

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

ERNEST MERRIWEATHER,	:	CIVIL ACTION
	:	
Plaintiff,	:	
v.	:	NO. 01-476
	:	
PHILADELPHIA FEDERATION OF	:	
TEACHERS HEALTH & WELFARE FUND,	:	
	:	
Defendant.	:	

MEMORANDUM

ROBERT F. KELLY, J.

JUNE 19, 2001

Presently before this Court is the Motion for Summary Judgment, filed by Defendant Philadelphia Federation of Teachers Health & Welfare Fund ("the Fund"). The Fund claims that summary judgment on Plaintiff Ernest Merriweather's ("Merriweather") claim of race discrimination is appropriate because Merriweather failed to exhaust his administrative remedies for that claim. For the following reasons, the Motion is granted.

I. BACKGROUND

Merriweather is an African-American male who was fifty-five years old at the time of the alleged discrimination. On October 19, 1999, Merriweather filed a charge of discrimination with the Philadelphia Commission on Human Relations ("PCHR") in which he alleged that he was discriminated against on the basis of his age when his employer, the Fund, eliminated his position as a Benefits Coordinator. On the PCHR complaint, Merriweather checked only the box marked "AGE" to identify the type of

discrimination he was alleging. On November 16, 1999, the PCHR issued a Statement of Particulars (the "Statement"). The Statement noted that Merriweather alleged that he was employed by the Fund from March 5, 1985 until June 1, 1999, when the Fund advised him that his position as a Benefits Coordinator was being eliminated for economic reasons. Merriweather further alleged that the Fund then offered him a teaching position in the school system. However, because he had not taught in sixteen years, Merriweather claimed that it would be very difficult for him to go back to teaching. Merriweather stated that the only other option that the Fund offered him was retirement, which was the option Merriweather chose. Merriweather claimed that other younger individuals were then hired to take his place. Merriweather alleged that the Fund lied to him about the economic difficulties and lack of other available job positions in order to force him to retire. As a result of these actions, Merriweather alleged that the Fund discriminated against him on the basis of his age. The charge of age discrimination was then dual filed with the Equal Employment Opportunity Commission ("EEOC").

On August 10, 2000, the PCHR advised Merriweather by letter that his case was dismissed with a finding of "Charge Not

Substantiated".¹ By letter dated August 16, 2000, Merriweather requested that the PCHR grant a review hearing. By letter dated August 18, 2000, The PCHR advised Merriweather that a review hearing would be granted only if he produced new evidence to support the request. On August 31, 2000, Merriweather submitted a letter to the PCHR presenting his argument for a rehearing. In this letter Merriweather stated for the first time that "circumstances have recently come to light which establish that Mr. Merriweather has a prima facie case of race discrimination under Title VII and the PHRA." (Pl.'s Mot. for Summ. J., Ex. 10). By letter dated September 26, 1999, the PCHR denied Merriweather's request for a review hearing and stated that he had not submitted new evidence or new legal arguments, which were prerequisites for a new hearing, but simply re-asserted prior arguments. Furthermore, the PCHR stated that "[t]he Complainant left the Respondent more than 300 days prior to his raising race as an issue. The new basis is untimely for consideration. There was ample time to amend the charge earlier, but this issue was not raised by Merriweather." (Pl.'s Mot. for Summ. J., Ex. 11).

On January 24, 2001, Merriweather filed his Complaint in this Court. The Complaint alleges that the Fund discriminated against him based upon his age in violation of the Age

¹ The EEOC adopted the findings of the PCHR and issued a Dismissal and Notice of Rights on October 30, 2000.

Discrimination and Employment Act, 29 U.S.C. § 621, et seq. ("ADEA") and the Pennsylvania Human Relations Act, 43 Pa. C.S.A. § 955, et seq. ("PHRA") and upon his race in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. ("Title VII").² The age discrimination claim concerns the same facts as described in the PCHR Statement. However, according to the Complaint, after Merriweather's position as a Benefits Coordinator was eliminated, unlike Robert Baselice ("Baselice"), his Caucasian co-worker whose position was also eliminated at the same time, Merriweather was not offered a part-time counselor position even though he was more qualified than Baselice.³ Merriweather claims that the Fund racially discriminated against him when it offered Baselice the part-time counseling position, instead of Merriweather. The current Motion for Summary Judgment was filed by the Fund on May 4, 2001 and was answered by Merriweather on May 29, 2001.

II. STANDARD

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper "if there is no genuine

² The Complaint also includes a state law claim for infliction of emotional distress.

³ Baselice also filed an age discrimination claim with the United States District Court of the Eastern District of Pennsylvania when his position with the Fund as a Retirement Counselor and Benefits Coordinator was terminated. Baselice is represented by the same counsel as Merriweather.

issue as to any material fact and the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). A factual dispute is material only if it might affect the outcome of the suit under governing law. Id. at 248.

To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). Further, the non-moving party has the burden of producing evidence to establish prima facie each element of its claim. Celotex, 477 U.S. at 322-23. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Id. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

III. DISCUSSION

The Fund claims that Merriweather failed to exhaust his

administrative remedies for the race discrimination claim now brought under Title VII. Therefore, the Fund argues that summary judgment on that issue should be granted in their favor.

Merriweather argues that the race discrimination claim is properly before this Court because it is reasonably related to his age discrimination claim.

As a prerequisite to filing a claim in federal court, Title VII requires a plaintiff to file a complaint with the EEOC within 180 days of the alleged act of discrimination. 42 U.S.C. § 2000e-5(e). This is known as exhaustion of administrative remedies. Antol v. Perry, 82 F.3d 1291, 1295 (3rd Cir. 1996). However, if the plaintiff first files the complaint with a state or local agency authorized to adjudicate the claim, such as the PCHR, the plaintiff is allotted three hundred days from the date of the alleged discrimination to file a charge of employment discrimination with the EEOC. 42 U.S.C. § 2000e-5(e); Harris v. SmithKline Beecham, 27 F. Supp.2d 569, 576 (E.D. Pa. 1998); aff'd 203 F.3d 816 (3rd Cir. 1999).

Here, Merriweather did not raise his claim of race discrimination until after the PCHR had made its determination, which was adopted by the EEOC, and after three-hundred days had passed from the date of the alleged discrimination. However, courts will entertain a discrimination claim that was not expressly alleged to an administrative agency if "the acts

alleged in the subsequent Title VII suit are fairly within the scope of the prior [administrative agency] complaint, or the investigation arising therefrom." Antol, 82 F.3d at 1295 (quoting Waiters v. Parsons, 729 F.2d 233, 237 (3d Cir. 1984) (per curiam)).

The Fund claims that Merriweather's race discrimination claim does not fall within the scope of the PCHR complaint or the PCHR's investigation. The Fund alleges that because the September 26, 2000 letter from the PCHR to Merriweather expressly states that Merriweather did not raise the race discrimination claim prior to August 31, 2000, then it is clear that the race discrimination claim was not within the scope of the PCHR complaint or the subsequent investigation. Furthermore, the Fund argues that even after the PCHR Statement was issued, alleging only age discrimination, Merriweather did not attempt to amend his claim to include race discrimination until after the appropriate time had passed.

Merriweather argues that his administrative complaint did include sufficient facts to trigger an investigation of the race discrimination claim. Merriweather claims that "if the PCHR would have properly investigated Plaintiff's claim of age discrimination, the facts surrounding [the Fund's] conduct of racial discrimination would have surfaced." (Pl.'s Resp. to Def.'s Mot. for Summ. J., p. 6). Merriweather alleges that the

race discrimination claim arises from the same facts which allegedly support Merriweather's age discrimination claim. Merriweather relies in part on Hicks v. ABT Associates, Inc., 572 F.2d 960 (3rd Cir. 1978), in which the court stated that "[i]f the [administrative agency's] investigation is unreasonably narrow or improperly conducted, the plaintiff should not be barred from his statutory right to a civil action." Hicks, 572 F.2d at 966.

In this case, Merriweather did not check any other box other than "AGE" on his PCHR complaint and the PCHR Statement does not mention Merriweather's race. The Statement also does not mention Baselice or anything about him such as his race, the positions offered to him, or that Merriweather was more qualified than him. The facts alleged by Merriweather to the PCHR include only his age; that the Fund told him his position was being terminated for economic reasons; that the Fund offered him the option of retiring or accepting a teaching position; that he was actually replaced by two younger employees; and that the real reason for his termination was age discrimination. Furthermore, both Merriweather, an African-American, and his Caucasian co-worker, Baselice, had their positions terminated. Also, of the two younger individuals who allegedly replaced Merriweather one was African-American. The facts that Merriweather presented to the PCHR were not reasonably related to a claim of race

discrimination and a full investigation of those facts would not have yielded evidence of any such claims.

Furthermore, the cases cited by Merriweather in support of his argument are not convincing. Unlike in Reddinger v. Hospital Central Services, Inc., 4 F. Supp.2d 405 (E.D. Pa. 1998), where the court found that a claim of retaliation arose out of the underlying claim, Merriweather's race discrimination claim is not fairly within the scope of his age discrimination claim, or the investigation arising therefrom. Id. at 410. The Reddinger court found that a plain reading of the EEOC complaint alleging discrimination based upon disability also reflected a claim for retaliation. Id. The Reddinger court focused on the Plaintiff's statement in the EEOC complaint that "I exercised my rights under the Family Medical Leave Act. The discharge was in violation of the Family Medical Leave Act and was initiated against me because of my son's disability." Id. (emphasis added). The court also stated that "where discriminatory actions continue after the filing of an EEOC complaint, the purposes of the statutory scheme are not furthered by requiring the victim to file additional EEOC complaints and re-starting the 180 day waiting period." Id. at 409 (citing Waiters, 729 F.2d at 237). Here, all the alleged discriminatory acts occurred before Merriweather filed his complaint with the PCHR. Merriweather simply did not allege any facts to the PCHR which would support a

race discrimination claim nor would such a claim have been uncovered by a reasonable investigation by the PCHR of Merriweather's allegations.

This situation is also distinguishable from Schouten v. CSX Transportation Inc., 58 F. Supp.2d 614 (E.D. Pa. 1999), where the court found that a claim of national origin discrimination was reasonably related to a claim of race discrimination. Id. at 617. The Court in Schouten found that race and national origin were very similar and the statement in the EEOC complaint that the plaintiff "had an accent and would not be a good conductor" encompassed both claims. Id. In this case, race and age discrimination are not so obviously linked.

Furthermore, in Hicks v. ABT Associates, 572 F.2d 960, the court did allow the plaintiff to raise a sex discrimination claim where he had only alleged race discrimination to the EEOC. Hicks, 577 F.2d at 964. However, the court allowed the additional sex discrimination claim because "the record contain[ed] evidence which create[d] a genuine issue of whether Hicks reasonably attempted to amend his charge to include sex discrimination, but the EEOC improperly refused to accept the amendment." Id. Here Merriweather does not dispute that he did not allege race discrimination until after the PCHR dismissed his claim. See Harris, 27 F. Supp.2d at 579 (finding that a claim of discrimination raised for the first time after a determination

and dismissal by the EEOC was barred as untimely for failure to exhaust administrative remedies). There is also no evidence that the PCHR improperly refused to accept the additional claim.

Lastly, Merriweather's age discrimination claim does not fairly encompass a race discrimination claim simply because an investigation would reveal that he is African-American and Baseline is Caucasian. Antol, 82 F.3d at 1296 (stating that "[t]he specifics of his disability discrimination charge do not fairly encompass a claim for gender discrimination merely because investigation would reveal that Antol is a man and the two employees who received the positions are women."). Because Merriweather has failed to exhaust his administrative remedies on his race discrimination claim and because the race discrimination claim is not fairly within the scope of the PCHR complaint, or the investigation arising therefrom, summary judgment in favor of the Fund is appropriate on this issue.

IV. CONCLUSION

No genuine issue of material fact remains concerning Merriweather's claim of race discrimination. Merriweather failed to exhaust his administrative remedies on his race discrimination claim. Furthermore, his claim is not fairly within the scope of the PCHR complaint, or the investigation arising therefrom. Therefore, Merriweather's race discrimination claim cannot be entertained by this Court and summary judgment in favor of the

Fund on this claim is appropriate.

An Appropriate Order follows.

