question of whether a plaintiff could file in the district court a complaint that was broader than her complaint filed with the EEOC. In Tjoutuku, the court considered the case of a high school teacher who claimed that her supervisor discriminated against her on the basis of her race. See id. at *1. The court initially concluded that the claims that plaintiff brought before the EEOC were time-barred by Title VII’s 300 day statute of limitations. See id. at *2.

The court in Tjoutuku next addressed additional, more recent, claims of racial discrimination that the plaintiff alleged in her complaint in the district court, but not in her EEOC complaint. The court ruled that such claims were barred, because they had not been raised in the EEOC proceedings. “Thus, in effect, plaintiff has never brought these new claims before the

EEOC, only bringing them now before the district court. The query, therefore, is whether a plaintiff can expand her district court complaint with new causes of action and theories of recovery that the plaintiff failed to bring in her EEOC charge.” Id. at *3. The court ruled that, given the statutory scheme of administrative action and conciliation upon which the Third Circuit had focused in Ostapowicz, the “parameters of the civil action in the district court are defined by the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination.” Id. at *4.

Plaintiff argues that, because the 1997 PHRC complaint makes reference to the 1993 PHRC complaint, defendant had notice that the EEOC investigation might include racial and age-based discrimination, because the latter complaint was based on race and age discrimination. In Davis v. Devereux Foundation, 644 F. Supp. 482 (E.D.Pa. 1986), the court considered a case with strikingly similar facts. In Davis, Davis had been fired from her job and replaced by a man. See id. at 483. Davis filed with the PHRC, and, subsequently, with the EEOC, alleging discrimination on the basis of sex. See id. Shortly after filing these complaints, Davis settled her claim, and was reinstated. See id. After returning to work, Davis was harassed, and, ultimately, fired again. See id. Davis then filed a second set of complaints with both the PHRC and the EEOC, alleging that her second dismissal was in retaliation for the prior filing of earlier complaints with the PHRC and the EEOC; there was no mention of sex discrimination in the second set of complaints filed with the PHRC and the EEOC. See id. In her complaint in the district court, filed thereafter, Davis alleged both retaliation and discrimination on the basis of sex. See id.

The court in Davis dismissed the claim for sex discrimination. The court noted that Davis had settled her initial sex discrimination claim, and that “settlements reached in pursuance of EEOC practice are entitled to the same treatment as voluntary settlements of litigation generally.” Id. The court then held that, because the plaintiff’s sex-discrimination claims asserted in the federal complaint arose from her first tour of duty with her employer, she could not now bring suit on that basis. “Obviously if defendant discriminated against plaintiff on the basis of sex during plaintiff’s second tour of duty with defendant, defendant could be guilty of a new violation of the statute. However, plaintiff’s [current EEOC complaint] does not specify sex as the alleged ground of discrimination, but retaliation for having filed the prior charge. Thus, *as plaintiff’s second EEOC complaint contained only allegations of retaliation, this court does not have jurisdiction of the instant case as a sex discrimination case.*” See id. (emphasis added).

In the instant case, as in Davis, plaintiff filed, and settled, the 1993 case before the PHRC, and remained in defendant’s employ. She subsequently filed the 1997 PHRC complaint, alleging only that Medvidik had retaliated against her for filing the 1993 PHRC complaint. The 1993 PHRC complaint alleged race and age discrimination. The 1997 PHRC complaint alleges retaliation, but makes no mention of discrimination on the basis of age or race. Indeed, plaintiff apparently made no mention of discrimination on the basis of race and age until filing her Complaint with this Court. It is not clear from plaintiff’s federal Complaint whether the age and race based discrimination of which she is complaining took place after the 1993 PHRC complaint was filed, or is the same discriminatory conduct of which she complained in the 1993 PHRC complaint.

Plaintiff alleged race and age discrimination in the 1993 PHRC complaint, but settled that case in 1995. Settlements of claims in EEOC or PHRC proceedings are to be treated the same as voluntary settlements of litigation generally. See Davis, 644 F. Supp. at 483. Therefore, to the extent that plaintiff seeks to relitigate the allegations of age and race discrimination raised in the 1993 PHRC complaint, she is precluded from doing so. See id.

Plaintiff did not allege in her 1997 PHRC complaint that defendant discriminated against her on the basis of age or race after the filing of the 1993 PHRC complaint. Therefore, to the extent that plaintiff is alleging in this case incidents of race and age discrimination which occurred after the 1993 PHRC complaint was filed, this Court does not have jurisdiction to hear such claims because plaintiff has failed to exhaust her administrative remedies. To allow plaintiff to pursue such claims would frustrate the statutory scheme for exhaustion of administrative remedies upon which the Third Circuit focused in Ostapowicz. Therefore, the Court grants defendant's motion for judgment on the pleadings as to plaintiff's race and age discrimination claims.³

³Plaintiff's claim of retaliation remains in this case. To establish a prima facie case of retaliation, plaintiff must show (1) that she was engaged in protected activity; (2) that she was subject to an adverse employment action subsequent to or contemporaneously with such protected activity; and, (3) there is a causal link between the protected activity and the adverse action. See Woodson, 109 F.3d at 920 (3d Cir. 1997). The Court notes that, with the case in this posture, it is not necessary for plaintiff to present evidence of race or age discrimination.

IV. CONCLUSION

Defendant's motion for judgment on the pleadings as to plaintiff's race and age discrimination claims is granted. The granting of the motion is without prejudice to plaintiff's right to proceed on her remaining claim of retaliation.

BY THE COURT:

JAN E. DUBOIS, J.