

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

DEBRA KEHRES, : CIVIL ACTION
Plaintiff :
 :
v. :
 :
ANTHONY J. PRINCIPI, :
Secretary of Veterans' :
Affairs :
Defendant : NO. 04-2163

MEMORANDUM

McLaughlin, J.

June 1, 2004

The plaintiff has filed a pro se complaint against the Secretary of Veterans Affairs Agency and/or the Agency itself ("VA"), alleging that the Agency failed to hire her as a pharmacist because the Pennsylvania State Board of Pharmacy kept her on probationary status.

With her complaint, the plaintiff filed a Motion to Proceed in Forma Pauperis, which is hereby granted. However, the plaintiff's complaint will be dismissed as legally frivolous, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).¹

A claim is frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 327

¹ Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that the action is frivolous or malicious. 28 U.S.C. § 1915 (B)(i). The Court shall also dismiss the case at any time if the plaintiff fails to state a claim on which relief can be granted. § 1915 (B)(ii).

(1989). Even under the most liberal reading of the complaint, the plaintiff fails to allege any facts that would provide an arguable basis in law or fact for any claim for which relief can be granted.

The plaintiff seems to allege that her civil rights were violated by the agency's failure to hire her. The plaintiff, however, also states that "this complaint is not about the VA." She alleges, instead, that the State Board of Pharmacy violated her due process rights by keeping her on probation. She alleges that the VA would have hired her but for the probationary status of her pharmacy license.

The plaintiff apparently seeks to assert a failure to hire claim under Title VII against the VA. She does not make allegations to support such a claim. Title VII prohibits an employer from failing to hire a person on the basis of his or her race, color, religion, sex or national origin. 42 U.S.C. § 2000e-2(a)(1); Kachmar v. Sungard Data Sys., Inc., 109 F.3d 173 (3d Cir. 1997). The plaintiff alleges that the only reason she was not hired was because of her probationary status.

To the extent the plaintiff also seeks to assert a § 1983 due process claim against the State Board of Pharmacy, that claim shall be dismissed. The State Board of Pharmacy is not named as a party to this suit and the plaintiff does not make any factual allegations showing how the State Board of Pharmacy

putatively violated her due process rights. See Colburn v. Upper Darby Township, 838 F.2d 663, 666 (3d Cir. 1988) (a § 1983 complaint must "allege the specific conduct violating the plaintiff's rights, the time and place of that conduct, and the identity of the responsible officials."). The Court cannot find a meritorious legal theory or a factual basis for this action. The Complaint is therefore frivolous and shall be dismissed.

An appropriate Order follows.

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ORDER

AND NOW, this 1st day of June, 2004, upon consideration of the plaintiff's Motion for Leave to Proceed In Forma Pauperis, the accompanying complaint and attachments thereto (Docket No. 1), IT IS HEREBY ORDERED that the plaintiff's Motion to Proceed In Forma Pauperis is GRANTED, but that this action is DISMISSED as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) for the reasons stated in a memorandum of today's date.

BY THE COURT:

MARY A. McLAUGHLIN, J.