

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

MICHELE BLACK : CIVIL ACTION
 :
 vs. :
 : NO. 04-CV-2393
 UNITED STATES POSTAL SERVICE :

MEMORANDUM AND ORDER

JOYNER, J.

November 23, 2004

By letter dated October 13, 2004, Plaintiff, Michelle Black seeks reconsideration of this Court's Order of October 5, 2004 granting the defendant's 12(b)(6) motion to dismiss on the grounds that it was uncontested and that the plaintiff's claims were barred by the applicable statutes of limitations. Given Plaintiff's status as a *pro se* litigant and given that it appears that she did timely file a response to the defendant's motion which for whatever reason, did not come to the Court's attention prior to the entry of the disputed Order, we shall grant the motion for reconsideration.

Factual Background

According to the defendant's motion to dismiss and exhibits attached in support thereof, Plaintiff initiated contact with the EEO office of the U.S. Postal Service on October 6, 1999 alleging that she had been subjected to a hostile work environment and sexual harassment. On November 18, 1999, Michelle Black was

terminated from her employment with the Postal Service for allegedly falsifying information on her application for employment. On December 1, 1999, she added a claim of retaliation to her original EEO filing and thereafter she filed a formal EEO complaint of discrimination. Her case was designated as Agency Case No. 4C-190-0025-00 and an Investigative Report was completed on her case on November 16, 2000.

Following a hearing before an EEOC Administrative Judge, an Order of Judgment was issued on February 1, 2002 finding in favor of the Agency on all of the plaintiff's claims. The Agency issued its Notice of Final Action on March 6, 2002, accepting and agreeing to implement the decision of the Administrative Judge. Ms. Black applied to the EEOC Office of Federal Operations but on September 23, 2003, that Office affirmed the Administrative Judge's decision. Plaintiff thereafter filed a Request for Reconsideration with the Office of Federal Operations, which was denied on January 7, 2004. Although the Office of Federal Operations' Decision advised Plaintiff that she could file an action in federal court within ninety days, she did not file her Request for Leave to Proceed *In Forma Pauperis* until June 2, 2004 and her federal court complaint was not docketed until June 10, 2004. On August 13, 2004, the defendant Postal Service filed its 12(b)(6) motion to dismiss the complaint which was granted, *inter alia*, as uncontested on October 6, 2004. It is this Order

of dismissal which Plaintiff now asks be reconsidered.

Standards Governing Motions for Reconsideration

It is well-settled that the purpose of a motion for reconsideration is to correct manifest errors of law or to present newly discovered evidence. Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985); Frederick v. Southeastern Pennsylvania Transportation Authority, 926 F.Supp. 63, 64 (E.D.Pa. 1996). A party filing a motion to reconsider must rely on at least one of the following grounds: (1) the availability of new evidence that was not available when the court granted the motion for summary judgment; (2) an intervening change in the controlling law; or (3) the need to correct an error of law or to prevent manifest injustice. Hartford Fire Insurance Company v. Huls America, Inc., 921 F.Supp. 278, 279 (E.D.Pa. 1995); Prousi v. Cruisers Division of KCS International, Inc., 1997 WL 793000 (E.D.Pa. 1991) at *3. Where evidence is not newly discovered, a party may not submit that evidence in support of a motion for reconsideration. Harsco, supra, citing DeLong Corp. v. Raymond International, Inc., 622 F.2d 1135, 1139-40 (3d Cir. 1980). See Also: North River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995).

Discussion

In this case, the defendant's 12(b)(6) motion was granted in large part because this Court believed that the plaintiff had no

opposition to dismissal. Indeed, at the time that the October 6, 2004 Order was entered, we were under the impression that the plaintiff had not bothered to file anything in opposition to the defendant's motion. In requesting reconsideration, however, the plaintiff has produced evidence, including copies of certified mail receipt cards, that she did in fact file a letter response to the motion in which she requested that it be denied because, among other reasons, she has proof that she made "all attempts" to file her complaint in a timely and orderly fashion and she has "all that information to still justify... a legitimate reason on why this case was presented to [the] courts a little late." (See p. 4 of Plaintiff's Letter Response to Defendant's Motion to Dismiss dated August 25, 2004). We thus believe reconsideration is necessary to prevent manifest injustice to the plaintiff.

Upon further review, we also believe reconsideration is necessary to correct an error of law. As the caselaw cited by Defendant makes clear, the law of the Third Circuit permits a statute of limitations defense to be raised by 12(b)(6) motion only if the time alleged in the statement of a claim shows that the cause of action has not been brought within the statute of limitations. Robinson v. Johnson, 313 F.3d 128, 135 (3d Cir. 2002), citing Hanna v. U.S. Veterans Admin. Hospital, 514 F.2d 1092, 1094 (3d Cir. 1975). "If the bar is not apparent on the face of the complaint, then it may not afford the basis for a

dismissal of the complaint under Rule 12(b)(6).” Id., quoting Bethel v. Jendoco Constr. Corp., 570 F.2d 1168, 1174 (3d Cir. 1978).

In reviewing the pleadings in this matter, we find that the statute of limitations bar is not apparent from the face of the plaintiff’s complaint, although it does appear from the documentation attached to the defendant’s motion. Thus, we conclude that by simply granting the defendant’s Rule 12(b)(6) motion and dismissing the plaintiff’s complaint, we effectively converted the motion into one for summary judgment under Rule 56(c) without giving the plaintiff the requisite notice and opportunity to present her evidence.¹ In so doing, we committed an error of law. See: Rycoline Products, Inc. v. C & W Unlimited, 109 F.3d 883, 886-887 (3d Cir. 1997).

In light of the evidence thus far presented, we believe that it is appropriate to now convert the defendant’s Rule 12(b)(6) motion for dismissal into one for summary judgment under Fed.R.Civ.P. 56(c). Accordingly, the plaintiff shall be given

¹ In this regard, Rule 12(b) states the following:

“If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.”

the opportunity to present whatever evidence she has to the Court that, for example, she either did in fact timely file her federal complaint within the prescribed 90-day statute of limitations or that the statute should be equitably tolled. See, e.g., Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380 (3d Cir. 1994).

An order follows.

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ORDER

AND NOW, this 23rd day of November, 2004, upon consideration of Plaintiff's Letter Motion for Reconsideration, it is hereby ORDERED that the Motion is GRANTED for the reasons set forth above, this Court's Order of October 6, 2004 is VACATED, the Defendant's Rule 12(b)(6) Motion to Dismiss the Plaintiff's Complaint filed on August 13, 2004 is CONVERTED to a Motion for Summary Judgment under Fed.R.Civ.P. 56(c) and Plaintiff is DIRECTED to present whatever evidence she has and Memorandum of Law in opposition to Defendant's Motion within thirty (30) days of the date of this Order.

Thereafter, Defendant shall file whatever additional evidence or legal memoranda in response to the Plaintiff's submissions within fifteen (15) days of the date of the Plaintiff's filings.

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.