

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

JANICE BULLOCK	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 03-cv-3509
CITY OF PHILADELPHIA	:	

MEMORANDUM

Baylson, J

August 22, 2005

I. Facts and Procedural History

This case arises from two separate complaints, which were consolidated as related cases; both complaints are now docketed under civil action number 03-CV-3509. Janice Bullock (“Plaintiff”) is a former employee of the City of Philadelphia (“Defendant”). Both of Plaintiff’s complaints generally allege civil rights violations stemming from Plaintiff’s employment relationships with Defendant. Presently before the Court is Defendant’s Motion for Summary Judgment (Doc. No. 32) as to all claims in the consolidated complaint.

A. Plaintiff’s First Complaint

Plaintiff’s first complaint (“Complaint 1”), docket number 03-3509, was filed with the Court on June 5, 2003 (see Doc. No. 4¹). In this complaint, Plaintiff alleges that she was discriminated against on the basis of race, gender, age and disability, in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), the Americans with Disabilities Act (the “ADA”) and the Equal Pay Act. Complaint 1 alleges facts that took place between September 4, 2001 and December 5, 2001. Specifically, Plaintiff’s claims in Complaint 1 arose out of an employment

¹ All references to the docket in this memorandum refer to the consolidated case, Civil Action No. 03-3509.

examination process, the result of which was that Plaintiff's application for the position of Public Health Program Analyst was denied by Defendant.

Plaintiff was denied the position of Public Health Program Analyst on December 5, 2001 and filed a complaint with the EEOC on August 16, 2001 (See Def. Ex. 13). The EEOC dismissed Plaintiff's complaint and issued a right-to-sue notice on March 10, 2003 (See Def. Ex. 14). As noted above, the federal civil rights complaint arising from this matter was filed on June 5, 2003.

B. Plaintiff's Second Complaint

Plaintiff's second complaint ("Complaint 2"), original docket number 03-6867, was filed in this Court on December 23, 2003 (See Def. Ex. 2). In Complaint 2 Plaintiff alleges that she was harassed and retaliated against because of her 1993 participation in the Pennhurst litigation. Plaintiff further alleges retaliation for exercising her First Amendment speech rights.

Plaintiff was employed by Defendant until 1996, when she was dismissed by Defendant. Plaintiff admits that she became aware of the alleged harassment and alleged retaliation in January of 1993. (See Def's Statement of Uncontested Facts at 8, and Pl's Am. Resp. to Def's Mot. for S.J. at 6.)

Complaint 2 further alleges that Defendant also denied Plaintiff's 2001 application for the position of Public Health Program Analyst (see supra) out of retaliation for Plaintiff's involvement in the Pennhurst litigation.

II. Discussion

A. Complaint 1

Defendants do not dispute that Plaintiff properly exhausted her administrative remedies

with respect to Complaint 1 and the Court finds that the civil complaint was timely filed within 90 days of the final disposition of the EEOC complaint. Plaintiff's remaining arguments as to Complaint 1 go to the relative merits of each claim raised therein—race, gender, age and disability discrimination and violation of the Equal Pay Act.

The Court has reviewed the extensive pleadings filed by both the Defendant in support of its Motion for Summary Judgment, and the Plaintiff in opposition. The Defendant has attached portions of Plaintiff's deposition, and she has attached a verification to some of her pleadings, which the Court finds, under the circumstances of the Plaintiff appearing pro se, satisfied the requirements of Rule 56(c) F.R. Civ. P.

The Court held oral argument on these issues on August 18, 2005. The Defendant's Motion asserts that Plaintiff has not demonstrated a genuine issue of fact for trial on her claims of age, race and gender discrimination because of the significant number of individuals over 40 years of age, who were female and who were African American who passed the test, such that a jury could not find any kind of discrimination.

However, Plaintiff comes forward with a number of facts, which although not presented in as organized a form as the Defendant's factual presentation, does show that the Plaintiff has personal knowledge of what she claims to have been discrimination based on the ages of the individuals who were eventually hired (all of them under 40 years of age), the order in which they were hired (Plaintiff asserts that a young white woman was hired first even though African American applicants had a higher rank), and Plaintiff has also presented her version of disputed facts on her claims that she was discriminated against because of her disability. The Court finds that the Plaintiff has established a prima facie case of discrimination on these grounds, and

although the Defendant has come forward with some evidence supporting its defenses, it is not sufficient to establish the validity of those defenses as a matter of law. The Court need not now decide whether Plaintiff's facts, if believed, a jury might find pretext.

Therefore, for these reasons, and additional reasons stated on the record at the conclusion of the summary judgment hearing, the Court will require a trial for the claims made in Complaint 1.

B. Complaint 2

In Complaint 2, Plaintiff's allegations are ambiguous as to the dates on which the alleged retaliation and harassment occurred. As noted above, Plaintiff admits that she became aware of the alleged harassment and retaliation in 1993. Additionally, the Court notes that Plaintiff's employment was terminated by Defendant in 1996. There are no facts alleged in Complaint 2, or in Plaintiff's responses to the instant motion for summary judgment, that take place after 1996 (and before the examination in 2001, the subject of Complaint 1). Furthermore, Complaint 2 explicitly notes that Plaintiff did not file charges with the EEOC or the PHRC regarding the allegations arising from the period of 1993 through 1996.

Defendant asserts two grounds upon which Complaint 2 should be dismissed. First, Defendant contends that Complaint 2 should be dismissed because Plaintiff failed to exhaust the administrative remedies with respect to the claims raised in Complaint 2. Second, Defendant asserts that the claims raised in Complaint 2 are barred by the applicable statutes of limitations. Plaintiff asserts that the claims contained in Complaint 2 are not time-barred because the "incidents" from 1993 through 1996 were part of an "ongoing pattern of discrimination, culminating in the incidents of September 2001." (Pl's First Resp. to Def's Mot. for S.J. at 5.)

Therefore, Plaintiff argues, any applicable statutes of limitations have been equitably tolled.

The Third Circuit addressed the issue of equitable tolling based on a continuing violation theory in Rush v. Scott Specialty Gases, Inc., 113 F.3d 476 (3d Cir. 1997), which is relied upon by both Plaintiff and Defendant. In Rush, the court adopted the framework set forth by the Fifth Circuit for determining whether a plaintiff has demonstrated a continuing violation. Specifically, district courts are directed to consider that following factors:

The first is subject matter. Do the alleged acts involve the same type of discrimination, tending to connect them in a continuing violation? The second is frequency. Are the alleged acts recurring. . . or more in the nature of an isolated work assignment or employment decision? The third factor, perhaps of most importance, is degree of permanence. Does the act have the degree of permanence which should trigger an employee's awareness of and duty to assert his or her rights, or which should indicate to the employee that the continued existence of the adverse consequences of the act is to be expected without being dependent on a continuing intent to discriminate?

Id. at 482 (quoting Berry v. Board of Supervisors of Louisiana State Univ., 715 F.2d 971, 981 (5th Cir. 1983)). Most relevant to Plaintiff's claims here, the court in Rush went on to emphasize that "a court must be circumspect in relating discrete incidents to each other." Id. at 484. The court favorably noted a decision in which the Third Circuit rejected a continuing violation theory where there was a seven-month gap between the two periods of employment underlying the plaintiff's claims, because this interruption "allowed the effects of the earlier incidents to dissipate." Id.

Under the framework provided by the Third Circuit, supra, the Court finds that even the most generous reading of Complaint 2 and Plaintiff's supporting briefs cannot allow a continuing violation theory of discrimination and harassment. Though the dates and factual allegations in Complaint 2 are ambiguous, a liberal reading of the complaint permits a finding that the incidents

complained of occurred between 1993 and 1996, culminating in Plaintiff's termination by Defendant. Nowhere in Complaint 2—or Complaint 1, for that matter—does Plaintiff allege incidents of discrimination or retaliation in the intervening period between 1996 and December 2001. It is also noted that the circumstances of the two discrete periods are substantially different. From 1993 to 1996, Plaintiff was employed by Defendant and subsequently terminated. In 2001, by contrast, Plaintiff was not employed by Defendant, but instead was involved in a job application process.

The Court finds that there is neither the requisite factual nexus nor degree of permanence between the events of 1993 through 1996 and those that arose in December 2001. Plaintiff has not sufficiently plead or shown a genuine issue of fact, as required by Rule 56, F.R. Civ. P., as to a continuing violation, and the Court therefore finds that the relevant statutes of limitations pertaining to the claims contained in Complaint 2 have not been equitably tolled. Plaintiff will be permitted to proceed only on those claims asserted in Complaint 1 and arising out of Plaintiff's 2001 application for the position of Public Health Program Analyst.

As noted above, Complaint 2 also alleges that the denial of Plaintiff's application for employment in December 2001 was also done in retaliation for Plaintiff's participation in the Pennhurst litigation in 1993. (See Complaint 2 at 1.) Even assuming that Plaintiff properly exhausted her administrative remedies through the filing of an EEOC charge on August 2, 2002, Plaintiff nevertheless failed to timely file Complaint 2 in this Court. The EEOC issued a Dismissal and Notice of Rights on March 10, 2003. (See Def. Ex. 14.) Plaintiff did not file Complaint 2 until December 23, 2003, more than seven months after the final disposition of the EEOC charge. Under both Title VII and the ADA, a plaintiff must file a complaint in federal

court within 90 days of receiving notice of dismissal from the EEOC. Although Complaint 1 was timely filed, Complaint 2 was not filed until well after the expiration of this 90-day period. Therefore, Court will also dismiss the Pennhurst-related retaliation claim raised in the context of the 2001 examination process.

III. Other Motions

There are other motions still pending in this case which the Court believes are now moot or should be denied. Plaintiff's Motion to Amend the Complaint must be denied because it is filed too late and is basically a compilation of evidence rather than any additional causes of action.

Plaintiff's Motion to Compel Discovery has also been filed too late, and the Court finds that Plaintiff has had adequate opportunity for discovery in this case.

Plaintiff's Motion for Sanctions is unfounded and will also be dismissed.

An appropriate Order follows.

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JANICE BULLOCK	:	CIVIL ACTION
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CITY OF PHILADELPHIA	:	

ORDER

AND NOW, this 22nd day of August, 2005, for the reasons stated in the foregoing Memorandum, and following the hearing in open court on August 18, 2005, it is hereby ORDERED as follows:

1. Defendant's Motion for Summary Judgment (Doc. No. 32) is GRANTED in part and DENIED in part. The case will proceed to trial solely on those claims arising out of the claims originally made in Civil Action No. 03-3509, concerning Plaintiff's 2001 application for employment. At trial, Plaintiff will be barred from presenting any evidence concerning the claims originally asserted in Civil Action No. 03-6867.

2. This case is scheduled to enter the Court's trial pool on October 3, 2005, and should start that day unless a criminal trial is ongoing or will also begin that day, in which event this case will follow the criminal trial. Court will not be in session on Tuesday, October 4, 2005 because of a religious holiday.

3. Plaintiff shall be prepared for trial in all respects, whether she is represented by counsel or appearing pro se. The Court will not continue the trial for Plaintiff to secure counsel or to give retained counsel additional time for trial preparation.

4. The parties will submit Points for Charge one week prior to the start of trial.

5. Plaintiff's Motion to Amend the Complaint (Doc. No. 50) is DENIED.
6. Plaintiff's Motion to Compel Discovery (Doc. No. 51) is DENIED.
7. Plaintiff's Petition for Imposition of F. R. Civ. P. and Sanctions (Doc. No. 44) is DENIED.
8. Defendant's Motion for Dismissal or Failure to Prosecute (Doc. No. 24) is DENIED as moot.
9. Defendant's Motion to Quash Subpoena (Doc. No. 25) is DENIED as moot.
10. Plaintiff's Emergency Motion Requesting 45-Day Continuance of Discovery (Doc. No. 26) is DENIED as moot.

BY THE COURT:

s/Michael M. Baylson
Michael M. Baylson, U.S.D.J.