

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

CARL T. BJORKLUND : CIVIL ACTION
: :
v. : :
: :
PHILADELPHIA HOUSING AUTHORITY : NO. 98-2838

MEMORANDUM ORDER

Plaintiff has asserted claims for employment discrimination under the Americans With Disabilities Act of 1990 ("ADA"), 42 U.S.C. 12111 et seq.; retaliation under the ADA; violation of the Family Medical Leave Act of 1993 ("FMLA"), 29 U.S.C. § 2601 et seq.; and, employment discrimination under the Age Discrimination Employment Act of 1967 ("ADEA"), 29 U.S.C. § 621 et seq. Presently before the court is defendant's Motion to Dismiss.

Plaintiff alleges that because of his age and affliction with cancer and heart disease, defendant discriminated against him in his employment in various ways between 1994 and 1996. The complaint describes various discriminatory conduct including:

- (a) Segregating, classifying, and limiting plaintiff's duties;
- (b) Resisting and retaliating against him for requesting certain accommodations during his treatment for cancer and heart disease;
- (c) Depriving him of meaningful assignments and assigning him demeaning work;
- (d) Denying him certain benefits to which he was entitled;
- (e) Unjustly criticizing his performance;
- (f) Refusing to consider him for alternative employment positions and assignments;

- (g) Harassing and attempting to intimidate him; and
- (h) Terminating his employment.

The only acts for which specific dates are alleged are the change in plaintiff's position from manager of benefits and compensation to senior recruiter in April 1994 and his termination on June 6, 1996.

Defendant argues that except as they relate to plaintiff's termination itself, his discrimination claims are time-barred. Defendant correctly states that discriminatory conduct more than 300 days prior to the filing of an EEOC complaint is generally not actionable. See 42 U.S.C. § 2000e-5(e). Under the continuing violation theory, however, a plaintiff may pursue a claim for "conduct that began prior to the filing period if he can demonstrate that the act is part of an ongoing practice or pattern of discrimination." Rush v. Scott Specialty Gases, Inc., 113 F.3d 476, 481 (3d Cir. 1997). A determination of whether the alleged incidents were isolated or part of a continuing pattern entails a fact specific inquiry into the nature or subject matter, frequency and permanence of the occurrences. Id.

Plaintiff has pled at least one timely act, his allegedly unlawful discharge. Plaintiff states that the other incidents were part of the same continuing pattern of violations. Whether plaintiff is correct in this assertion is best assessed on a more developed record. See Ross v. Franklin Mint Co., 1995

WL 322526, at *1 (E.D. Pa. May 22, 1995) ("issue of whether a series of acts are either isolated acts or are part of a continuing pattern of violations is better decided on a motion for summary judgment").

ACCORDINGLY, this day of January, 1999, **IT IS**
HEREBY ORDERED that defendant's Motion to Dismiss (Doc. #3) is
DENIED.

BY THE COURT:

JAY C. WALDMAN, J.