

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

AHMAD FARAHMAND	:	CIVIL ACTION
	:	
v.	:	
	:	
DONALD H. RUMSFELD,	:	
Secretary of Defense and	:	
LT. GENERAL HENRY T. GLISSON,	:	NO. 02-1236
Director of the Defense	:	
Logistics Agency	:	

MEMORANDUM AND ORDER

HUTTON, J.

November 20, 2002

Presently before the Court are Plaintiff's Motion for Consolidation (Docket No. 4) and Defendants' Memorandum in Opposition to Plaintiff's Motion to Consolidate (Docket No. 5).

I. BACKGROUND

On December 23, 1997, Plaintiff filed a complaint alleging that Defendants discriminated against him when he was passed over for a promotion. He asserted that the discrimination was based on his age of 62, his Iranian national origin, and/or his religion, which is Muslim. He complained that he was not one of the four finalists chosen after an elaborate selection process, which included an important interview before a three person panel consisting of employees in the Medical Directorate in Philadelphia.

Plaintiff alleged that the finalists were chosen because they were younger and did not share Plaintiff's protected class characteristics.

A jury trial on the merits resulted in a jury finding in favor of the Plaintiff concerning national origin discrimination, and for the Defendants on the claim of religious discrimination. The Court entered a Findings of Fact, Conclusions of Law, and Final Judgment in favor of the Defendants on the age discrimination claim on August 23, 1999. The Third Circuit Court of Appeals subsequently vacated the judgment in favor of the Plaintiff on the claim of national origin discrimination, and remanded it for trial, while affirming the district court's judgment for Defendants on the age discrimination claim.

On March 11, 2002, Plaintiff filed a complaint alleging that he had again experienced discrimination when he was passed over for a promotion, in favor of younger, allegedly less qualified applicants who were not part of his protected class of age, national origin (Iranian), race (Indo-Iranian), or religion (Muslim). Moreover, Plaintiff alleges that he was treated less favorably after the initiation of his first lawsuit. In this lawsuit, Plaintiff's central grievance is that he did not make it to the interview process.

II. LEGAL STANDARD

The Court has "inherent power to 'control the disposition of cases on its docket with economy of time and effort for itself, for counsel and for litigants.'" Liberty Lincoln Mercury, Inc. v. Ford Marketing Corp. et. al., 149 F.R.D. 65, 80 (D.N.J. 1993) (quoting United States v. Kramer, 770 F. Supp. 954, 957 (D.N.J. 1991)). This power is augmented by Rule 42(a) of the Federal Rules of Civil Procedure, which states in relevant part:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The moving party bears the burden of proof on a motion for consolidation. See In re Consolidated Parlodel Litigation, 182 F.R.D. 441, 444 (D.N.J. 1998); Schneck v. International Business Machines Corp., CIV.A.NO. 92-4370, 1996 WL 885789 *3 (D.N.J. June 15, 1996).

A threshold requirement for consolidation is whether there exists a common question of law or fact. See In re Consolidated Parlodel Litigation, 182 F.R.D. at 444; Easton & Co. v. Mutual Benefit Life Insurance Co., CIV.A.NOS. 91-4012, 92-2095, 1992 WL 448794 *4 (D.N.J. Nov. 4, 1992). While the existence of common issues is a prerequisite for consolidation, their mere presence does not compel consolidation. Liberty Lincoln Mercury, Inc., 149 F.R.D. at 81. Rather, a court may consolidate cases if, in its

discretion, "consolidation would facilitate the administration of justice." Waste Distillation Tech., Inc. v. Pan American Resources, Inc., 775 F. Supp. 759, 761 (D.Del. 1991).

A district court has "broad discretion" when determining whether consolidation is appropriate. Azon v. Long Island Railroad, CIV.A.NO. 00-6031, 2001 WL 1658219 (S.D.N.Y. Dec. 26, 2001) (quoting Malcolm v. National Gypsum Co., 995 F.2d 346, 350 (2d Cir. 1993)). When exercising this discretion, a court should weigh the benefits of judicial economy "against the potential for new delays, expense, confusion or prejudice." Easton, 1992 WL 448794 at *4.

A motion to consolidate may be denied if the common issue is not a principle one, if it will cause delay in one of the cases, or will lead to confusion or prejudice in the trial of a case. See 9 C. Wright & A. Miller, Federal Practice and Procedure, § 2382 (Civil 2d. 1995). "Where the evidence in one case is not relevant to the issues in the other, consolidation would create a likelihood of prejudice by confusing the issues." Liberty Lincoln Mercury, Inc., 149 F.R.D. at 81. Finally, a court may deny consolidation when one case is further into the discovery process. See 9 C. Wright & A. Miller, Federal Practice and Procedure, § 2382 (Civil 2d. 1995); See Mills v. Beech Aircraft Corp., Inc., 886 F.2d 758, 762 (D.Miss. 1989) (denying a motion for consolidation where the cases were at different stages of preparedness for trial).

III. DISCUSSION

Plaintiff has failed to meet its burden of proving that consolidation should be granted. The only common issue between the cases before the Court is that of purported discrimination. Acknowledging a common issue, however, does not end the Court's inquiry. The Court must consider whether the interest of judicial economy are outweighed by factors such as confusion, prejudice, and delay during the proceedings.

In the instant case, Plaintiff alleges that he was passed over on two separate occasions for a promotion. To win on the merits the Plaintiff is required to prove that he is as capable or more qualified than the relevant applicant pool. See Ward's Cove Package, Co. v. Antonio, 490 U.S. 642, 651 (1989) (holding that in discrimination cases the focus must be on the available pool of qualified applicants at the relevant time). Currently, the Plaintiff has not shown that the applicant pools in either case had any overlap. A consolidated trial would, therefore, needlessly delay both cases and likely confuse a jury.

In the first case, Plaintiff's central contention is derived from the fact that he did not make it to the final tier of candidates from which the selecting official, Paul Bellino, made the decision to promote an employee. There were four persons who made it to this final stage. In the second case, Plaintiff's

complaint is grounded in the fact that he did not even make it to the interview process.

From the information before the court, it appears that the two cases are derived from different job opportunity announcements, judged by different criteria within two "significantly" different selection processes, which filtered applications from two separate applicant pools. This will similarly cause delay and confusion.

In the first case, the ultimate promotion decision was made by Paul Bellino and an interview panel consisting of three employees in the Medical Directorate in Philadelphia. The second case involves a decision made by human resources personnel in a Defense Logistics Agency office in Columbus, Ohio.

Finally, the two cases are at different stages with different claims. The first case has already gone to trial. The sole issue left to decide is the national origin claim for which the Third Circuit ordered a new trial. In the second case issues of race, religion, national origin and age will be determined. Moreover, the discovery deadline is not until January of 2003. These discrepancies weigh against consolidation. Accordingly, Plaintiff's Motion is denied.

An appropriate Order follows.

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LT. GENERAL HENRY T. GLISSON,	:	NO. 02-1236
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Logistics Agency	:	

ORDER

AND NOW, this 20th day of November, 2002, upon consideration of Plaintiff's Motion for Consolidation (Docket No. 4) and Defendants' Memorandum in Opposition to Plaintiff's Motion to Consolidate (Docket No. 5), IT IS HEREBY ORDERED that Plaintiff's Motion is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.