

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

CHRISTINE L. JANCZUK

CIVIL ACTION

v.

DIGITAL SYSTEMS GROUP, INC.

NO. 00-CV-3443

MEMORANDUM AND ORDER

McLaughlin, J.

September 18, 2001

The central issue before the Court in this case is whether the plaintiff may maintain a lawsuit under Section 1132(a)(1)(B) of the Employment Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461 (2001) (ERISA), when that lawsuit is contingent upon a claim the plaintiff has for leave under the Family and Medical Leave Act, 29 U.S.C. §§ 2601-2654 (2001) (FMLA). I find that the plaintiff can only maintain an action under Section 1132(a)(1)(B) for rights guaranteed by an employee benefit plan, as opposed to rights guaranteed by a statute such as the FMLA. Because the plaintiff's other claims are either untimely or barred by her failure to exhaust her administrative remedies, I will grant the defendant's motion to dismiss the complaint.

According to her complaint, the plaintiff, Christine L.

Janczuk, was hired by the defendant, Digital Systems Group, Inc., on December 5, 1990.¹ On May 9, 1997, the plaintiff suffered: "knee problems, which caused her to not be able to work." Compl. at ¶ 10. The plaintiff took all of the leave that was available to her.

On October 7, 1997, the defendant informed the plaintiff that she was entitled to 12 weeks of leave under the FMLA. The defendant also told the plaintiff that the 12 weeks had begun on August 12, 1997. On November 5, 1997, the defendant terminated the plaintiff.

At the time of her termination, the plaintiff had **been** employed by the defendant for just less than seven years. Under the terms of the defendant's plan, employees are required to **work** for seven years before their pension rights are fully vested. At some point after she was fired, the plaintiff was informed by the defendant that she was only 80% vested in the plan.

The plaintiff sued the defendant pursuant to ERISA, claiming that it abridged her rights under her pension plan by denying her medical leave to which she was entitled by the FMLA. The FMLA

¹A motion to **dismiss** under Fed. R. Civ. P. 12(b)(6) may only be granted if, accepting all well-pleaded allegations as true, and viewing them in the light most favorable to the plaintiff, the plaintiff is not entitled to relief. See In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1420 (3d Cir. 1997) (citing Bartholomew v. Fischl, 782 F.2d 1148, 1152 (3d Cir. 1986)).

requires certain employers to provide certain employees with at least 12 workweeks of medical leave during any 12-month period. See 29 U.S.C. § 2612(a) (1)(D). The implementing regulations provide that only leave taken after an employee has been notified that the leave is being designated as FMLA leave may be counted **against** the 12-week entitlement. See 29 C.F.R. §§ 825.700(a) and 825.208(c). The plaintiff argues that, under the regulations, her leave did not begin until she was informed of it, on October 7th, and it therefore did not end until twelve weeks after that, in January of 1998. Had the plaintiff been terminated in January instead of November, she would have worked for the defendant for seven years, and her pension would have fully vested. The plaintiff also claims that the defendant discriminated against her on the basis of her sex and on the basis of a disability.

The plaintiff's complaint has two counts, an ERISA count and a "civil rights" count. The defendant in its motion to dismiss responded as though the plaintiff were pursuing claims under the FMLA, ERISA, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17 (2001) (Title VII), and the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213 (2001) (ADA). However, the plaintiff asserts in her opposition to the defendant's motion that she is not pursuing a claim under the FMLA. Thus, the Court will analyze the plaintiff's claims under ERISA and under both Title VII and the ADA, but not the FMLA.

ERISA Claim

The plaintiff argues that the defendant denied her full vesting in violation of Section 1132(a)(1)(B) of ERISA, which provides that: "A civil action may be brought- by a participant or beneficiary...to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of his plan, or to clarify his rights to future benefits under the terms of the plan." See 29 U.S.C. § 1132 (a)(1)(B). A court interpreting the terms of a plan, like a court interpreting a contract, must base its interpretation on what is within the four corners of the plan document; extrinsic evidence may only be used to determine the meaning of an ambiguous term. See Epright v. Env'tl. Res. Mgmt., Inc. Health and Welfare Plan, 81 F.3d 335, 339 (3d Cir. 1996).

Here, the plan language at issue is "7 full years of service." Both parties agree that the plaintiff did not serve for **seven** years. The plaintiff, in essence, asks the Court to credit her with seven years of service, because she was illegally terminated. However, she has sued under the plan, to enforce its terms, and the plan provides only that the plaintiff had to serve for seven years. The plaintiff does not allege that the plan differentiates between legal and illegal terminations.

The defendant, acting in its capacity as employer, made the decision to fire the plaintiff. It is this decision that the plaintiff would like to challenge, albeit because of its effect on her pension. It cannot be challenged under the terms of the pension plan, though, because the plan does not constrain the defendant's discretion to hire and fire. The question of whether the plaintiff was illegally terminated can only be evaluated under the FMLA, which is the source of the substantive guarantee of a certain amount of leave.² Because the plaintiff was not denied benefits due to her under the terms of her plan, I will dismiss the ERISA count of her complaint.

ADA Claim

The defendant argues that the plaintiff's ADA claim should be dismissed because it is time-barred. Under the statute, the plaintiff had 180 days within which to file her charge with the Equal Employment Opportunity Commission (EEOC). See 42 U.S.C. § 2000e-5(e)(1). The plaintiff was fired on November 5, 1997, and she did not file her charge until October 15, 1999, nearly two

²As was noted above, the plaintiff has opted not to file suit under the FMLA. It appears that such a claim would be barred by the FMLA's two-year statute of limitations, because the plaintiff was fired on November 5, 1997, and she did not file her complaint until July 7, 2000. See 29 U.S.C. § 2617(c)(1).

years later. The date that the plaintiff filed her charge is not included in the complaint. However, this Court is permitted to consider the charge, which the defendant attached to its motion to dismiss, without turning the motion into one for summary judgment. See Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993) (holding that a court deciding a motion to dismiss may consider a concededly authentic document upon which the complaint is based).

In her opposition to the motion to dismiss, the plaintiff appears to acknowledge that the statute of limitations had expired and to argue that it should be equitably tolled. She asserts that she:

.,.has stated claims under ABA [sic] and had been in touch with Department of Labor and the EEOC earlier than October 15, 1999. Proof can be presented and therefore this is a premature issue for the dismissal of the **ADA** claims. It is acknowledged that the only written EEOC charge filed on 10/15/99 does refer to disability and FMLA, but plaintiff had been sent back and forth between Department and EEOC. Therefore, equitable tollings should take place in this case.

Pl.'s Opp'n at 6.

The plaintiff does not allege sufficient grounds for equitable tolling of the ADA's statute of limitations. Being "sent back and forth between Department and EEOC" does not

constitute being prevented "in some extraordinary way" from filing on time. Seitzinger v. Reading Hosp. & Med. Ctr., 165 F.3d 236, 240 (3d Cir. 1999). The plaintiff does not allege that either agency acted to prevent her from filing or that she was misled regarding the need to file within 180 days. The plaintiff's ignorance of the law, without more, is not sufficient grounds for equitable tolling. See Sch. Dist. of Allentown v. Marshall, 657 F.2d 16, 21 (3d Cir. 1981). Because the plaintiff did not file her charge within 180 days, and because she does not allege sufficient grounds for equitably tolling the statute of limitations, I will dismiss the plaintiff's **ADA** claim.

Title VII Claim

The defendant argues that the plaintiff's Title VII claim should **be dismissed** because she **failed** to exhaust her administrative remedies prior to filing suit in federal court. In support of this argument, the defendant points to the charge that the plaintiff filed with the EEOC, which makes no reference to discrimination on the basis of sex.

In order to establish that she has exhausted her administrative remedies, the plaintiff would have to show that her charge put the EEOC on notice that she was pursuing a claim

of sex discrimination. See Anjelino v. N.Y. Times Co., 200 F.3d 73, 93 (3d Cir. 1999). There is no way that she can make this showing because her charge makes no mention of sex discrimination.

The plaintiff appears to concede that she failed to exhaust but argues that her failure to exhaust should be tolled for equitable considerations. However, the only equitable considerations she raises are that she was sent back and forth between the Department of Labor and *the* EEOC. This excuse is arguably relevant to a delay in filing, but it is not relevant to her failure to include her sex discrimination claim in her EEOC charge. I will dismiss the plaintiff's claim under Title VII because she failed to exhaust her administrative remedies and there are no grounds to waive the exhaustion requirement.

An Order follows.

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CHRISTINE L. JANCZUK : CIVIL ACTION
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: :
V. : :
: :
DIGITAL SYSTEMS GROUP, INC. : NO.00-CV-3443

ORDER

AND NOW, this 18th day of September, 2001, upon consideration of defendant's motion to dismiss and all responses and replies thereto, it is hereby ORDERED and DECREED that the defendant's motion is GRANTED for the reasons stated in a memorandum of today's date.

BY THE COURT:


Mary A. McLaughlin, J.