

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

JAMES GEORGE DOURIS :  
 :  
 : CIVIL ACTION  
 :  
 v. :  
 : NO. 04-CV-232  
 :  
 BUCKS COUNTY, ET AL. :

**SURRICK, J.**

**JANUARY 31, 2005**

**MEMORANDUM & ORDER**

Presently before this Court are the following Motions: (1) Motion to Dismiss of Defendants William Neis, Mayor of Doylestown Borough, and Doylestown Borough (“Doylestown Defendants”) (Doc. No. 7); (2) Motion to Dismiss of Defendants Bucks County, Bucks County Office of the District Attorney, Diane E. Gibbons, Bucks County Office of Human Resources, and Carmen G. Thome (“Bucks County Defendants”) (Doc. No. 20); and (3) “Plaintiff Douris’ Motion for Reconsideration of the Courts Order Upon Plaintiff Filed a Motion of Perjury by the Defendants and Their Legal Council Onto the Court” (Doc. No. 17). For the following reasons, we grant Defendants’ Motions and dismiss Plaintiff’s Complaint. As a result, we also dismiss as moot Plaintiff’s Motion.

**I. BACKGROUND**

Plaintiff James George Douris has filed a number of lawsuits in this District. The instant action is the sixth that Plaintiff has pursued in this Court since 1999. Five of the lawsuits named the Borough of Doylestown or a Bucks County entity as defendants. On July 1, 1999, Douris filed a complaint against Bucks County and two individual defendants, alleging abuse of process,

malicious prosecution, conspiracy, as well as violations of 42 U.S.C. § 1983, the Americans with Disabilities Act (“ADA”), Age Discrimination in Employment Act, Pennsylvania Human Relations Act (“PHRA”), and the Pennsylvania Constitution. *Douris v. County of Bucks*, Civ. A. No. 99-3357, 2001 U.S. Dist. LEXIS 9282, at \*1-2 (E.D. Pa. July 3, 2001). In that case, like the one before us, Douris asked for an employment application for an available position with Bucks County. On August 2, 2001, the Honorable Robert F. Kelly denied Plaintiff’s motion for a new trial and entered judgment against Plaintiff and in favor of Defendants. The Court also affirmed the taxation of costs against Plaintiff. The Third Circuit Court of Appeals affirmed. *Douris v. County of Bucks*, Civ. A. No. 99-3357, 2003 U.S. Dist. LEXIS 2518, at \*7 (E.D. Pa. Feb. 19, 2003), *aff’d*, 2003 U.S. App. LEXIS 22945 (3d Cir. Oct. 17, 2003).

Next, Douris and his wife filed a complaint against the Borough of Doylestown and six individuals, alleging wrongful use of process and violations of the ADA, PHRA, Pennsylvania’s Regulatory Building Code Standards, and Pennsylvania’s Right to Know Law. *Douris v. Dougherty*, Civ. A. No. 01-5757, 2003 U.S. Dist. LEXIS 1576, at \*1-2 (E.D. Pa. Jan. 31, 2003), *aff’d*, 2004 U.S. App. LEXIS 1932 (3d Cir. Jan. 28, 2004). Plaintiffs also alleged violations of the First, Fourth, and Fourteenth Amendments to the United States Constitution pursuant to 42 U.S.C. § 1983 and conspiracy to violate civil rights pursuant to 42 U.S.C. § 1985. *Id.* at \*1. On January 31, 2003, Chief Judge James T. Giles concluded that there existed no genuine issues of material fact and summary judgment was granted in favor of Defendants and against Plaintiff. This decision was affirmed by the Third Circuit Court of Appeals.

In April, 2002, Douris filed a complaint against Mark Schweiker, Governor of Pennsylvania, Bucks County, the Bucks County District Attorney’s Office, and four additional

individuals, alleging malicious prosecution, abuse of process, conspiracy, the existence of a constitutionally inadequate state appeals process, as well as violations of the First Amendment, Pennsylvania Constitution, ADA, and PHRA. *Douris v. Schweiker*, Civ. A. No. 02-CV-1749, 2003 U.S. Dist. LEXIS 19514, at \*1-2 (E.D. Pa. Oct. 21, 2003), *aff'd*, 2004 U.S. App. LEXIS 14760 (3d Cir. May 13, 2004). On October 21, 2003, the Honorable Michael M. Baylson granted summary judgment in favor of Defendants and against Plaintiff. This decision was affirmed by the Third Circuit Court of Appeals.

In May, 2003, Plaintiff filed a complaint against Genuardi's Family Markets, alleging violations of the First Amendment, ADA, and PHRA. On September 20, 2004, the Honorable Herbert J. Hutton granted Defendant's motion for summary judgment and dismissed all of Douris's claims. *Douris v. Genuardi's Family Mkts.*, Civ. A. No. 03-3076, 2004 U.S. Dist. LEXIS 19339, at \*1-2 (E.D. Pa. Sept. 20, 2004).

Finally, in November, 2003, Douris filed a complaint against the Office of the Pennsylvania Attorney General, Bucks County District Attorney's Office, and two individuals alleging violations of the ADA and PHRA. On July 6, 2004, this Court granted Defendants' motion for summary judgment and Plaintiff's Complaint was dismissed. *Douris v. Office of Pa. Att'y Gen.*, Civ. A. No. 03-CV-5661, 2004 U.S. Dist. LEXIS 12769, at \*1-2 (E.D. Pa. July 6, 2004).

The following facts are alleged in Plaintiff's present Complaint.<sup>1</sup> Plaintiff is over forty years old and has various physical ailments. (Compl. ¶ 3.) He suffers from carpal tunnel

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<sup>1</sup>Some of the allegations made in this Complaint are similar to allegations made in the other lawsuits filed by Plaintiff.

syndrome and chronic arthritis with bone chips in both hands. (*Id.*) He is limited in his abilities to write, hold items, cook, clean, feel, and clean himself after using the toilet. (*Id.* ¶¶ 21, 34.)<sup>2</sup> He also has knee, back, sight, and hearing problems. (*Id.* ¶ 3.) Douris uses both a wheelchair and crutches. (*Id.*)

Plaintiff learned about an available Accounting Assistant position with the District Attorney's Office. (*Id.* ¶¶ 15, 29.)<sup>3</sup> The job description details several essential duties and responsibilities, including documenting incoming payments, preparing bank deposits, reconciling bank statements, proper escheatment of funds, entering case information through various computer applications, contacting defendants regarding account status, expunging certain cases, and maintaining and reconciling the petty cash fund. (Doc. No. 37 Ex. A.)<sup>4</sup> A successful applicant must have a "high school diploma with a solid knowledge of accounting principles and theory and office experience with a bookkeeping/accounting focus," "general banking knowledge," "excellent written and verbal communication skills," and "proficiency in Microsoft Word, Access, Excel, Quicken and Quickbooks computer applications and 10-key calculator."

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<sup>2</sup>Douris avers that he requires the use of a bidet. (Compl. ¶ 21.)

<sup>3</sup>Plaintiff seems to be confused about whether the events giving rise to his Complaint occurred in 2002 or 2003. *Compare* Compl. ¶¶ 15, 29, 30 *with id.* ¶¶ 16, 46, 48, 52, 53. His Complaint avers that he went to the Bucks County Office of Human Resources and asked for an application for the Accounting Assistant position on May 2, 2003. However, information about this job was distributed in February 2002 (Doc. No. 37 Ex. A), and Plaintiff filed his administrative charge in June 2002. (*Id.*)

<sup>4</sup>On September 10, 2004, Douris requested a ninety-day extension of time to respond to the motion to dismiss filed by the Bucks County Defendants. (Doc. No. 23). We granted this request. (Doc. No. 26.) We also granted Plaintiff's request for an additional week to respond. (Doc. No. 29.) Despite the additional time to respond, Douris failed to comply with the deadline. However, given Plaintiff's pro se status, we will, out of an abundance of caution, consider the documents which were filed out of time.

*(Id.)*

An Accounting Assistant must maintain various records, which entails handling thousands of files that are located in filing cabinets and corrugated boxes. (Compl. Ex. A at 2.) Thus, a person must access drawers in the filing cabinets, which may be above shoulder level or below knee level, as well as retrieve or store files in boxes on the floor. (*Id.*) To fulfill these responsibilities, a person may need to sit, stand, walk, climb or balance, reach with hands and arms, move up to ten pounds, and stoop, kneel, crouch, or crawl. (Compl. Ex. A at 2; Doc. No. 37 Ex. A.) The position also requires sufficiently acute vision skills. (Doc. No. 37 Ex. A.) However, the job description itself states that “[r]easonable accommodations may be made to enable individuals with disabilities to perform the essential functions.” (Compl. Ex. A at 2; Doc. No. 37 Ex. A.) An Accounting Assistant must also interact with members of the public. (Compl. Ex. A at 2.)

Douris called the Bucks County Office of Human Resources to inquire about the available position. In response to his request for an employment application for the position, the woman to whom he spoke asked him why he needed the application sent to him. (Compl. ¶ 16.) When Douris did not receive an application in the mail, he went to the Bucks County Office of Human Resources and again asked for but did not receive an employment application. (*Id.* ¶ 48.) At some point, Douris obtained an employment application. (*Id.* ¶¶ 38, 54-55; Doc. No. 37 Ex. B.) However, he never applied for the position. (Compl. ¶ 23.)

When he sought an application, Plaintiff avers that Carmen G. Thome called the Doylestown police department in an attempt to harass him and to limit his access to the Bucks County Office of Human Resources, which is located at 50 North Main Street. (*Id.* ¶¶ 49-50.)

Thome asked the security officer to limit Douris's ability to move throughout the building. (*Id.* ¶ 49.) She also arranged to have three police officers follow Douris and escort him from the building. (*Id.* ¶ 51.)

Plaintiff asserts that, if he had received the Accounting Assistant position, he would be unable to park in a handicapped parking space all day on East Court Street without receiving a ticket. (*Id.* ¶¶ 23, 33.) The parking meters in the handicapped parking spaces intimidate handicapped persons like Douris who want to use the spaces but cannot physically place coins in the meters. (*Id.* ¶ 71.) Certain non-handicapped individuals, such as judges and Bucks County Commissioners, are able to park all day for free. (*Id.* ¶¶ 23, 33) When the Borough of Doylestown repaints the blue lines of the handicapped parking spaces every year, it fails to upgrade the handicapped parking spaces. (*Id.* ¶ 70.)

Plaintiff also claims that the Bucks County Office of Human Resources, which is located at 50 North Main Street in Doylestown, Pennsylvania, was not accessible when he sought an application because the handicapped door was locked. (*Id.* ¶ 26.) When Plaintiff requested entry, he waited approximately ten minutes until a security officer opened the door for him. (*Id.* ¶ 46.) After he entered the building in a wheelchair, Douris hit the wall and injured his feet. (*Id.* ¶¶ 47, 52.)<sup>5</sup>

Plaintiff filed an administrative charge of discrimination against Bucks County and the Bucks County District Attorney with the Equal Employment Opportunity Commission ("EEOC") and the Pennsylvania Human Relations Commission ("PHRC") on June 28, 2002. (Compl. Ex.

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<sup>5</sup>Douris claims that the building at 55 East Court Street in Doylestown, Pennsylvania also is not handicapped accessible (Compl. ¶ 22) because it does not have a bidet in its men's restroom. (*Id.* ¶ 25.)

A; Doc. No. 37 Ex. A.) The EEOC issued a right to sue letter to Plaintiff on October 21, 2003. (Compl. Ex. B.) Douris filed the instant Complaint on January 20, 2004. Plaintiff seeks compensatory damages, punitive damages, attorneys' fees, and injunctive relief for the Defendants' asserted violation of his rights under: United States Constitution; Pennsylvania Constitution; Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101; Rehabilitation Act of 1973, 29 U.S.C. § 701; Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e; Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. § 621; 42 U.S.C. § 1983; and Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. § 951. He also avers that Defendants violated his United States Veteran Benefits Employment Rights.

## **II. LEGAL STANDARD**

In responding to Defendants' Motions, Plaintiff Douris submitted documents that were not part of his Complaint.<sup>6</sup> In reviewing the merits of his claims, we relied on these additional materials. Thus, we convert Defendants' Motions to Dismiss into Motions for Summary Judgment. *Camp v. Brennan*, 219 F.3d 279, 280 (3d Cir. 2000); *Hall v. Tribo Constr. Co.*, Civ. A. No. 00-1194, 2001 U.S. Dist. LEXIS 11175, at \*7 (W.D. Pa. Mar. 28, 2001) (quoting *Kulwicki v. Dawson*, 969 F.2d 1454, 1462 (3d Cir. 1992)).

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

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<sup>6</sup>In responding to the Motions to Dismiss, Douris filed a total of twenty-eight (28) exhibits. (Doc. Nos. 18, 37.) These exhibits included materials regarding his physical limitations, prior litigation involving the Plaintiff, and the EEOC investigation of his charge of discrimination.

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). A genuine issue of material fact exists only when “the evidence is such that a reasonable jury could return a verdict for the non-moving party.”

*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

The party moving for summary judgment bears the initial burden of demonstrating that there are no facts supporting the non-moving party’s legal position. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986). Once the moving party carries this initial burden, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (explaining that the nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts”). “The nonmoving party . . . ‘cannot rely merely upon bare assertions, conclusory allegations or suspicions’ to support its claim.” *Townes v. City of Philadelphia*, Civ. A. No. 00-CV-138, 2001 U.S. Dist. LEXIS 6056, at \*4 (E.D. Pa. May 11, 2001) (quoting *Fireman’s Ins. Co. v. DeFresne*, 676 F.2d 965, 969 (3d Cir. 1982)). Rather, the party opposing summary judgment must go beyond the pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. *Celotex*, 477 U.S. at 324. When deciding a motion for summary judgment, the court must view facts and inferences in the light most favorable to the nonmoving party. *Anderson*, 477 U.S. at 255; *Siegel Transfer, Inc. v. Carrier Express, Inc.*, 54 F.3d 1125, 1127 (3d Cir. 1995). We will not resolve factual disputes or make credibility determinations. *Siegel Transfer, Inc.*, 54 F.3d at 1127.

Plaintiff is proceeding pro se in this case. Allegations by pro se petitioners, “‘however inartfully pleaded,’ are held ‘to less stringent standards than formal pleadings drafted by lawyers .

...” *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)). In liberally construing a pro se plaintiff’s pleadings, we will ““apply the applicable law, irrespective of whether a pro se litigant has mentioned it by name.”” *Higgins v. Beyer*, 293 F.3d 683, 687 (3d Cir. 2002) (citing *Holley v. Dep’t of Veteran Affairs*, 165 F.3d 244, 247-48 (3d Cir. 1999)). However, we will not ““become a surrogate attorney for the party, even one who is proceeding pro se.”” *Thorpe v. Dohman*, Civ. A. No. 04-CV-1099, 2004 U.S. Dist. LEXIS 21495, at \*4 (E.D. Pa. Oct. 22, 2004) (quoting *Taylor v. Diznoff*, 633 F. Supp. 640, 641 (W.D. Pa. 1986)). A court may dismiss a pro se plaintiff’s complaint only when “it appears ‘beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’” *McDowell v. Delaware State Police*, 88 F.3d 188, 189 (3d Cir. 1996) (quoting *Haines*, 404 U.S. at 520).

### **III. LEGAL ANALYSIS**

#### **A. Federal and State Constitutional Violations**

Douris alleges that Defendants violated his rights under the United States and Pennsylvania Constitutions. (Compl. ¶ 1.) However, his Complaint fails to state which constitutional provisions were violated. Indeed, upon reviewing the averments of his Complaint, we are unable to determine what constitutional violations Plaintiff could pursue. Douris’s supporting affidavit seems to assert a First Amendment claim arising from his exclusion from “any service or goods or activities or programs because of [his] disabilities or [his] religious beliefs.” (Doc. No. 37 Douris Aff. ¶ 13.) He states that his “religious beliefs require [him] to was after going to the toilet to cleans himself.” (*Id.* ¶ 29.) We will not allow Plaintiff to pursue his theory that the Bucks County Defendants violated his First Amendment religious rights

because they failed to provide a bidet in its men’s restroom. *See* U.S. Const. Amend. I; 5 Ronald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law* § 21.6 (3d ed. 1999). Plaintiff’s constitutional claims must be dismissed.

**B. Title I of the ADA**

Plaintiff seeks relief under Title I of the ADA. Title I prohibits a broad range of discrimination in employment against a qualified individual with a disability, including discriminatory job application procedures and discriminatory employee hiring. 42 U.S.C. § 12112(a) (2000). Douris alleges that he was a prospective employee and that he was discriminated against in his pursuit of employment.

1. Accounting Assistant Position

Douris alleges that he saw a posting for a job which was made available by Defendants Bucks County, Bucks County Office of the District Attorney, Gibbons, Bucks County Office of Human Resources, and Thome. (Compl. ¶ 29.) He avers that the Bucks County Defendants did not mail an application to him after he requested it (*id.* ¶ 16) and that he was required to go to the Bucks County Office of Human Resources in Doylestown, Pennsylvania, to fill out an application. When he went to the office in a wheelchair (*id.* ¶ 52) and sought an application, an “[u]nnamed female failed to give Plaintiff Douris an employment application . . . .” (*Id.* ¶ 48.) Plaintiff asserts that the requirement that all prospective job applicants complete an application at a Bucks County office allows the Bucks County Defendants to conduct improper pre-screening of potential job applicants. (Compl. Ex. A at 3.) We construe Douris’s complaint as asserting a violation of 42 U.S.C. § 12112(b)(6) (2000). That provision of Title I of the ADA prohibits an employer from

using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position and is consistent with business necessity[.]

*Id.* Because we must construe the pro se Plaintiff's Complaint liberally, we view his Complaint as alleging that the Bucks County Defendants used its requirement that all persons complete a job application in person to discriminate against him because of his disability.<sup>7</sup>

Even though Plaintiff points to possible discriminatory treatment, he must also demonstrate that he is a qualified individual with a disability in order to prevail under Title I of the ADA. 42 U.S.C. § 12112(a). A qualified person with a disability is "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." *Id.* § 12111. The employee bears the burden of proving that he is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodation. *Shiring v. Runyon*, 90 F.3d 827, 832 (3d Cir. 1996).

Douris inquired about an Accounting Assistant position with the Bucks County Office of the District Attorney. The job description details several essential duties and responsibilities, including documenting incoming payments, preparing bank deposits, reconciling bank statements, proper escheatment of funds, entering case information through various computer applications, contacting defendants regarding account status, expunging certain cases, and maintaining and reconciling the petty cash fund. (Doc. No. 37 Ex. A.) A successful applicant

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<sup>7</sup>Douris never applied for a position. (Compl. ¶ 23.) Under the circumstances, he may not rely on those sections of the ADA which apply to those who have actually filed an application for a job. *See* 42 U.S.C. §§ 12112(b)(1), (b)(5), (b)(7), (d) (2000).

must have a “high school diploma with a solid knowledge of accounting principles and theory and office experience with a bookkeeping/accounting focus,” “general banking knowledge,” “excellent written and verbal communication skills,” and “proficiency in Microsoft Word, Access, Excel, Quicken and Quickbooks computer applications and 10-key calculator.” (*Id.*) An Accounting Assistant must also interact with members of the public. (Compl. Ex. A at 2.)

An Accounting Assistant must maintain various records, which entails handling thousands of files that are located in filing cabinets and corrugated boxes. (*Id.*) Thus, a person must access drawers in the filing cabinets, which may be above shoulder level or below knee level, as well as retrieve or store files in boxes on the floor. (*Id.*) To fulfill these responsibilities, a person may need to sit, stand, walk, climb or balance, reach with hands and arms, move up to ten pounds, and stoop, kneel, crouch, or crawl. (Compl. Ex. A at 2; Doc. No. 37 Ex. A.) The position also requires sufficiently acute vision skills. (Doc. No. 37 at A.) However, the job description itself states that “[r]easonable accommodations may be made to enable individuals with disabilities to perform the essential functions.” (Compl. Ex. A. at 2; Doc. No. 37 Ex. A.)

Douris fails to aver that, despite his disability, he can perform the essential functions of the job. He states that he is qualified for the position (Doc. No. 37 Douris Aff. ¶ 2), presumably because he: (1) has training for the job; (2) has a high school diploma; (3) has accounting, bookkeeping, and general banking knowledge; and (4) uses a computer. (Doc. No. 37 Ex. A.) These assertions do not show that he “satisfies the requisite skill, experience, education and other job-related requirements of the employment position.” 29 C.F.R. § 1630.2(m) (2004). Douris points to no history of working in the accounting field. Rather, Douris is a master plumber. (Compl. ¶ 3.) His failure to demonstrate that he possesses excellent written communication

skills is patent. Finally, he does not claim to be proficient in the Microsoft Word, Access, Excel, Quicken, and Quickbooks computer applications integral to the position.

Moreover, Douris does not indicate that the Bucks County Defendants could offer him a reasonable accommodation. A plaintiff must “make at least a facial showing that such accommodation is possible.” *Shiring*, 90 F.3d at 832. Because Douris fails to plead sufficient facts to support his claim under Title I of the ADA, it must be dismissed.

## 2. Posting of EEO Notice

Plaintiff avers that the Bucks County Defendants violated Title I of the ADA when it failed to post an appropriate EEO notice, as required under 42 U.S.C. § 12115.<sup>8</sup> (Compl. ¶¶ 18, 31.) A person may file suit in federal court “alleging discrimination on the basis of disability . . . .” 42 U.S.C. § 12117 (2000). In defining the contours of actionable discrimination, the Act provides an illustrative, and not exhaustive, list of improper conduct. 42 U.S.C. § 12112(b) (2000). Thus, a plaintiff presumably could argue that he was somehow discriminated against or otherwise prejudiced because an employer failed to post a proper EEO notice. *See Nicolai v. Trustmark Ins. Co.*, No. 97-C-5659, 1998 U.S. Dist. LEXIS 12178, at \*8 (E.D. Pa. May 20, 1998).

Douris argues that the Bucks County Defendants prevented job applicants from learning about filing an administrative charge with the EEOC or PHRC. (Compl. ¶ 31.) If the posting was improper, it apparently did not prevent Douris from filing a timely complaint with the EEOC

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<sup>8</sup>That provision states in pertinent part: “[e]very employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act . . . .” 42 U.S.C. § 12115 (2000).

or PHRC. “Only the person suffering from discrimination has standing to bring a private ADA claim.” 1 Henry H. Perritt, Jr., *Americans with Disabilities Act Handbook* § 9.04[D] (4th ed. 2003); *see also Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc.*, 140 F.3d 478, 485 (3d Cir. 1998) (holding that a “plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties”) (quoting *Valley Forge Christian Coll. v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 474 (1982)). Because Douris does not claim that the failure to post a notice resulted in discrimination against him, he may not proceed on his allegations that the Bucks County Defendants failed to post a proper notice.<sup>9</sup>

### **C. Title II of the ADA**

Plaintiff also seeks to pursue a claim against the Defendants under Title II of the ADA.<sup>10</sup> Under Title II, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132 (2000);

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<sup>9</sup>Plaintiff also alleges that all Defendants discriminated against him in violation of the PHRA. (Compl. ¶ 66.) Under the PHRA, an individual has the right “to obtain employment for which he is qualified, and to obtain all the accommodations, advantages, facilities and privileges of any public accommodation” free from discrimination. 43 Pa. Cons. Stat. § 953 (2004). Douris avers that Defendants participated in a conspiracy to discriminate against disabled persons in employment. The PHRA does not contemplate a cause of action for conspiracy to violate its provisions. *See* 43 Pa. Cons. Stat. § 955 (2004); *Milliner v. Enck*, Civ. A. No. 98-CV-467, 1998 U.S. Dist. LEXIS 6651, at \*13-14 (E.D. Pa. May 7, 1998) (concluding that claim of conspiracy is not recognized under PHRA). Accordingly, we cannot recognize a conspiracy theory of recovery.

<sup>10</sup>Plaintiff raises similar claims regarding building accessibility under the PHRA. Our analysis under the ADA applies equally to the PHRA claim. *Kelly v. Drexel Univ.*, 94 F.3d 102, 105 (3d Cir. 1996).

*see also Tennessee v. Lane*, 124 S. Ct. 1978, 1982 (2004) (quoting 42 U.S.C. § 12132).<sup>11</sup> In order to state a prima facie case under Title II, a plaintiff must show that: (1) he is a qualified individual with a disability; (2) he was excluded from participation in or denied the benefits of a public entity's services, programs, or activities by the public entity, or was discriminated against by the public entity; and (3) such exclusion, denial of benefits, or discrimination was because of plaintiff's disability. *Douris v. Dougherty*, 192 F. Supp. 2d 358, 368 (E.D. Pa. 2002). In complying with Title II, a public entity is not required "to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens." 28 C.F.R. § 35.164 (2004). The Act defines a public entity to include a local government. 42 U.S.C. § 12131(1)(A) (2000). Thus, the Doylestown and Bucks County Defendants are subject to its requirements.

#### 1. Claims Against Doylestown Defendants

Plaintiff alleges that the parking meters in the handicapped parking spaces intimidate handicapped persons like him who want to use the spaces but cannot physically place coins in the meters. (Compl. ¶ 71.) He contends that because the handicapped cannot put coins in the parking meters they live in fear of getting a ticket while certain non-handicapped individuals, such as judges and Bucks County Commissioners, are able to park all day for free. (*Id.*) *Douris*

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<sup>11</sup>Plaintiff's Complaint also pursues a claim under Section 504 of the Rehabilitation Act. (Compl. ¶ 1). Section 504 provides in pertinent part that "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ." 29 U.S.C. § 794 (2000). Section 504 and Title II of the ADA provide similar protections to disabled persons. *Koslow v. Pa. Dep't of Corr.*, 302 F.3d 161, 166 n.3 (3d Cir. 2002). We will apply the same standard to Plaintiff's Title II and Rehabilitation Act claims. *Yeskey v. Pa. Dep't of Corr.*, 118 F.3d 168, 170 (3d Cir. 1997) (citing 42 U.S.C. § 12134(b)).

also claims that when the Borough of Doylestown repaints the blue lines of the handicapped parking spaces every year, it fails to upgrade the handicapped parking spaces. (*Id.* ¶ 70.)

Initially, we observe that Douris has failed to explain how he can navigate this courthouse in his wheelchair, hold a pen or pencil in his hand and sign his name even with an “x”, and lawfully operate a motor vehicle in Pennsylvania while at the same time he cannot use his hands to put a coin in a parking meter. In any event, Plaintiff does not have standing to pursue a claim under Title II of the ADA based on these facts. “It goes without saying that those who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Art. III of the Constitution by alleging an actual case or controversy.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983). The Supreme Court has determined that a plaintiff must necessarily plead three elements of standing: (1) the plaintiff suffered an injury in fact; (2) there is a causal connection between the injury and the conduct complained of; and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The party invoking federal jurisdiction bears the burden of establishing the elements of standing. *Id.*

Douris’s asserted claim fails because he points to no injury in fact. Plaintiff asserts that certain handicapped people, including himself, do not use the handicapped parking spaces because they are afraid of receiving a ticket. (Compl. ¶ 71.) Further, he argues that Doylestown has not upgraded the handicapped parking spaces. None of these allegations states a cognizable injury under Title II of the ADA. The mere prospect of injury is insufficient to satisfy the injury in fact requirement. *See Warth v. Seldin*, 422 U.S. 490, 501 (1975) (stating that a plaintiff “must allege a distinct and palpable injury to himself . . .”). Plaintiff has not provided any evidence by

affidavit or otherwise which would support a finding that there exists an injury that can be redressed through this litigation.

Even if Douris demonstrated sufficient injury, he would be unable to satisfy his prima facie burden of proving a violation of Title II because he is not being treated any differently than non-disabled persons. In fact, Plaintiff concedes that only a select group of people, such as judges and Bucks County Commissioners, have access to a free all day parking space. (Compl. ¶ 23.) Douris’s primary argument seems to be that he should be allowed to park for free while members of the general public should continue to pay for parking in Doylestown. However, “Title II does not entitle a disabled person to the accommodation of his or her choice. It entitles the disabled person only to adequate accommodation resulting in reasonable access to the public program in question.” 1 Henry H. Perritt, Jr., *Americans with Disabilities Act Handbook* § 5.06 (4th ed. 2003). Douris points to no evidence to suggest that he was excluded from participation in or denied the benefits of a public entity’s services, programs, or activities by the public entity, or was discriminated against by the public entity.

Douris also avers that, if he had received the Accounting Assistant position, he would be unable to park in a handicapped parking space all day on East Court Street without receiving a ticket. (Compl. ¶¶ 23, 33.) This claim is not ripe. We may only resolve controversies that are ripe. The ripeness doctrine “determines when a proper party may bring an action.”<sup>12</sup> *Armstrong*

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<sup>12</sup>While the doctrines of standing and ripeness are related, they are analytically distinct. “[S]tanding focuses on whether the type of injury alleged is qualitatively sufficient to fulfill the requirements of Article III and whether the plaintiff has personally suffered that harm, whereas ripeness centers on whether that injury has occurred yet.” *Presbytery of N.J. of Orthodox Presbyterian Church v. Florio*, 40 F.3d 1454, 1462 (3d Cir. 1994) (quoting *Erwin Chemerinsky, Federal Jurisdiction* 99 (1989)).

*World Indus., Inc. v. Adams*, 961 F.2d 405, 411 (3d Cir. 1992) (citing *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580 (1985)). In determining whether an issue is ripe for review, courts must evaluate “both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.” *Presbytery of N.J. of Orthodox Presbyterian Church v. Florio*, 40 F.3d 1454, 1462 (3d Cir. 1994) (quoting *Abbott Labs. v. Gardner* 387 U.S. 136, 149 (1967)). The party invoking federal jurisdiction bears the burden of establishing ripeness. *Id.*

Douris asks this Court to remedy a harm that has not occurred and may never occur. The entire premise of his claim regarding future harm is that he would receive a parking ticket if he received the Accounting Assistant position and parked in a handicapped space for an entire day. Since Plaintiff has never applied for this position, the conjectural harm advanced by Plaintiff cannot materialize and there is no issue ripe for judicial decision. Furthermore, Plaintiff will suffer no hardship as a result of our declining to review this claim since he has not received the Accounting Assistant position and consequently will not be required to park all day on East Court Street. Plaintiff may not pursue any Title II claim against the Doylestown Defendants.

## 2. Claims Against Bucks County Defendants

### a. 55 East Court Street Address

Douris claims that the building at 55 East Court Street in Doylestown, Pennsylvania is not handicapped accessible (Compl. ¶ 22) because it does not have a bidet in its men’s restroom. (*Id.* ¶ 25.) The office for the Bucks County Office of Human Resources was located at 55 East Court Street before it moved to a new location at 50 North Main Street. (*Id.* ¶¶ 16, 26.) Title II does not “require a public entity to take any action that it can demonstrate would result in a

fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.” 28 C.F.R. § 35.150(a)(3) (2004). We believe that the regulations were written with requests such as this in mind. The request that a bidet be installed is the type of accommodation that would benefit a limited number of individuals but impose great costs on public entities. Therefore, Plaintiff’s claim under Title II of the ADA regarding the men’s restroom facilities at the 55 East Court Street building is denied.

b. 50 North Main Street Address

Plaintiff also claims that the new office for the Bucks County human resources department was not accessible on one occasion because its handicapped door was locked. (Compl. ¶ 26.) When Plaintiff requested entry, he waited approximately ten minutes until a security officer opened the door for him. (*Id.* ¶ 46.) After he entered the building in his wheelchair, Douris “went down the ramp and hit the wall injuring his feet.” (*Id.* ¶ 47.) He claims that the “ramp is too steep.” (*Id.*)<sup>13</sup>

Plaintiff fails to state a claim under Title II of the ADA based on any of these facts. Even though Plaintiff had to wait a short period of time, he was given access to the building through the handicapped entrance. Douris fails to show that he was excluded from participation in or denied the benefits of a public entity’s services, programs, or activities by the public entity, or was discriminated against by the public entity.<sup>14</sup> Because there is no genuine issue as to any

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<sup>13</sup>Plaintiff further asserts that the District Attorney’s Office altered walls, doors, desks, and file space several years ago without the proper permit. (Compl. ¶ 40.)

<sup>14</sup>Plaintiff mentions his experience with the handicapped access ramp in detailing his 42 U.S.C. § 1983 civil rights claim. He provides no factual support for a theory that the ramp’s construction violates Title II of the ADA. We need not credit the bald assertions of the pro se Plaintiff’s complaint when deciding these Motions. *See, e.g., Roman v. City of Reading*, 257 F.

material fact, Plaintiff's Title II claims against the Bucks County Defendants are dismissed.

**E. Title VII and ADEA**

Douris alleges that Defendants violated Title VII and the ADEA. (Compl. ¶ 1.) As a prerequisite to filing suit in federal court under Title VII and the ADEA, a plaintiff must file a timely charge with the EEOC alleging discrimination on a basis covered by the applicable statute. 42 U.S.C. § 2000e-5(e)(1) (2000) (administrative filing requirements under Title VII); 29 U.S.C. § 626(d) (2000) (administrative filing requirements under ADEA); *Gerhart v. Boyertown Area Sch. Dist.*, Civ. A. No. 00-5914, 2002 U.S. Dist. LEXIS 11935, at \*10 (E.D. Pa. Mar. 5, 2002) (plaintiff must exhaust administrative remedies under Title VII and ADEA).

Plaintiff may not proceed with his Title VII or ADEA claims. He fails to aver that he filed a charge under either Title VII or the ADEA. While Douris did file an administrative charge, the EEOC recognized that it was “filed under the American [sic] with Disabilities Act of 1990 (the “ADA”).” (Compl. Ex. A.) Thus, the agency's determination only addresses the merits of Douris's ADA claims. (*Id.*) Further, the notice of the right to sue, which was issued by the EEOC, expressly states that he has “the right to institute a civil action under Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12111, et seq. . . .” (Compl. Ex. B.) Because he has not exhausted his administrative remedies under either Title VII or the ADEA, these claims must be dismissed.

**F. United States Veteran Benefits Employment Rights**

Douris alleges that the Bucks County Defendants violated his federal United States

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Supp. 2d 799, 801 n.2 (E.D. Pa. 2003); *King v. City of Philadelphia*, Civ. A. Nos. 99-6303, 01-3642, 2002 U.S. Dist. LEXIS 1459, at \*4 (E.D. Pa. Jan. 31, 2002).

Veteran Benefits Employment Rights when they declined to hire him. Plaintiff was honorably discharged from the United States Navy in 1977. (Compl. ¶¶ 3, 63.) He asserts that “[v]ets are to be first hired and begiven enhanced protection for disabled veterans, requiring employers to make efforts to accommodate the veterans disabilities.” (*Id.* ¶ 63.) Further, he avers that the Defendants had an obligation to hire him because they receive federal grants. (*Id.* ¶ 64.) Douris fails to point to the specific federal statute which confers these rights on him as a veteran. However, we must liberally construe his complaint because of his pro se status. We are able to discern potential claims under two federal statutes.

1. Uniformed Services Employment and Reemployment Rights Act of 1994

Under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 (“USERRA”), a veteran may not be discriminated against because of his status as a veteran when he applies for a job. *Id.* § 4311.<sup>15</sup> An employer violates USERRA if the job applicant’s status as a veteran “is a motivating factor” in the employer’s decision not to hire him. *Id.* § 4311(c); *see also Gordon v. Wawa, Inc.*, 388 F.3d 78, 84 (3d Cir. 2004). In order to state a claim under USERRA, a plaintiff’s complaint must contain some averment that the decision not to hire him was motivated, in part, by plaintiff’s status as a veteran. *Gordon*, 388 F.3d at 84 (affirming dismissal of USERRA claim in complaint). Douris’s Complaint fails to state a claim under USERRA. Plaintiff asserts that he is a veteran. (Compl. ¶ 63.) However, he never claims that the decision not to hire him was motivated by his veteran status. Douris’s Complaint does

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<sup>15</sup>Section 4311(a) provides in pertinent part: “A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment . . . .” 38 U.S.C. § 4311(a) (2000).

not assert a claim under USERRA.

2. Vietnam Era Veterans' Readjustment Assistance Act

Under the Vietnam Era Veterans' Readjustment Assistance Act ("VEVRAA"), 38 U.S.C. § 4212, certain parties that enter into contracts with the United States are required to take affirmative action regarding the employment of veterans. If a veteran

believes any contractor of the United States has failed to comply or refuses to comply with the provisions of the contractor's contract relating to the employment of veterans, the veteran may file a complaint with the Secretary of Labor, who shall promptly investigate such complaint and take appropriate action in accordance with the terms of the contract and applicable laws and regulations.

38 U.S.C. § 4212(b) (2000). Under this statutory framework, a complainant must file his grievance with the United States Department of Labor ("DOL"). *Id.*; *see also Philippeaux v. N. Cent. Bronx Hosp.*, 871 F. Supp. 640, 648 (S.D.N.Y. 1994).<sup>16</sup> After it conducts an investigation, the DOL may decide to pursue litigation in a specific case. 41 C.F.R. § 60-250.65 (2004).

*Philippeaux* is instructive. In *Philippeaux*, the pro se plaintiff asserted that a hospital violated federal law because it disregarded his status as a veteran when it failed to hire him. *Philippeaux*, 871 F. Supp. at 647. Plaintiff did not assert that he filed an administrative complaint with the DOL. *Id.* at 648 n.2. The court concluded that even if plaintiff had a private right of action under 38 U.S.C. § 4212, he must first seek administrative relief. *Id.* at 648. Here, Plaintiff did not file an administrative complaint with the DOL. Thus, even if a private right of

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<sup>16</sup>This administrative framework prevents a plaintiff from bringing a claim for violation of VEVRAA pursuant to 42 U.S.C. § 1983. *Philippeaux v. N. Cent. Bronx Hosp.*, 871 F. Supp. 640, 648 (S.D.N.Y. 1994).

action exists under the VEVRAA, it cannot be pursued here.<sup>17</sup>

**G. 42 U.S.C. § 1983**

Plaintiff asserts a claim against all Defendants under 42 U.S.C. § 1983, which provides in pertinent part that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C. § 1983. In *Monell v. Department of Social Services*, 436 U.S. 658, 690 (1978), the Supreme Court held that municipal governments are “persons” under § 1983. *See id.* at 690 (“Local governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief . . .”).

Section 1983 does not create a cause of action. *Doe v. Delie*, 257 F.3d 309, 314 (3d Cir. 2001). Rather, a plaintiff must prove an underlying statutory or constitutional violation in order to prevail under 42 U.S.C. § 1983. *See, e.g., Daniels v. Williams*, 474 U.S. 327, 330 (1986) (holding that in order to recover in a § 1983 suit, a “plaintiff must still prove a violation of the underlying constitutional right”); *Delie*, 257 F.3d at 314. Douris has not demonstrated that any of his federal constitutional or statutory rights were violated. Thus, he is precluded from

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<sup>17</sup>Several circuits have concluded that there is no private right of action under the VEVRAA. *See, e.g., Barron v. Nightingale Roofing, Inc.*, 842 F.2d 20, 21-22 (1st Cir. 1988); *Jackson v. Dana Corp.*, Civ. A. No. 98-5431, 1999 U.S. Dist. LEXIS 17380, at \*30 (E.D. Pa. Nov. 9, 1999) (citing *Antol v. Perry*, 82 F.3d 1291, 1298 (3d Cir. 1996); *Harris v. Adams*, 873 F.2d 929, 932 (6th Cir. 1989)).

asserting a claim under 42 U.S.C. § 1983.<sup>18</sup>

#### IV. CONCLUSION

Plaintiff's Complaint fails to raise a cognizable claim against any of the named Defendants.<sup>19</sup>

An appropriate Order follows.

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<sup>18</sup>To the extent Plaintiff seeks to assert that Defendants conspired to violate his federal constitutional or statutory rights, this claim fails as well. “[A] § 1983 conspiracy claim is not actionable without an actual violation of § 1983.” *Barkauskie v. Indian River Sch. Dist.*, 951 F. Supp. 519, 539 (D. Del. 1996).

<sup>19</sup>Given Plaintiff's litigation history in this District, we think it appropriate to quote from the Memorandum of a colleague in the case of *Wexler v. Citibank*, Civ. A. No. 94-4172, 1994 U.S. Dist. LEXIS 14992 (E.D. Pa. Oct. 24, 1994):

It is of course true that “access to the courts is a fundamental tenet of our judicial system; legitimate claims should receive a full and fair hearing no matter how litigious the plaintiff may be.” Moreover, courts traditionally have shown pro se litigants a leniency not extended to those with legal representation. This leniency does not, however, grant pro se litigants a license to abuse the judicial process with impunity.

*Id.* at \*19 (internal citations omitted). *See also Mallon v. Padova*, 806 F. Supp. 1109 (E.D. Pa. 1992).

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

JAMES GEORGE DOURIS	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 04-CV-232
	:	
BUCKS COUNTY, ET AL.	:	

**ORDER**

AND NOW, this 31<sup>st</sup> day of January, 2005, upon consideration of the Motions to Dismiss filed by Defendants William Neis, Mayor of Doylestown Borough, and Doylestown Borough (“Doylestown Defendants”), Defendants Bucks County, Bucks County Office of the District Attorney, Diane E. Gibbons, Bucks County Office of Human Resources, and Carmen G. Thome (“Bucks County Defendants”), and all papers submitted in support thereof and in opposition thereto, it is ORDERED that:

(1) Motion to Dismiss of Doylestown Defendants (Doc. No. 7, 04-CV-232) is GRANTED;

(2) Motion to Dismiss of Bucks County Defendants (Doc. No. 20, 04-CV-232) is GRANTED; and

(3) “Plaintiff Douris’ Motion for Reconsideration of the Courts Order Upon Plaintiff Filed a Motion of Perjury by the Defendants and Their Legal Council Onto the Court” (Doc. No. 17, 04-CV-232) is DISMISSED as MOOT.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge

