

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

ANTHONY GUSTAITIS : CIVIL ACTION
 :
 v. :
 :
 ELAINE CHAO, Secretary of Labor : NO. 05-1210

MEMORANDUM AND ORDER

L. FELIPE RESTREPO
UNITED STATES MAGISTRATE JUDGE

December 22, 2006

Plaintiff, Anthony Gustaitis, a former employee of the federal government, initiated this employment discrimination action alleging gender discrimination under Title VII of the Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991 (“Title VII”), 42 U.S.C. §§ 2000e, et seq., and age discrimination under the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621, et seq. The Court is in receipt of a letter dated December 15, 2006 from defendant’s counsel stating that, “[u]nder the circumstances of this case wherein plaintiff is suing for gender and age discrimination but is not seeking any compensatory damages, **plaintiff has no right to a jury on any of his claims.**” See Letter from Pl.’s Counsel to this Court dated 12/15/06, at 1 (emphasis added). Plaintiff’s counsel has submitted a letter dated December 19, 2006 in response to defendant’s letter.

Defendant’s letter will be treated as defendant’s Motion to Strike Jury Demand.

For the reasons which follow, defendant’s motion is granted.

DISCUSSION

Generally, the Seventh Amendment right to trial by jury does not apply to actions against the federal government. Duffy v. Halter, 2001 WL 253828, at *8 (E.D. Pa. Mar. 13, 2001) (citing Lehman v. Nakshian, 453 U.S. 156, 160 (1981)). In a suit against the federal government, a plaintiff has the right to a trial by jury only where Congress has provided an affirmative statutory grant of the right. Duffy, 2001 WL 253828, at *8 (citing Lehman, 453 U.S. at 160).

“The ADEA provides no such affirmative grant, and therefore **there is no right to trial by jury for an ADEA claim against the federal government.**” Duffy, 2001 WL 253828, at *8 (citing Lehman, 453 U.S. at 160) (emphasis added); see Arnett v. Aspin, 846 F. Supp. 1234, 1241 (E.D. Pa. Mar. 29, 1994) (citing Lehman). Thus, in the present case, plaintiff has no right to a jury trial for his ADEA claims, and plaintiff’s motion is granted in that regard. See Duffy, 2001 WL 253828, at *8 (granting defendant’s Motion to Strike Plaintiff’s Jury Demand regarding the plaintiff’s ADEA claim); Arnett, 846 F. Supp. at 1241 (“plaintiffs in actions against the United States do not have a right to a jury trial when suing under the ADEA”).

With regard to the right to a jury trial for a Title VII claim, the Third Circuit in Spencer v. Wal-Mart Stores, Inc., 469 F.3d 311 (3d Cir. 2006), recently observed that, “[u]nder the 1991 [Civil Rights] Act, **plaintiffs seeking compensatory damages may request jury trials.**” Id. at 316 (citing 42 U.S.C. § 1981a(c)(1)) (emphasis added). However, the 1991 Act clarifies that “[c]ompensatory damages . . . shall **not** include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964.” Spencer, 469 F.3d at 316 (quoting § 1981a(b)(2)) (emphasis added). “The 1991 Act does **not**

have a provision stating that parties seeking **back pay** may request a jury trial.” Spencer, 469 F.3d at 316 (citing § 1981a(c)) (emphasis added).

Here, plaintiff’s Complaint seeks only back pay and thus does not seek compensatory damages. Indeed, during a December 21, 2006 telephone conference with counsel for the respective parties, plaintiff’s counsel conceded that the Complaint in this case does not make a claim for compensatory damages.

The Third Circuit stated in Spencer: “[I]t is obvious that **back pay** remains an **equitable remedy** to be awarded within the **discretion of the court.**” Spencer, 469 F.3d at 316 (emphasis added); see Lutz v. Glendale Union High Sch., 403 F.3d 1061, 1069 (9th Cir. 2005); Craig v. Y & Y Snacks, Inc., 721 F.2d 77, 85 (3d Cir. 1983) (stating that “back pay is itself considered a discretionary remedy”); Gurmankin v. Costanzo, 626 F.2d 1115, 1119, 1123 (3d Cir. 1980) (referring to the trial court’s “exercise of discretion . . . in granting or denying equitable relief” and stating that back pay is classified appropriately as an “equitable remedy”). Thus, “there is no right to have a jury determine the appropriate amount of back pay under Title VII . . . even after the Civil Rights Act of 1991.” Lutz, 403 F.3d at 1069. Therefore, “[b]ecause a lost wages award – whether in the form of back pay or front pay – is an **equitable remedy**, a party is generally **not entitled** to a **jury** determination on the question.” Broadnax v. City of New Haven, 415 F.3d 265, 271 (2d Cir. 2005) (emphasis added) (italics in original); Robinson v. Metro-North Commuter R.R., 267 F.3d 147, 157 (2d Cir. 2001) (“[b]ecause back pay and front pay have historically been recognized as equitable relief under Title VII, neither party was

entitled to a jury trial”), cert. denied, 535 U.S. 951 (2002).¹ Accordingly, in that plaintiff is seeking only back pay and not compensatory damages, he is not entitled to trial by jury on his claims under the ADEA and Title VII, and defendant’s Motion to Strike Jury Demand is granted. See Lutz, 403 F.3d at 1069; Robinson, 267 F.3d at 157; Duffy, 2001 WL 253828, at *8; Arnett, 846 F. Supp. at 1241.²

An implementing Order follows.

¹Although plaintiff cites Broadnax in opposition to defendant’s motion, that case is distinguishable from this case, and indeed is consistent with granting defendant’s present motion. In Broadnax, the Court held that “when a party demands jury consideration of lost wages under Title VII **and the party’s opponent fails to object** Rule 39(c) [of the Federal Rules of Civil Procedure] **permits** the district court to submit the lost wages issue for a non-advisory jury determination.” Broadnax, 415 F.3d at 272 (emphasis added). Of course, in this case, defendant **does** object to trial by jury. Furthermore, Rule 39(c) which was applied by the Court in Broadnax, provides that “[i]n all actions **not triable of right by a jury** . . . the court, **with the consent of both parties**, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.” Fed. R. Civ. P. 39(c) (emphasis added). Here, unlike in Broadnax, there is no “consent of both parties,” see id. Moreover, as explained above, the Court stated that a party seeking back pay is “**not entitled** to a jury determination on the question.” Broadnax, 415 F.3d at 271 (emphasis added) (italics in original).

²To the extent that the Court retains the discretion to try this case with an advisory jury, see Fed. R. Civ. P. 39(c), the Court declines to do so.

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ORDER

AND NOW, this 22nd day of December, 2006, upon consideration of the letter from defendant's counsel to this Court dated December 15, 2006, which will be treated as defendant's Motion to Strike Jury Demand, and plaintiff's opposition thereto, and following a telephone conference with counsel for the respective parties on December 21, 2006, for the reasons provided in the accompanying Memorandum, it is hereby ORDERED that defendant's Motion to Strike Jury Demand is GRANTED.

BY THE COURT:

/s/ L. Felipe Restrepo
L. FELIPE RESTREPO
UNITED STATES MAGISTRATE JUDGE