

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

LEANON TRAWICK,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 06-01937
	:	
v.	:	
	:	
FRANCIS J. HARVEY, SECRETARY	:	
OF THE ARMY, et al.	:	
	:	
Defendants.	:	

MEMORANDUM AND ORDER

Stengel, J.

August 15, 2006

Leanon Trawick brings this employment discrimination case against his former employer alleging a violation of federal law for failing to hire him as a Director of Logistics in Hanua, Germany. Presently before the Court is the Motion to Dismiss or, in the Alternative, to Transfer Venue filed by defendants Francis J. Harvey, Secretary of the United States Army and the Department of the Army (collectively "Defendants"). For the reasons described below, I find that venue is improper in this district. I will therefore transfer the entire case to the Eastern District of Virginia pursuant to 28 U.S.C. § 1406(a).

I. BACKGROUND

Plaintiff is an African-American man who served in the United States Army (the "Army") from July 30, 1972 until August 1, 1994. He currently resides in Pennsylvania. After retiring from the Army, Plaintiff worked as a civilian "Supervisory Traffic Management Specialist," and was assigned to the Area Support Group (the "ASG")

assisting the United States military in Hanua, Germany. Plaintiff wished to apply for the position of Director of Logistics in September of 2003, but the had Army previously re-classified the position so that only a local national could occupy it.

Plaintiff commenced this action by filing his Complaint on May 7, 2006. The Complaint alleges two claims. Count I alleges that the Army violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII"), by discriminating against him based upon his race. Specifically, he alleges that the Army's decision to re-classify the Director of Logistics position as "local national only" was an unlawful discriminatory act in violation of Title VII. Count II alleges that the Army's decision to re-classify the position violated "the equal protection clause of the [United States] Constitution." Defendants filed the instant Motion to Dismiss or, in the Alternative, to Transfer Venue on June 27, 2006.

II. DISCUSSION

Defendants argue that the Eastern District of Pennsylvania is not a proper venue for this case. When venue is challenged by the defendant, the plaintiff bears the burden of proving that venue is proper. See Dinterman v. Nationwide Mut. Ins. Co., 26 F. Supp. 2d 747, 749 (E.D. Pa. 1998). Venue must generally be established for each cause of action in a plaintiff's complaint. Kravitz v. Inst. for Int'l Research, Civ. A. No. 92-5045, 1993 WL 453457, at *3 (E.D. Pa. Nov. 5, 1993). When venue is improper as to a plaintiff's Title VII claim, however, federal courts have consistently transferred the entire

case to an appropriate venue, instead of splitting the case apart. See e.g., Archuleta v. Sullivan, 725 F. Supp. 602, 606 (D.D.C. 1989); Saran v. Harvey, Civ. A. No. 04-1847, 2005 WL 1106347, at *4 (D.D.C. May 9, 2005).

Title VII contains an exclusive venue provision for cases brought within its ambit, rendering inapplicable the general venue provision of 28 U.S.C. § 1391. Specifically,

Title VII's venue provision provides in relevant part:

Each United States district court . . . shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office.

42 U.S.C. § 2000e-5(f)(3).

Thus, a plaintiff may only bring a Title VII case in one of the following three judicial districts: (1) where the allegedly unlawful employment practice was committed; (2) where the relevant employment records are maintained and administered; or (3) where the aggrieved person would have worked but for the alleged unlawful employment practice. See id. Only when the defendant cannot be brought to court in any of these districts does venue lie in the location of the defendant's principal office. Id.

In this case, Plaintiff has failed to establish that venue is proper in the Eastern District of Pennsylvania for his Title VII claim. Defendants have submitted the declaration of Howard A. Nollenberger, Jr. in support of their motion.¹ Mr. Nollenberger's declaration, as well as the Complaint, demonstrate that this district is not a proper judicial district for Plaintiff's Title VII claim.

First, none of the events comprising the allegedly unlawful employment practice occurred within the Eastern District of Pennsylvania. Instead, "the factual basis for all the allegations raised by [Plaintiff] and the current judicial complaint occurred in 2003 in Hanau, Germany." Nollenberger Decl. ¶ 2. Thus, the only proper venue under this portion of section 2000e-5(f)(3) would be in Germany.

Second, none of the employment records relevant to Count I of the Complaint are maintained or administered in this district. Rather, all of the records relevant to this case are maintained and administered in Hanau Germany. *Id.* at ¶ 3. Again, the only proper district under this portion of Title VII's venue provision is in Germany.

Third, if the Army had not reclassified the Director of Logistics position as "local national only," Plaintiff would have had the opportunity to apply for the position to work for the ASG in Germany. *See* Compl. ¶¶ 10, 13. Thus, venue does not lie in the Eastern District of Pennsylvania, or any other judicial district in the United States, under the first three venue alternatives delineated in section 2000e-5(f)(3).

¹Mr. Nollenberger is a labor and administrative law attorney who represents the Army in Equal Employment Opportunity administrative actions originating in Hanau, Germany. *See* Nollenberger Decl. ¶ 2.

I must therefore turn to the final venue alternative articulated in the statute. The "principal office" of the Army is the Pentagon, which is located in the Eastern District of Virginia. See *Donnell v. Nat'l Guard Bureau*, 568 F. Supp. 93, 94 (D.D.C. 1983).

Accordingly, the only proper venue for Plaintiff's Title VII claim is in the Eastern District of Virginia. Plaintiff has not raised a valid argument for finding that the Eastern District of Pennsylvania is a proper venue for his Title VII claim,² and I find that the only proper judicial district this claim is the Eastern District of Virginia.

Federal courts may transfer a case to any judicial district where the plaintiff could have originally brought a claim in the interests of justice. 28 U.S.C. § 1406(a). As noted above, federal courts will routinely transfer an entire case to a judicial district where venue is proper for a Title VII claim. See *Archuleta*, 725 F. Supp. at 606. Under the circumstances presented here, I find that it is in the interest of justice to transfer this case to a court with proper venue. There is no indication that Plaintiff initiated his case in this Court for any improper purpose or motive. Rather, Plaintiff is a resident of this state and may have assumed that venue in this Court would be proper. Accordingly, I will transfer this case to the Eastern District of Virginia.³

²Plaintiff's opposition to the instant motion urges me to "take into account the spirit of the venue rules and apply it [sic] in context." In particular, he argues that because both Plaintiff and Defendants have a presence in Pennsylvania, and because they are in an employer/employee relationship, the Eastern District of Pennsylvania is an appropriate venue. Such a subjective approach to venue flies in the face of the specific venue rules propounded by Congress in Title VII cases and is not a valid argument for finding that venue is proper in the Eastern District of Pennsylvania.

³Defendants argue that I should dismiss Count II of the Complaint for lack of jurisdiction. I will deny Defendants' motion to dismiss Count II without prejudice. Defendants may raise this and any other arguments regarding the sufficiency of the Complaint in the proper venue.

III. CONCLUSION

For the reasons described above, Defendants' motion is granted insofar as it requests to transfer the case to the Eastern District of Virginia. An appropriate Order follows.

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

LEANON TRAWICK,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 06-01937
	:	
v.	:	
	:	
FRANCIS J. HARVEY, SECRETARY	:	
OF THE ARMY, et al.	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 15th day of August, 2006, upon consideration of Defendants' Motion to Dismiss or in the Alternative to Transfer Venue (Docket No. 3) and Plaintiff's response thereto, it is hereby **ORDERED**:

1. The motion is **GRANTED** insofar as it requests the transfer of this case to the Eastern District of Virginia;
2. The motion is otherwise **DENIED**;
3. The case shall be **TRANSFERRED** to the United States District Court for the Eastern District of Virginia pursuant to 28 U.S.C. § 1406(a); and

4. The Clerk of Court is directed to Transfer the original pleadings of this case to the United States District Court for the Eastern District of Virginia.

BY THE COURT:

/s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.