

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

CAROL SHANNON : CIVIL ACTION  
v. :  
CITY OF PHILADELPHIA : NO. 98-5277

MEMORANDUM AND ORDER

BECHTLE, J.

MARCH , 1999

Presently before the court is defendant City of Philadelphia's ("the City") motion to dismiss and plaintiff Carol Shannon's ("Shannon") response thereto. For the reasons set forth below, said motion will be granted in part and denied in part.

**I. BACKGROUND**

Shannon filed the instant action seeking relief under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12117, the Family Medical Leave Act of 1993 ("FMLA"), 29 U.S.C. § 2601-2654 and the Pennsylvania Human Relations Act ("PHRA"), Pa. Stat. Ann. tit. 43, §§ 951-63.<sup>1</sup> The facts as alleged in Shannon's Complaint are as follows.

In June of 1989, Shannon began working for the City as a data support clerk in the Homicide Unit of the District

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1. The court has jurisdiction over Shannon's ADA and FMLA claims pursuant to 28 U.S.C. § 1331. The court has jurisdiction over Shannon's PHRA claim pursuant to 28 U.S.C. § 1367.

Attorney's Office. On June 10, 1994, Shannon was admitted to the Crises Center at Fitzgerald Mercy Hospital where she was diagnosed with major depression. On June 29, 1994, Shannon applied to the City for leave from work under the FMLA and included a report from her physician stating that her condition would last six months.<sup>2</sup> In August of 1994, Shannon requested an additional three month unpaid leave of absence from September 2, 1994 to December 6, 1994. The City instructed Shannon to return to work on September 2, 1994. In September of 1994, Shannon made a second request for extended medical leave. On September 16, 1994, the City denied Shannon's second request and informed Shannon that her employment with the District Attorney's Office was terminated.

On July 12, 1995, Shannon filed a claim with the Equal Employment Opportunity Commission ("EEOC") alleging that the City violated her rights under the FMLA. On July 26, 1998, the EEOC issued Shannon a Right to Sue letter. On October 4, 1998, Shannon filed the instant action. On December 9, 1998, the City filed its motion to dismiss and alternatively sought summary judgment. For the reasons set forth below, the court will not convert the motion to dismiss to one for summary judgment and the motion to dismiss will be granted in part and denied in part.

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2. Although not specifically stated in her complaint, Shannon states in her response to the City's motion to dismiss that the City granted her leave under the FMLA from July 6, 1994 to September 1, 1994. (Pl.'s Resp. at 2.)

## II. LEGAL STANDARD

For the purposes of a motion to dismiss, the court must accept as true all well-pleaded allegations of fact in a plaintiff's complaint, construe the complaint in the light most favorable to the plaintiff, and determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988). The court, however, need not accept as true legal conclusions or unwarranted factual inferences. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997) (citations omitted). A complaint is properly dismissed only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

Under Federal Rule of Civil Procedure 12(b), the court may consider matters outside the complaint by converting a motion filed pursuant to Rule 12(b)(6) to one for summary judgment under Rule 56 provided that the court grants the parties a reasonable opportunity to present all material information to allow the court to decide the motion. Fed. R. Civ. P. 12(b). The court will not convert the City's motion to dismiss to one for summary judgment. Discovery will go forward on the claims not dismissed by the accompanying Order and the parties may move for summary judgment under Rule 56 at an appropriate time.

### **III. DISCUSSION**

In its motion to dismiss, the City sets forth four primary grounds for dismissal. First, the City asserts that Shannon failed to properly plead that she exhausted her administrative remedies before filing a claim under the ADA in this court. Second, the City argues that Shannon did not establish that she is a qualified individual as defined by the ADA. Third, the City argues that Shannon's FMLA claim should be dismissed because the action is barred by the statute of limitations. Finally, the City asserts that Shannon failed to properly plead that she exhausted her administrative remedies before filing a claim under the PHRA with this court. The court will address each argument separately.

#### **A. ADA Claim**

##### **1. Exhaustion of Administrative Remedies**

Prior to filing suit in federal court under the ADA, a plaintiff must exhaust her administrative remedies by filing a claim with the EEOC. Reddinger v. Hospital Cent. Serv., Inc., 4 F. Supp. 2d 405, 409 (E.D. Pa. 1998). The plaintiff must also receive a right to sue letter from the EEOC before filing suit. Id. The City asserts that Shannon failed to properly plead that she exhausted her administrative remedies before filing a claim under the ADA in this court.

Shannon's Complaint states that "[o]n or about July 12, 1995 Plaintiff filed a claim with the Equal Employment Opportunity Commission alleging that defendant violated her

rights pursuant to the terms and conditions of the Family Medical Leave Act." (Compl. ¶ 9.) The Complaint also states that "[o]n or about July 6, 1998 The Equal Employment Opportunity Commission issued to Plaintiff a Notice of her Right To Sue." (Compl. ¶ 10.) The Complaint further alleges that "[a]ll jurisdictional prerequisites to filing suit have been met." (Compl. ¶ 11.) The City argues that because Shannon's Complaint does not mention that she filed a claim with the EEOC alleging any violations of the ADA, Shannon failed to properly plead that she exhausted her administrative remedies with respect to her claim under the ADA.

The City is correct in that the Complaint states that Shannon filed a claim with the EEOC for violations of the FMLA and does not mention that she filed a claim for violations of the ADA. Shannon attached copies of the claim she filed with the EEOC and the Right to Sue letter issued by the EEOC to her response to the City's motion to dismiss.<sup>3</sup> (Pl.'s Opp. Exs. A &

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3. Generally, courts may not look beyond the complaint in deciding a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). However,

a court may properly look beyond the complaint to matters of public record including court files, records and letters of official actions or decisions of government agencies and administrative bodies, documents referenced and incorporated in the complaint and documents referenced in the complaint or essential to a plaintiff's claim which are attached to a defendant's motion.

Arizmendi v Lawson, 914 F. Supp. 1157, 1160-61 (E.D. Pa. 1996) (citations omitted) (considering EEOC right to sue letter attached to defendant's motion to dismiss). See also Gallo v. Board of Regents of Univ. of California, 916 F. Supp. 1005, 1007 (S.D. Cal. 1995) (considering EEOC right to sue letter referenced

C.) Those documents clearly reflect that Shannon made a claim to the EEOC for violations of the ADA, as well as for violations of the FMLA. On the "charge of discrimination" form, Shannon marked the boxes next to "disability" and "retaliation" to indicate the basis for her claim of discrimination. (Pl.'s Opp. Ex. A.) In the body of that document Shannon stated, "I believe I have been discriminated against because of my disability in violation of the Americans with Disabilities Act of 1964." Id. The EEOC Right to Sue letter sent to Shannon, dated July 6, 1998, states that "[y]ou are notified that you have the right to institute a civil action under Title I of the Americans with Disabilities Act of 1990." (Pl.'s Opp. Ex. C.) These documents referenced in Shannon's Complaint demonstrate that Shannon exhausted her administrative remedies prior to filing a claim with this court under the ADA. (Compl. ¶¶ 9-11.)

## **2. "Qualified Individual" Under the ADA**

The ADA prohibits employers from discriminating against "qualified individual[s] with a disability." 42 U.S.C. § 12112(a). To establish a prima facie case under the ADA, the plaintiff must prove that (1) she is disabled within the meaning of the ADA; (2) she is qualified, with or without reasonable

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in complaint). Because Shannon must show that she exhausted her administrative remedies before this court can consider her ADA claim, these documents are essential to that claim. Thus, the court may properly consider Shannon's charge of discrimination filed with the EEOC and the Right to Sue letter attached to her response because the documents are referenced in her Complaint and are essential to her claim.

accommodation, to perform the job she held or sought; and (3) she was terminated or discriminated against because of her disability. Harris v. SmithKline Beecham, 27 F. Supp. 2d 569, 581 (E.D. Pa. 1998) (citations omitted).

The City argues that Shannon is not a qualified individual as defined by the ADA because she could not attend work for an extended period of time. The City states that Shannon received twelve weeks of FMLA leave from June 10, 1994 through September 1, 1994. (Def.'s Mem. Supp. Mot. Dis. at 5.) Shannon alleges that in August of 1994 she requested an additional three month unpaid leave of absence from September 2, 1994 to December 6, 1994. (Compl. ¶ 15.) The City denied that request. (Compl. ¶ 17.) Shannon submitted a second request for additional leave and included a letter from her physician that indicated she would be able to return to work in three to six months. (Compl. ¶¶ 18-19.) On September 16, 1994, the City denied that request and informed Shannon that her employment was terminated. (Compl. ¶¶ 20-21.)

The City argues that because Shannon's physician indicated that Shannon would not be able to return to work for three to six months beyond the leave period granted under the FMLA that Shannon was not qualified to perform the essential function of attending work. (Compl. ¶¶ 27-28.) Shannon argues that her request for an additional period of unpaid leave, beyond that received pursuant to the FMLA, was a reasonable accommodation that the City could have granted without undue

hardship.

Under the ADA, "a qualified individual with a disability" is a person "who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). The term "reasonable accommodation" may include--

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

42 U.S.C. § 12111(9). Whether granting the additional leave requested was a reasonable accommodation and whether the City could provide it to Shannon without undue hardship are factual inquiries that are not properly decided in the context of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1391-92 (3d Cir. 1994) (reversing trial court for resolving factual issues in context of Rule 12(b)(6)). Accordingly, the court will deny the City's motion to dismiss Shannon's ADA claim.

**B. FMLA Claim**

The City seeks dismissal of Shannon's FMLA claim for failure to comply with the statute of limitations. Generally, a statute of limitations defense cannot be used in the context of a

Rule 12(b)(6) motion to dismiss. However, "an exception is made where the complaint facially shows noncompliance with the limitations period and the affirmative defense clearly appears on the face of the pleading." Oshiver, 38 F.3d at 1384 n.1 (3d Cir. 1994). The statute of limitations under the FMLA is ordinarily two years. 29 U.S.C. § 2617(c)(1). For willful conduct, however, the statute of limitations is three years. 29 U.S.C. § 2617(c)(2). Shannon does not allege a willful violation of the FMLA. Accordingly, the two year statute of limitations applies.

Shannon alleges that the City denied her request for additional leave under the FMLA and terminated her employment on September 16, 1994. (Compl. ¶¶ 20-21.) The statute of limitations for a claim under the FMLA begins to run "the date of the last event constituting the alleged violation for which the action is brought." 29 U.S.C. § 2617(c)(1). Shannon alleges, among other things, that the denial of additional leave violates the FMLA. The last denial occurred on September 16, 1994. Thus, the latest date on which the statute of limitations for Shannon's FMLA claim began to run was September 16, 1994. Shannon did not file her Complaint instituting this action until October 4, 1998. Shannon does not address the issue in her response to the City's motion to dismiss beyond stating that the claim is timely. She does not cite any authority or basis for that argument. In this instance, it is clear from the face of Shannon's Complaint that she did not file this action alleging a violation under the FMLA

until over four years after her employment was terminated.<sup>4</sup> This period is plainly beyond the two year statute of limitations that applies to Shannon's claim under the FMLA. Accordingly, the court will dismiss Shannon's FMLA claim.

**C. PHRA Claim**

The City argues that Shannon's PHRA claim should be dismissed because she failed to plead that she exhausted her administrative remedies under the PHRA before instituting an action in this court. A plaintiff may not seek judicial remedies under the PHRA, unless an administrative complaint is filed with the Pennsylvania Human Relations Commission within 180 days of the alleged act of discrimination. Woodson v. Scott Paper Co., 109 F.3d 913, 925 (3d Cir. 1997) (citation omitted). Shannon's Complaint does not allege that she exhausted her administrative remedies under the PHRA prior to filing suit in this court. Additionally, Shannon does not address this issue in her response to the City's motion to dismiss. The court will dismiss Count

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4. The court agrees with the City's argument, which is not disputed by Shannon, that filing a discrimination charge with the EEOC does not toll the statute of limitations for her FMLA claim. See Johnson v. Railway Express Agency, 421 U.S. 454, 465-67 (1975) (holding that an EEOC filing did not toll the limitation period for a suit brought under 42 U.S.C. § 1981); Sanders v. Hale Fire Pump Co., No. 87-2468, 1987 WL 17748, \*3 (E.D. Pa. Sept. 30, 1987) (finding that plaintiff's EEOC claim did not toll statute of limitations for a hybrid claim under § 301 of the Labor Management Relations Act). This position is bolstered by the fact that the FMLA does not require a plaintiff to pursue any administrative remedies before filing suit in federal court. See 29 U.S.C. §§ 2601 et seq.; 29 C.F.R. § 825.400(a); Krohn v. Forsting, 11 F. Supp. 2d 1082, 1085 (E.D. Mo. 1998); Churchill v. Star Enter., No. 97-3527, 1998 WL 254080, \*6 (E.D. Pa. 1998).

III of Shannon's Complaint alleging a claim under the PHRA for failure to allege that she exhausted her administrative remedies.

**IV. CONCLUSION**

For the reasons set forth above, the City's motion to dismiss will be granted in part and denied in part.

An appropriate Order follows.

