

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

HILLARY JORDAN, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
STORAGE TECHNOLOGY CORP., :
Defendant. : NO. 99-CV-329

MEMORANDUM & ORDER

J.M. KELLY, J.

SEPTEMBER , 2000

Defendant, Storage Technology Corp. ("STC"), has filed the present Motion for Summary Judgment. In what is becoming an unfortunate pattern in this case, Plaintiff, Hillary Jordan ("Jordan"), has filed a Response more than one month late and without requesting leave of the Court. The Court notes that at the preliminary pre-trial conference in this matter, Jordan's attorney, Calvin Taylor, Jr., Esq., stated that he intended to transfer this file due to health concerns and requested a continuance in this matter. The Court stayed discovery until November 1, 1999, which Mr. Taylor assured the Court was sufficient time, to allow Jordan to retain substitute counsel. Still, Jordan's Response was filed by Mr. Taylor.¹

I. BACKGROUND

Jordan was employed by STC as a Senior Logistics

¹STC suggests, in its Reply Brief, that the Court consider Jordan's "lackadaisical attitude towards this litigation" as a reason to grant summary judgment. Def.'s Rep. Mem., at 1. STC has not asked for such a sanction by an appropriate motion and there is no basis in Federal Rule of Civil Procedure 56 for such a consideration.

Coordinator. His job duties involved maintaining inventory of computer parts at locations in Allentown, Wilkes Barre and Harrisburg. He was also required to attend meetings in suburban Philadelphia. At a meeting in 1986, a supervisor named Ruth or Rueth ("Rueth") made a comment that he was "being treated like the niggers of STC." Jordan complained about this statement and Rueth was terminated. A supervisory employee² stated that Jordan would pay for Rueth's termination. In October of 1990, Jordan was placed on a "Personal Improvement Plan." In August of 1991, he was informed that he had successfully completed the plan. Sometime in early 1994 STC purchased a competitor named XL Datacomp. Jordan was required to drive between Allentown, Wilkes Barre and Harrisburg to inventory parts that were acquired in the XL Datacomp purchase. Jordan was working 10-16 hour days, and on occasion, slept on the floor at work. The inventory process was exacerbated by STC removing the XL Datacomp computers so that Jordan had to work with unfamiliar parts and inventory parts by means of paper catalogues. Jordan requested assistance with the XL Datacomp inventory and to have an XL Datacomp computer returned. These requests were denied. Subsequently, on March 21, 1994, Jordan was at his work station and found himself unable to work. He went to a doctor who suggested he take some time

²There appears to be a conflict as to whether this employee was at a supervisory level or the same level as Jordan. For purposes of this motion, the Court accepts Plaintiff's version.

off. Jordan was placed on short-term disability and received such payments for six months. Despite several attempts by STC and his long-term disability insurer, Jordan never completed a long term disability application. On November 22, 1995, his employment was terminated.

Jordan has provided, as evidence of timely filing of his EEOC charge, a copy of a charge with a transmittal letter, signed by attorney Calvin Taylor, Esq., dated December 12, 1995. There are also charges dated May 28, 1996 and June 27, 1996.

II. DISCUSSION

Although Jordan's Complaint is less than a model of clarity, it appears, when read in conjunction with the three EEOC charges, that he has alleged discrimination based upon: (1) race, pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e to 2000e-17 (1994) ("Title VII"); (2) disability pursuant to Title I of the Americans with Disabilities Act, 42 U.S.C. §§ 12111-12117 ("ADA"); and (3) age, pursuant to the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-626 ("ADEA"), as well as retaliation for complaining about Rueth's comment in violation of Title VII. In addition, Jordan makes parallel claims under the Pennsylvania Human Relations Act, 43 Pa. Con. Stat. Ann. §§ 951-963 (West 1991) ("PHRA"). The Court understands Jordan's claim to be that when he complained about Rueth's comment, he was subjected to an almost decade long

regiment of retaliation and discrimination that included the Personal Improvement Plan, having his workload dramatically increased while denying him assistance and ultimately his termination. STC attacks Jordan's claims both for his alleged failure to properly exhaust his administrative remedies before the EEOC and on the merits.

A. SUMMARY JUDGMENT

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). This court is required, in resolving a motion for summary judgment pursuant to Rule 56, to determine whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In making this determination, the evidence of the nonmoving party is to be believed, and the district court must draw all reasonable inferences in the nonmovant's favor. See id. at 255. Furthermore, while the movant bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact, Rule 56(c) requires the entry of summary judgment

"after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

B. EEOC FILING

The enforcement provision of Title VII requires that an injured party must file a charge with the EEOC within 180 days after the alleged unlawful employment practice occurred. See 42 U.S.C. § 2000e-5(e)(1). This 180-day filing requirement acts as a statute of limitations, barring relief for conduct which occurred outside the statutory period. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1387 (3d Cir. 1994).

1. Sufficiency of Evidence

STC first argues that Jordan has not opposed summary judgment with the required affidavits, therefore there is no evidence that the Court should consider in support of Jordan's argument that a charge was filed with the EEOC on December 12, 1995. As it is indisputable that the last act by STC that could be considered employment discrimination against Jordan was his termination on November 22, 1995, the only one of the EEOC charges that would have been timely filed was the December 12, 1995 charge. Jordan has supported the authenticity of this charge with a transmittal letter signed by his attorney, Calvin

Taylor, Esq., which achieves the purpose of Rule 56's affidavit requirement, namely to assure that there is a basis to include the proffered evidence in the record. As Attorney Taylor prepared the transmittal letter and Jordan's Response, his position as an officer of the Court adequately supports the reliability of the letter. STC argues that the EEOC records do not indicate the December 12, 1995 charge was ever filed. This creates a factual issue, but cannot be considered dispositive on this Motion for Summary Judgment.³

2. Exhaustion of Administrative Remedies

Where a plaintiff doesn't pursue an administrative claim before the EEOC, that claim is waived in a subsequent lawsuit. See Hopson v. Dollar Bank, 994 F. Supp. 332, 337-38 (W.D. Pa. 1997) (holding plaintiff's failure to assert continuing violations theory in administrative filing and complaint was "fatal"). Jordan has not asserted racial discrimination in his EEOC charge, either by checking off the race discrimination box or by alleging facts in his charge that would support a race discrimination claim. While the Rueth incident was based upon an act of racial discrimination, a review of the acts that follow support that Jordan was retaliated against, but there is no

³The Court, of course, makes no comment upon an issue that is not before it, namely, whether Attorney Taylor must be a witness as to the authenticity of the charge of December 12, 1995 and what effect his potential testimony may have upon his representation of Jordan.

evidence in the record that racial discrimination played a part in the subsequent acts of discrimination alleged by Jordan. Accordingly, STC's Motion for Summary Judgment must be granted as to the claims of race discrimination.

Jordan sufficiently alleged age and disability discrimination and retaliation in the December 12, 1995 EEOC charge, therefore the Court is unable to say that he has failed to exhaust his administrative remedies as to those claims. Accordingly, the Court shall turn to analysis of the merits of Jordan's ADEA, ADA and retaliation claims.

C. MERITS

The shifting burden in an employment discrimination case requires a plaintiff to first prove a prima facie case for the employment decision in question. See McDonnell Douglas v. Green, 411 U.S. 792, 802 (1973). The employer may then come back with a legitimate, nondiscriminatory reason for the employment action. See id. The burden then returns to the plaintiff to prove that the offered explanation is pretextual. See id.

1. ADEA

To establish a prima facie case under the ADEA, Jordan must show that: (1) he is over 40; (2) he is qualified for the position in question; (3) he suffered an adverse employment decision; and (4) he was replaced by a significantly younger person to create an inference of age discrimination. See Sempier

v. Johnson & Higgins, 45 F.3d 724, 728 (3d Cir. 1995). Jordan has failed to establish a prima facie case because there is no evidence in the record that he was replaced by a younger employee.

2. ADA

In order to establish a prima facie case under the ADA, Jordan must show: (1) he is a person with a disability as defined by the ADA; (2) he is otherwise qualified to perform the essential functions of the position, either with or without reasonable accommodations by his employer; and (3) he suffered an adverse employment decision because of discrimination. See Gaul v. Lucent Technologies, Inc., 134 F.3d 576, 580 (3d Cir. 1998). The disability that Jordan appears to claim is his stress-related emotional breakdown on March 21, 1994. Jordan requested an assistant and the computer prior to his alleged disability. Therefore, he was not disabled when he requested the accommodations. Subsequent to the breakdown, there is no evidence that Jordan ever requested to return to work or requested any accommodation from STC. Reasonable accommodation in an employment setting requires an interactive process between the employer and employee, however, the burden is upon the employee to initiate the process by requesting an accommodation. See Jones v. United Parcel Serv., 214 F.3d 402, 408 (3d Cir. 2000). As Jordan was not disabled when he requested

accommodations and never requested accommodations after he alleges he became disabled, he has not established a prima facie case under the ADA.

3. Retaliation

In order to establish a prima facie case of retaliation, Jordan "must show that (1) he was engaged in protected activity; (2) he was discharged subsequent to or contemporaneous with such activity; and (3) there is a causal link between the protected activity and the discharge." Woodson v. Scott Paper Co., 109 F.3d 913, 919-20 (3d Cir. 1997). Complaining about Rueth's comment was a protected activity and there is no dispute that his termination occurred subsequent to the protected activity. Temporal proximity between a protected activity and termination is sufficient to establish causation for a prima facie case of retaliation. See id. at 920. Temporal remoteness, on the other hand, does not necessarily preclude a prima facie case of retaliation. See Robinson v. SEPTA, 982 F.2d 892, 894 (3d Cir. 1993). The plaintiff must, however, demonstrate that the employer engaged in an ongoing pattern of antagonism during the intervening period. See id. at 895.

The Rueth incident occurred in 1986. Jordan was placed on the Personal Improvement Plan in 1990 and the workload increase related to STC's purchase of XL Datacomp occurred in 1994. In contrast, the length of time between protected activity and

termination in both Robinson and Woodson was two years. While Jordan argues that there was a pattern of antagonism following the Rueth incident that continued until his termination, Jordan has presented no evidence to support this assertion.

Accordingly, Jordan has failed to establish a prima facie case of retaliation.

D. PHRA

To bring suit under the PHRA, a plaintiff must first have filed an administrative complaint with the Pennsylvania Human Relations Commission ("PHRC") within 180 days of the alleged act of discrimination. See 43 Pa. Cons. Stat. Ann. § 959(g).

Failure to file a timely complaint with the PHRC serves to preclude judicial remedies under the PHRA. See Woodson, 109 F.3d at 913. Whether the filing requirements have been satisfied is a matter of Pennsylvania law, and one that has been strictly interpreted by Pennsylvania courts. See, e.g., Vincent v. Fuller Co., 616 A.2d 969, 974 (Pa. 1992) (holding that "persons with claims that are cognizable under the [PHRA] must avail themselves of the administrative process of the [PHRC] or be barred from the judicial remedies authorized in Section 12(c) of the Act").

Jordan has presented no evidence that he ever filed a timely charge with the PHRC, and in fact, the PHRC has stated that they have no record of a complaint by Jordan against STC. See Def.'s Mot. Summ. J., Ex. N. As he failed to file a claim with the

PHRC, summary judgment will also be granted on Jordan's PHRA claim.

III. CONCLUSION

By failing to claim race discrimination in his EEOC complaint, Jordan waived that claim under Title VII. Jordan has also failed to present a prima facie case of discrimination under the ADA or the ADEA, or a prima facie case of retaliation under Title VII. Finally, there is no evidence that Jordan filed a claim with the PHRC as a prerequisite to his PHRA claim.

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O R D E R

AND NOW, this day of September, 2000, upon consideration of the Motion for Summary Judgment of Defendant, Storage Technology Corp., the Response of Hillary Jordan, and the Reply thereto of Defendant, Storage Technology Corp., it is ORDERED that the Motion for Summary Judgment is GRANTED. Judgment is ENTERED in favor of Storage Technology Corp. and against Hillary Jordan.

The Clerk of Court shall mark this case as closed.

BY THE COURT:

JAMES MCGIRR KELLY, J.