

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

EDGAR Q. BULLOCK	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
BALIS & CO., INC.	:	
a/k/a GUY CARPENTER &	:	
COMPANY, INC.	:	NO. 99-748

**MEMORANDUM AND ORDER**

**J. M. KELLY, J.**

**JULY 21, 1999**

Currently before the Court is the Motion to Dismiss of Defendant Balis & Co., Inc. a/k/a Guy Carpenter & Company, Inc. (“Balis”) and Plaintiff Edgar Q. Bullock’s (“Bullock”) response. Counts III and IV are dismissed by stipulation of the parties. For the reasons that follow, Defendant’s Motion will be denied as to Counts I and II and granted as to Count V.

**I. BACKGROUND**

Bullock was hired by Balis in May 1978, ultimately reaching the position of Assistant Vice President. In a meeting with Balis’s President, William W. Fox (“Fox”), on March 21, 1997, Bullock disclosed that he suffered from Attention Deficit Disorder (“ADD”). Despite claiming that he was fully capable of performing his job requirements, Bullock admitted that his ADD could affect his efficiency in completing his work-related tasks and requested a one year period in which to seek appropriate treatment and evaluate his condition’s effect on his job. Fox told Bullock that a six month treatment period was sufficient. Nevertheless, Fox fired Bullock on March 31, 1997, just ten days after their meeting. In accordance with a previous employment

agreement, Bullock's termination did not take effect until September 1997. Bullock filed a charge of discrimination with the EEOC in January 1998 and later supplemented that charge with further information. Subsequently, Bullock filed his complaint against Balis on February 12, 1999, charging violations of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 (1994) ("ADEA"), the Americans with Disabilities Act, 42 U.S.C. §§ 12101 (1994) ("ADA"), and the common law of the Commonwealth of Pennsylvania. More specifically, Count I of Bullock's complaint alleges that Balis's action in terminating him violated the ADEA. In Count II Bullock claims that Balis's action violated the ADA and Count V seeks to recover for intentional infliction of emotional distress ("IIED").

Balis moves to dismiss Counts I and II because it claims that Bullock failed to file a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") within 300 days of the alleged discriminatory conduct, as required by Title VII of the Civil Rights Act of 1964. See 42 U.S.C. § 2000e-5(e). It is Balis's contention that the alleged discriminatory conduct occurred at the March 21, 1997, meeting between Bullock and Fox because Bullock states in his complaint that he was "perceived as a person with a disability" after he disclosed his condition to Fox. (Compl. ¶ 17) Balis maintains that this statement shows Bullock knew he was thought of as suffering from a disability and was being discriminated against. Therefore, Balis asserts that Bullock's termination on March 31 was merely a confirmation of the discrimination he was subjected to and aware of on March 21. Consequently, Balis claims that Bullock had to file his discrimination charge within 300 days of March 21, 1997, and his failure to do so bars his claim under the statutory limitations. Balis further contends that Bullock's claim for IIED must be dismissed for several reasons: (1) the Pennsylvania Supreme Court has not recognized it

as an actionable tort; (2) it is barred by the exclusivity provision of the Pennsylvania Workmen's Compensation Act; (3) the alleged discriminatory acts were not severe enough to rise to the level necessary to maintain a claim; and, (4) Bullock failed to allege any physical harm requiring medical treatment.

## **II. DISCUSSION**

### **A. Legal Standard - Rule 12(b)(6)**

Balis moves to dismiss Bullock's claims pursuant to Federal Rule of Civil Procedure 12(b)(6). In deciding a 12(b)(6) motion to dismiss, the Court will accept all well-pled factual allegations in the complaint as true and will view them in the light most favorable to the non-movant. Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989). In addition, a claim will not be dismissed unless the non-movant can prove no set of facts that would entitle it to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

### **B. ADEA & ADA Claims**

#### **1. Balis's Motion to Dismiss Bullock's Count I ADEA & Count II ADA Claims**

##### **a. Sufficiency of the January 1998 "Charge of Discrimination"**

A charge of an unlawful employment practice under the ADEA and the ADA must "be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires." 42 U.S.C. § 2000e-5(b). The Commission's minimum requirements state that the person making the charge need supply only a "written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of." 29 C.F.R. § 1601.12(b) (1998). Balis argues that Bullock's January 22, 1998, EEOC "Charge of Discrimination" is deficient and cannot be considered a "charge" under the regulations because

that particular charge was never served on Balis and the EEOC's "Notice of Charge of Discrimination" instructed Balis to take no action with regard to it. Also, Balis insists the January charge was deficient because the EEOC required more information from Bullock before it could proceed with an investigation.

Despite Balis's argument that Bullock's charge was facially deficient, the Court finds Bullock's January 1998 charge meets the minimum requirements necessary to constitute a viable charge under Title VII guidelines and EEOC regulations. Although sparse on facts and dates, Bullock's January charge was a written statement that identified the parties and the actions complained of. The fact that the charge was inadequate for the EEOC to begin its investigation does not compel a contrary conclusion; the EEOC regulations provide for this situation:

A charge may be amended to cure technical defects or omissions, including failure to verify the charge, or to clarify and amplify allegations made therein. Such amendments ... will relate back to the date the charge was first received. A charge that has been so amended shall not be required to be redeferred.

Id. As a result, the EEOC regulations do not lead the Court to conclude the January charge was insufficient to provide notice to Balis.

Alternatively, Balis parallels the January EEOC charge to an EEOC intake questionnaire in order to support its theory that Bullock's January 1998 EEOC charge was deficient. Balis relies on Proffit v. Keycom Electronic Publishing, 625 F. Supp. 400 (N.D. Ill. 1985), in which the court stated that although the intake questionnaire in dispute fulfilled the minimum requirements needed to constitute a charge, it was insufficient because it was not signed and verified as required by Title VII language. The Court does not find Proffit persuasive in light of the number of circuit courts that have held that EEOC intake questionnaires can constitute

official charges for statutory filing purposes. See Peterson v. City of Wichita, 888 F.2d 1307, 1309 (10th Cir.), cert. denied, 495 U.S. 932 (1989) (finding timely filed but unverified EEOC charge of discrimination was valid when later amended as regulation allows); Casavantes v. California State Univ., 732 F.2d 1441, 1443 (9th Cir. 1984) (holding that filing an intake questionnaire with the EEOC was sufficient to constitute a charge even though it was neither signed nor verified as procedure required); Price v. Southwestern Bell Tel., 687 F.2d 74, 78 (5th Cir. 1982) (finding that depending on how the EEOC treats the intake questionnaire it can, in certain circumstances, constitute a charge). In view of Balis's failure to produce authorities sufficiently persuasive to counter these cases, the Court finds the January 1998 charge of discrimination filed by Bullock against Balis was not deficient and does meet the filing requirements for a charge under Title VII and EEOC regulations.

**b. Statute of Limitations for filing a “Charge of Discrimination”**

The statute of limitations begins to run when the plaintiff's cause of action begins to accrue. Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1385 (3d Cir. 1994) (“[T]he accrual date is not the date on which the wrong that injures the plaintiff occurs, but the date on which the plaintiff *discovers* that he or she has been injured.”). Plaintiff therefore is entitled to the full statute of limitations period once she discovers the injury. New Castle County v. Halliburton NUS Corp., 111 F.3d 1116, 1124-25 (3d Cir. 1997). The time limit for filing a charge of discrimination under the ADEA is 300 days after the alleged violation. See 29 U.S.C. § 626(d)(2). Likewise, the time limit for filing a charge of discrimination under the ADA is also 300 days. See 42 U.S.C. § 2000e-5(e)(1) (setting forth the time limit for maintaining a Title VII complaint which, under 42 U.S.C. § 12117(a), is the same for the ADA). The 300 day extended

period for filing a charge with the EEOC is available to a plaintiff regardless of whether that plaintiff timely filed a charge with its state agency. See EEOC v. Commercial Office Prods. Co., 486 U.S. 107, 124 (1988); Melincoff, D.O. v. East Norriton Physician Serv., Inc., No. 97-4554, 1998 WL 254971, at \*9 (E.D. Pa. April 20, 1998). As a result, although Bullock did not file with the PHRA within the prescribed 180 day period, that does not preclude his timely filed EEOC charge from being valid.

Balis asserts that the alleged ADEA violation in this case occurred on March 21, 1997, at the initial meeting between Fox and Bullock. Yet, Balis points to nothing supporting the notion that at the conclusion of the March 21 meeting, Bullock could definitively say he was being or going to be discriminated against because of his age. Furthermore, the Court cannot say as a matter of law that Bullock either knew or could have known that he was being discriminated against at the close of the March 21 meeting because of his disclosure that he suffered from ADD. In fact, viewing the evidence in a light most favorable to Bullock, he left the meeting with Fox believing that he had Balis's support in receiving treatment and evaluation for his ADD. Balis has produced no factual allegations to support its argument. As a result, the Court finds that, given the limited record presently before the Court, the date of accrual for the statute of limitations is March 31, 1997, the day of Bullock's termination, and Bullock filed within the statutory time limits. Balis's Motion to Dismiss Counts I & II is therefore denied.

**C. Balis's Motion to Dismiss Bullock's Count V Intentional Infliction of Emotional Distress Claim**

While the tort of IIED has not been specifically adopted by the Supreme Court of Pennsylvania, the Third Circuit, in Williams v. Guzzardi, 875 F.2d 46 (3d Cir. 1989) through its

interpretation of Kazatsky v. King David Memorial Park, Inc., 527 A.2d 988 (Pa. 1987), instructed district courts that they are to recognize the tort until the Pennsylvania Supreme Court definitively decides the issue. Williams at 51; see also Clark v. Township of Falls, 890 F.2d 611, 623 (3d Cir. 1989); McWilliams v. AT&T Info. Sys., Inc., 728 F.Supp. 1186, 1194 (W.D. Pa. 1990). Moreover, the Pennsylvania Superior Court recognizes the tort. See Rinehimer v. Luzerne City Com. College, 539 A.2d 1298, 1305 (Pa. Super. Ct. 1988); Banyas v. Lower Bucks Hosp., 437 A.2d 1236, 1238 (Pa. Super. Ct. 1982); Jones v. Nissenbaum, Rudolph & Seidner, 368 A.2d 770, 772-73 (Pa. Super. Ct. 1976).

The Pennsylvania Workmen's Compensation Act ("WCA") does, however, bar an employee's claim of intentional infliction of emotional distress against an employer. The exclusivity provision of the WCA states, "[t]he liability of an employer under this act shall be exclusive and in place of any and all other liability to such employees...." 77 Pa. Stat. Ann. tit. 77 § 481(a) (West 1999). Nevertheless, Bullock cites Burns v. United Parcel Service, Inc., 757 F. Supp. 518 (E.D. Pa. 1991), and Alexander v. Red Star Express Lines of Auburn, Inc., 646 F. Supp. 672 (E.D. Pa. 1986), aff'd 813 F.2d 396 (3d Cir. 1987), in support of his contention that an IIED claim is not barred by the WCA. These cases are easily distinguishable from the present case because they concern cases of retaliatory discharge for filing a workmen's compensation claim, not claims of IIED. In fact, the court in Alexander did not even weigh whether the WCA is the exclusive remedy for emotional distress claims stemming from an employment discharge. See Sibley v. Faulkner Pontiac-GMC, Inc., No. 89-7303, 1990 WL 116226, \*7 n.13 (E.D. Pa. Aug. 8, 1990). Instead, the issue in Alexander was whether the plaintiff could bring an action claiming retaliatory discharge for filing a workmen's compensation claim. The present case does

not involve a retaliation claim, and therefore these cases are of limited value. Finally, Bullock also cites Shirsat v. Mutual Pharmaceutical Co., No. 93-3202, 1996 WL 606297 (E.D. Pa. Oct. 22, 1996) to support his claim of IIED. In that case, however, “the plaintiff’s claim [wa]s for damages incidental to his wrongful termination, not an independent cause of action for intentional infliction of emotional distress.” Id. at \*1. Therefore, this case is also inapplicable for the present action.

The WCA bars a claim of IIED based only on an allegedly wrongful termination and does not bar a claim based on something more, such as prior misconduct. See Matczak v. Frankford Candy & Chocolate Co., 136 F.3d 933, 940 (3d Cir. 1997) (finding that the Pennsylvania WCA bars claims for IIED deriving from the employer/employee relationship); Doe v. Shapiro, 852 F. Supp. 1246, 1254 (E.D. Pa. 1994) (finding IIED claim barred where plaintiff alleges termination in violation of ADA and PHRA); Geary v. Visitation of the Blessed Virgin Mary Parish Sch., No. 92-5769, 1992 WL 392599, \*2 (E.D. Pa. Dec. 18, 1992) (finding IIED claim barred where plaintiff alleges termination in violation of ADA), aff’d in part and vacated in part, 7 F.3d 324 (3d Cir. 1993); Sibley, 1990 WL 116226, at \*7 (finding IIED claim barred where plaintiff alleges wrongful termination in violation of ERISA & PHRA). In the present case, all that is charged by Bullock is that he was terminated in violation of the ADEA and ADA. No allegations of prior misconduct or grounds for a charge of retaliatory termination have been alleged in the complaint. Consequently, because a claim for IIED based only on wrongful termination is barred by the WCA, Balis’s Motion to Dismiss Count V of Bullock’s complaint is granted.

An Order follows.

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EDGAR Q. BULLOCK

V.

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CIVIL ACTION

NO. 99-748

**ORDER**

AND NOW, this 21st day of July, 1999, upon consideration of Defendant Balis & Co., Inc. a/k/a Guy Carpenter & Company, Inc.'s ("Balis") Motion to Dismiss and Plaintiff Edgar Q. Bullock's ("Bullock") response thereto, it is hereby **ORDERED**:

1. Defendant Balis's Motion to Dismiss Counts I and II of Plaintiff's complaint is **DENIED**;
2. Defendant Balis's Motion to Dismiss Count V of Plaintiff's complaint is **GRANTED**; and Count V of Plaintiff's complaint is **DISMISSED**;  
and
3. Counts III and IV of Plaintiff's complaint are **DISMISSED** by stipulation of the parties.

BY THE COURT:

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JAMES MCGIRR KELLY, J.