

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

ANTHONY D. OKOKURO : CIVIL ACTION
 :
v. :
 :
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF WELFARE and :
DON JOSE STOVALL : No. 00-2044

MEMORANDUM AND ORDER

J. M. KELLY, J.

FEBRUARY , 2001

Presently before the Court is a Motion for Summary Judgment filed by the Defendants, Don Jose Stovall ("Stovall") and the Commonwealth of Pennsylvania, Department of Public Welfare ("DPW") (collectively referred to as the "Defendants"). The Plaintiff, Anthony D. Okokuro ("Okokuro"), filed suit in this Court, alleging that the Defendants retaliated against him and discriminated against him because of his race and national origin. The Defendants originally responded to the suit by filing a Motion to Dismiss, which the Court denied. The Defendants subsequently filed the instant Motion for Summary Judgment. For the following reasons, the Motion for Summary Judgment is granted in part and denied in part.

I. BACKGROUND

Relying on the parties' stipulations of fact and otherwise

accepting as true the evidence of the nonmoving party, and all inferences that can be drawn therefrom, the facts of the case are as follows.

A. The Girard District Office, 1992 and 1993

Okokuro worked for DPW as an Income Maintenance Worker. In January, 1992, DPW transferred Okokuro to its Girard District Office. Okokuro, a United States citizen, is an African-American male of Nigerian origin. His wife is white. Okokuro alleges that he was the victim of several instances of racial and national origin discrimination while working at the Girard office, mostly at the hands of one of his supervisors, Ms. Vernell Grant ("Grant"). Specifically, Okokuro alleges that Grant: (1) continually referred to his marriage to a white woman as an "unfortunate" example of "jungle fever"; (2) called him an "Oreo Cookie"; (3) referred to Okokuro's wife as "rich white trash" or a "white man"; (4) told him that she "likes her coffee black . . . like her men"; (5) raised her dress and showed Okokuro her thigh; and (6) badgered Okokuro regarding his citizenship despite her knowledge that he was a United States citizen. Okokuro, hoping to find a more agreeable work environment, requested a transfer from the Girard office.¹ After

¹ Okokuro also filed a grievance with his union. Okokuro alleges that he dropped his grievance after the union's District Administrator, Gloria Hamilton, warned him that he "would regret

denying Okokuro's request twice, DPW finally granted it and transferred him to the Elmwood District Office in January, 1994.

B. The Elmwood District Office, 1994 through 1996

Okokuro's mistreatment only worsened after he arrived at the Elmwood District Office. He alleges that he was the victim of many instances of racial and national origin discrimination, specifically that: (1) Sandra L. Baytops ("Baytops"), the Income Maintenance Administrator, repeatedly suggested that he attend a voluntary AIDS Seminar because "there are a lot of AIDS cases in Africa"; (2) he found a condom that someone had anonymously placed in his desk drawer; (3) he found Oreo Cookies that someone had anonymously placed in his desk drawer; (4) degrading printed materials directed at him were distributed throughout the office; (5) during an annual evaluation, his supervisor, Catherine White ("White"), questioned how he could afford his new clothes; (6) White taunted him by commenting that Grant, from the Girard office, had asked about him; and (7) the Office Manager, Ms. Collins, asked Okokuro to "produce his drug money." Okokuro also claims that employees harassed him because they believed he was a homosexual. The exact dates of the events at the Elmwood office remain uncertain.

it" if he followed through with his complaints. Okokuro also alleges that she chastised him for marrying outside his race.

Okokuro also alleges that his supervisor at the Elmwood office, David Miller ("Miller"), verbally abused him on a regular basis. On September 10, 1996, Okokuro informed Baytops that he was having difficulties with Miller. On September 13, 1996, Baytops, Miller and Okokuro had a meeting. Toward the end of the meeting, Okokuro began taping the conversation with a tape recorder because he believed the process was unfair. When Baytops asked Okokuro to turn off the tape recorder, he did so. Nevertheless, on October 28, 1996, DPW suspended Okokuro for one day because he had taped the meeting without prior permission or disclosure. Okokuro appealed his one day suspension to the Pennsylvania Civil Service Commission, claiming it was the product of discrimination. After conducting a hearing, the Commission found that DPW had no basis for the suspension, but also found that it was not the product of discrimination.

C. Okokuro's Legal Claims Against the Defendants

On October 25, 1996, three days before his one day suspension and three years after leaving DPW's Girard office, Okokuro filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"). The EEOC complaint explicitly referred to the alleged discriminatory conduct at the Girard office, and to the behavior of Baytops and White at the Elmwood office; it did not, however, make any reference to

Miller's verbal abuse, his resulting one day suspension or employees' calling Okokuro a homosexual.

After pursuing his administrative remedies, Okokuro filed a pro se Complaint in this Court on April 19, 2000. Okokuro's suit names DPW and Stovall, an executive officer of the DPW, as Defendants. Okokuro filed suit in response to what he considered national origin discrimination, racial discrimination, retaliation, psychological torture and DPW's refusal "to pay my medical and legal cost[s] already incurred." Plf.'s Compl. ¶ 3; Plf.'s Am. Compl. ¶ 3.² His suit does not mention discrimination based on sexual orientation, nor does it make reference to any employee's calling him a homosexual. Okokuro seeks both retroactive and prospective relief in the form of a court order requiring the Defendants to pay his medical bills, legal expenses, and to "stop black balling" him. Id. ¶ 4. Okokuro bases his claim on Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e-200e-17 (1994). See Plf.'s Resp. to Def.'s Mot. to Dismiss at 1.

The Defendants filed a Motion To Dismiss Okokuro's claims based on Pennsylvania's Eleventh Amendment sovereign immunity. The Court denied that motion, finding that Okokuro could obtain

² Okokuro filed his first Amended Complaint on May 2, 2000, which alleged retaliation. Okokuro then filed his second Amended Complaint on June 27, 2000, for which the court subsequently granted him leave. Accordingly, the Court will consider Okokuro's second Amended Complaint.

injunctive relief from Stovall and both injunctive relief and compensatory damages from DPW. The Defendants subsequently filed the instant Motion for Summary Judgment, which the Court will now consider.

II. STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 56, a court must grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The movant bears the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the movant fails to meet this burden under Rule 56(c), its motion must be denied.

If the movant adequately supports its motion, however, the burden shifts to the nonmoving party to defend the motion. To satisfy this burden, the nonmovant must go beyond the mere pleadings by presenting evidence through affidavits, depositions or admissions on file to show that a genuine issue of fact for trial does exist. Id. at 324; Fed. R. Civ. P. 56(e). An issue is considered genuine when, in light of the nonmovant's burden of proof at trial, the nonmovant produces evidence such that a reasonable jury could return a verdict against the moving party.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). When deciding whether a genuine issue of fact exists, the court is to believe the evidence of the nonmovant, and must draw all reasonable inferences in the light most favorable to the nonmovant. Id. at 255. Moreover, a court must not consider the credibility or weight of the evidence presented, even if the quantity of the moving party's evidence far outweighs that of the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

If the nonmoving party meets this burden, the motion must be denied. If the nonmoving party fails to satisfy its burden, however, the court must enter summary judgment against it on any issue on which that party will bear the burden of proof at trial. Celotex, 477 U.S. at 322-23.

Although Okokuro failed to respond to the Defendants' Motion for Summary Judgment, the Court cannot grant that motion as uncontested. See E.D. Pa. R. Civ. P. 7.1(c). Instead, the Court is required to conduct its own examination of whether granting summary judgment is appropriate. Fed. R. Civ. P. 56(e) ("If the [nonmovant] does not so respond, summary judgment, if appropriate, shall be entered against the [nonmovant].").

III. DISCUSSION

The Defendants advance two arguments in support of their Motion for Summary Judgment. First, they argue that claims based on alleged discrimination at the Girard office are barred by Title VII's time limit for filing claims with the EEOC. Second, they contend that claims based on the events at the Elmwood office are barred because Okokuro failed to exhaust his administrative remedies with regard to those claims. The Court will discuss each argument in turn.

A. Title VII's 180 Day Time Limit

Defendants seek summary judgment on any claims arising out of events that occurred at the Girard office because they are time-barred. Okokuro, who seeks redress pursuant to Title VII and did not initially file his claim with the PHRC, was required to file his charge with the EEOC within 180 days after the occurrence of the alleged discriminatory conduct. See 42 U.S.C. § 2000e-5(e)(1) (1994). Because Okokuro filed his charge with the EEOC on October 25, 1996, and the alleged discriminatory conduct at the Girard office all took place in 1992 and 1993, any claim based on conduct at the Girard office appears time-barred. Whether Okokuro may maintain a cause of action based on those events depends upon whether the 180 day limit should be equitably

tolled, or whether Okokuro sufficiently pleaded facts to support the application of the continuing violation doctrine.

1. The Equitable Tolling Doctrine

There is no evidence on this record that would justify equitable tolling of the 180 day limit. Because that limit is analogous to a statute of limitations, it is not a jurisdictional prerequisite to filing suit. Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1387 (3d Cir. 1997). It is therefore potentially subject to equitable tolling. Id. The doctrine of equitable tolling may be used to revive time-barred claims as a remedy for a defendant's wrongdoing. Id. Equitable considerations for whether tolling is appropriate include, but are not limited to, whether: (1) the defendant has actively misled the plaintiff with respect to the plaintiff's cause of action; (2) the plaintiff, in some extraordinary way, has been prevented from asserting his rights; or (3) the plaintiff has timely asserted his rights in the wrong forum by mistake. Id.; School Dist. v. Marshall, 657 F.2d 16, 19-20 (3d Cir. 1981).

The record in this case contains no evidence that Okokuro mistakenly pursued his claim in an improper forum, or that the Defendants misled him regarding his cause of action. Although

Okokuro does allege that Gloria Hamilton told him he would regret pursuing his claims with the union, this does not amount to the kind of extraordinary prevention that would justify reviving Okokuro's claims against the Defendants. Accordingly, the equitable tolling doctrine will not revive Okokuro's claims based on conduct occurring at DPW's Girard office.

2. The Continuing Violation Doctrine

Under the continuing violation doctrine, a plaintiff may pursue a Title VII claim for discriminatory conduct that began prior to the filing period if he can demonstrate that such conduct was part of an ongoing practice or pattern of discrimination against him. West v. Philadelphia Elec. Co., 45 F.3d 744, 754 (3d Cir. 1995). In essence, applying the continuing violation doctrine makes the statute of limitations run from the last occurrence of discrimination rather than the first. Miller v. Beneficial Mgmt. Corp., 977 F.2d 834, 842 (3d Cir. 1992). To apply the doctrine, a plaintiff must first demonstrate that: (1) at least one discriminatory act occurred within the filing period; and (2) the harassment is more than the occurrence of isolated or sporadic acts of intentional discriminations. West, 45 F.3d at 754-55. To determine whether harassment is merely sporadic and isolated, courts should consider: (1) the similarity in character of the violations; (2)

the continuity and frequency of the violations; and (3) whether the harassment caused a discrete event that triggered the plaintiff's duty to assert his rights. Id. at 755-56.

In the instant case, although Okokuro did not specifically plead the existence of a continuing violation in either his informal EEOC complaint or his formal Complaint with the Court,³ he has alleged facts sufficient to justify the application of the continuing violation doctrine. First, Okokuro has alleged, and the Defendants have not challenged, that acts of discrimination did occur within the 180 day filing limit. Second, the alleged conduct at the Girard office is more than isolated or sporadic acts. Rather, Okokuro has alleged frequent discriminatory conduct that, because of its similarity to the conduct at the Elmwood office, constitutes a continuing violation. Accordingly, the 180 day filing period does not bar Okokuro's claim based on discrimination occurring at the Girard office.

B. Failure to Exhaust Administrative Remedies

The Defendants ask the Court to enter summary judgment in

³ Some courts have held that the doctrine must be clearly pleaded before it can be applied to revive otherwise time-barred claims. See Miller v. International Tel. & Tel. Co., 755 F.2d 20, 25 (2d Cir. 1985); Hopson v. Dollar Bank, 994 F. Supp. 332, 337-38 (W.D. Pa. 1997); Poveromo-Spring v. Exxon Corp., 968 F. Supp. 219, 226 (E.D. Pa. 1997). Despite those cases, the instant case involves a pro se plaintiff unfamiliar with the Federal Rules of Civil Procedure. Moreover, this case involves a hostile work environment claim that, in the context of the continuing violation doctrine, is distinguishable from other employment discrimination claims. See, e.g., West, 45 F.3d at 755.

their favor on any claims arising from Okokuro's one day suspension,⁴ his being depicted as a homosexual, and his treatment at the hands of his supervisor, Miller. The gravamen of their argument is that Okokuro failed to exhaust his administrative remedies for those claims because they were never mentioned in the charge he filed with the EEOC.

Plaintiffs seeking redress under Title VII must generally exhaust all of their applicable administrative remedies by filing a charge of discrimination with the EEOC. Walters v. Parsons, 729 F.2d 233, 237 (3d Cir. 1984) (per curiam). The limits of the subsequent federal court action are defined by the scope of that informal EEOC complaint. Accordingly, most plaintiffs must specifically raise their claims initially in their informal EEOC complaint. Id. A plaintiff need not have raised a claim in his EEOC complaint, however, if "the acts alleged in the subsequent Title VII suit are fairly within the scope of the prior EEOC complaint, or the investigation arising therefrom." Id.; see also Antol v. Perry, 82 F.3d 1291, 1295-96 (3d Cir. 1996). If such is the case, the plaintiff may bring a cause of action for those acts even though his informal EEOC complaint failed to specifically mention them.

⁴ The Court assumes that the Defendants mean to prevent Okokuro from trying his claim of retaliation. Although the Defendants do not say as much, Okokuro's suspension came three days after he filed his informal complaint with the EEOC, and could conceivably be the basis of a retaliation claim.

1. Retaliation and Sexual Orientation Discrimination

In the instant case, Okokuro's EEOC complaint clearly made out a claim for racial and national origin discrimination because Okokuro was allegedly subjected to a hostile work environment. The complaint did not, however, mention retaliation or sexual orientation discrimination.⁵ Those claims are clearly outside the scope of Okokuro's EEOC complaint. Moreover, Okokuro has failed to present the Court with any evidence that those events were part of any EEOC investigation into his charges. Indeed, Okokuro has failed to respond to the Defendants' motion at all. Because the United States Court of Appeals for the Third Circuit has rejected a per se rule that all claims of retaliation are ancillary to the filing of an EEOC complaint, the Court is required to closely scrutinize the record to determine whether retaliation falls within the scope of the actual EEOC investigation. Robinson v. Dalton, 107 F.3d 1018, 1024 (3d Cir. 1996). Okokuro has failed, however, to provide the Court with any evidence that the EEOC's investigation of his claims turned up evidence of his one day suspension. The Court therefore finds that Okokuro failed to exhaust his administrative remedies for any claim of retaliation or sexual orientation discrimination.

⁵ Nor does Okokuro's formal Amended Complaint with the Court make any reference to sexual orientation discrimination or his coworkers' calling him a homosexual. The Defendants ostensibly seek summary judgment on that claim because Okokuro emphasized those statements during his deposition.

Accordingly, he is precluded from litigating them now in federal court.

2. Racial and National Origin Discrimination

Okokuro's EEOC complaint explicitly refers to the alleged discriminatory conduct of Baytops and White. Such conduct, if proven, could give rise to liability under Title VII for racial and national origin discrimination. Because Okokuro clearly referenced these events in his EEOC complaint, he exhausted his administrative remedies for them and may litigate them in federal court.

Moreover, the Defendants have failed to present any other argument that would prevent Okokuro from bringing a racial and national origin discrimination claim against them for this conduct. The Defendants have not contended that claims premised on that conduct are barred by the 180 day time limit,⁶ nor have they challenged the sufficiency of the evidence of Okokuro's discrimination claims under Title VII's burden-shifting scheme. Accordingly, Okokuro may proceed with his claims of racial and

⁶ The Defendants did conclude that "[a] review of the EEOC charges clearly shows that [Okokuro] raised only the incidents at the Girard office in 1993, which are time barred." Defs.' Mem. in Support of their Mot. for Summary Judgment at 7-8. To the contrary, Okokuro's EEOC complaint clearly raised as an issue the conduct of Baytops and White, which occurred at the Elmwood office. Because the exact dates on which these events occurred remained unclear, the Court cannot rule as a matter of law that these claims are barred by the 180 day time limit.

national origin discrimination. Okokuro can premise his claim on the events that took place at DPW's Girard and Elmwood offices, specifically Miller's abusive treatment and Okokuro's one day suspension,⁷ as well as the conduct of Grant, Baytops and White.

⁷ The Defendants requested summary judgment on any claim based on Miller's abusive treatment or Okokuro's one day suspension. To the extent that this conduct would give rise to a claim of retaliation, the Court agrees because Okokuro did not exhaust his administrative remedies for such a claim. To the extent that Okokuro can prove that those events resulted from discriminatory animus, however, they may give rise to Title VII liability for racial and national origin discrimination.

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

ANTHONY D. OKOKURO : CIVIL ACTION
 :
v. :
 :
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF WELFARE and :
DON JOSE STOVALL : No. 00-2044

O R D E R

AND NOW, this day of February, 2001, in consideration of the Motion for Summary Judgment filed by the Defendants, Don Jose Stovall and the Commonwealth of Pennsylvania, Department of Public Welfare ("DPW") (Doc. No. 16), it is **ORDERED** that:

1. Defendants' Motion for Summary Judgment is **GRANTED IN PART**. Judgment is **ENTERED** in favor of Defendants and against the Plaintiff on any claims of sexual orientation discrimination or retaliation occurring at DPW's Elmwood District Office.
2. With respect to Okokuro's claims for racial and national origin discrimination at DPW's Girard and Elmwood offices,

Defendants' Motion for Summary Judgment is **DENIED**.

BY THE COURT:

JAMES MCGIRR KELLY, J.