

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

PAULA FANTROYAL : CIVIL ACTION
 :
 v. :
 :
 KENNETH S. APFEL : No. 00-1860

MEMORANDUM AND ORDER

J. M. KELLY, J.

DECEMBER , 2000

Presently before the Court is a Motion for Partial Dismissal filed by the Defendant, Kenneth S. Apfel, Commissioner of the Social Security Administration. The Plaintiff, Paula Fantroyal ("Fantroyal"), filed a pro se Complaint that alleged disability discrimination against her. Defendant now seeks partial dismissal of that Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1). For the following reasons, Defendant's Motion for Partial Dismissal is granted.

I. BACKGROUND

Fantroyal alleges that she began working in an air-tight, unventilated work area in 1991. Because the building in which she worked was in the process of major renovations, chemicals were frequently stored near her work station. She later became ill, which she claims was caused by prolonged exposure to these chemicals.

After visiting a doctor, Fantroyal learned that she was hyper-sensitive to chemicals. She then requested, five times,

that her employer grant her reasonable accommodations. Fantroyal claims that her employer failed to grant her reasonable accommodations, and that she was constructively forced into disability retirement because of her illness.

Fantroyal finally decided to seek relief in federal court. On April 10, 2000, Fantroyal sought leave from this Court to proceed in forma pauperis, which the Court granted. Fantroyal subsequently filed a pro se Complaint on April 12, 2000. The Complaint alleged disability discrimination by the Social Security Administration in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq. (1994).

Defendant subsequently filed a Motion for Partial Dismissal due to lack of federal subject matter jurisdiction on June 26, 2000. The next day, Defendant filed an Answer to Fantroyal's Complaint. On July 10, 2000, Fantroyal filed a pro se Response in which she asked the Court to obtain legal representation for her. The Court ultimately did so, and granted her additional time to supplement her Response. With the assistance of counsel, Fantroyal filed a second Response on November 10, 2000.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(1) empowers parties to assert as a defense the court's "lack of jurisdiction over the subject matter" of the case. Fed. R. Civ. P. 12(b)(1). This

defense can be raised at any time. Fed. R. Civ. P. 12(h)(3). A motion to dismiss pursuant to Rule 12(b)(1) challenges a federal court's authority to hear the case. Therefore, the party asserting jurisdiction bears the burden of showing that the case is properly before the Court at all stages of litigation.

Packard v. Provident Nat'l Bank, 994 F.2d 1039, 1045 (3d Cir. 1993); Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1408-09 (3d Cir. 1991); Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977).

Motions pursuant to Rule 12(b)(1) take one of two forms: those that attack the complaint on its face and those that attack the existence of subject matter jurisdiction in fact. Kelly v. Blake, No. 93-0365, 1993 WL 131518, at *1 (E.D. Pa. Apr. 26, 1993); Yuksel v. Northern Am. Power Tech., Inc., 805 F. Supp. 310, 311 (E.D. Pa. 1992). A facial attack requires the district court to accept the allegations of the complaint as true in deciding whether subject matter jurisdiction exists. See Mortenson, 549 F.2d at 891; Garcia v. United States, 896 F. Supp. 467, 471 (E.D. Pa. 1995). In considering a factual attack, however, the court may weigh the evidence in determining its power to hear the case. Mortenson, 549 F.2d at 891; Garcia, 896 F. Supp. at 471.

III. DISCUSSION

The instant case presents a facial attack on Fantroyal's Complaint, asking the Court to dismiss portions of her case because she incorrectly made her claim under the ADA. Defendant is correct that, under the ADA, Fantroyal's claim cannot stand. Generally speaking, the ADA precludes a "covered entity" from discriminating against individuals because of their disabilities. 42 U.S.C. § 12112(a). The term "covered entity" includes "employers." 42 U.S.C. § 12111(2). The term "employer," however, explicitly excludes the United States. 42 U.S.C. § 12111(5)(B)(i). Federal employees therefore have no claim against the United States under the ADA. Facially, Fantroyal's Complaint, which sets forth a disability discrimination claim against a United States agency, fails to invest the Court with subject matter jurisdiction over her case. Accordingly, the Court must dismiss her claim to the extent that it seeks relief under the ADA.

The Court will not, however, dismiss Fantroyal's claims in their entirety. Although Fantroyal's pro se Complaint mistakenly invoked jurisdiction under the ADA, the facts alleged make out a claim for relief under the Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq. (1994), which is the sole basis for federal employees to bring claims of disability discrimination. Spence v. Straw, 54 F.3d 196, 202 (3d Cir. 1995); Weber v. Henderson, No. 99-2574, 2000 WL 217676, at *1 n.2 (E.D. Pa. Feb. 10, 2000).

The Rehabilitation Act provides that no disabled individual "shall, solely by reason of her or his disability, be . . . denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency" 29 U.S.C. § 794. Defendant concedes that Fantroyal may set forth a claim for relief under the Rehabilitation Act. See Def.'s Mem. in Supp. of its Mot. for Partial Dismissal at 3.

That Fantroyal failed to explicitly mention the Rehabilitation Act in her Complaint does not bar her claim; the Federal Rules of Civil Procedure are meant as a vehicle "to facilitate a proper decision on the merits," not as a "game of skill in which one misstep . . . may be decisive." Conley v. Gibson, 355 U.S. 41, 48 (1957). Indeed, Federal Rule of Civil Procedure 8(f) requires that "[a]ll pleadings shall be so construed as to do substantial justice." Fed. R. Civ. P. 8(f). Consistent with this rule is the well-established principle that courts should subject a pro se party's pleadings to less stringent standards of specificity and construe their complaints liberally. See, e.g., Haines v. Kerner, 404 U.S. 519, 520 (1972); Lewis v. Attorney Gen. of the United States, 878 F.2d 714, 722 (3d Cir. 1989); Micklus v. Carlson, 632 F.2d 227, 236 (3d Cir. 1980). "When a court is dealing with a complaint drawn by a layman unskilled in the law," suggests one commentator,

"technical deficiencies in the complaint will be treated leniently and the entire pleading will be scrutinized to determine if any legally cognizable claim can be found within it." 5 C. Wright & A. Miller, Federal Practice and Procedure § 1286, at 550-53 (1990) (footnotes omitted). Moreover, "[a] pleading will be judged by its substance rather than according to its form or label and, if possible, will be construed to give effect to all its averments." Id. at 553-56.

In the instant case, Fantroyal's invoking jurisdiction under the ADA was clearly a misstep, but it is not decisive. The Court will dismiss any claims to the extent that Fantroyal seeks relief under the ADA, but Fantroyal may pursue her claims under the Rehabilitation Act. Moreover, the Court will entertain a properly filed motion seeking leave of the Court to amend Fantroyal's Complaint to explicitly include the Rehabilitation Act and any other appropriate facts, if Fantroyal elects to do so.¹

¹ In opposing Defendant's Motion for Partial Dismissal, Fantroyal informally asked, in the alternative, that the Court grant her leave to amend her Complaint. The Court will deny this request, without prejudice, for two reasons. First, Fantroyal never made a formal motion to seek leave to amend her Complaint, as she must under Federal Rule of Civil Procedure 15(a). Second, this Court's Order of October 18, 2000, foreclosed Defendant from responding to Fantroyal's informal request for leave to amend. See Order, Oct. 18, 2000 ("Plaintiff may file a supplement to her Response by or before November 10, 2000. The Court will consider the Defendant's Motion on the papers filed by the parties as of that date."). Consequently, Defendant has not been afforded an opportunity to respond to Fantroyal's request. The Court will

therefore deny, without prejudice, Fantroyal's request for leave to amend her Complaint.

