

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

MICHELE BLACK	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
vs.	:	NO. 04-CV-2393
	:	
UNITED STATES POSTAL SERVICE	:	
	:	
Defendant	:	

**MEMORANDUM AND ORDER**

JOYNER, J.

June 7, 2005

This employment discrimination case is now before the Court for resolution of Defendant's Motion for Summary Judgment. For the reasons which follow, the Motion is granted.

**Factual Background**

Plaintiff initiated contact with the EEO office of the U.S. Postal Service on October 6, 1999, alleging that she had been subjected to a hostile work environment and sexual harassment. On November 18, 1999, Plaintiff was terminated from her employment with the Postal Service for allegedly falsifying information on her employment application. On December 1, 1999, Plaintiff added a claim of retaliation to her original EEO filing, and thereafter she filed a formal EEO complaint of discrimination. An Investigative Report was completed on her case on November 16, 2000. Following a hearing before an EEOC Administrative Judge, an Order of Judgment was issued on February 1, 2002, finding in favor of Defendant on all of Plaintiff's

claims. The Agency issued a Notice of Final Action on March 6, 2002, accepting and implementing the Administrative Judge's decision.

Plaintiff appealed to the EEOC Office of Federal Operations, but on September 23, 2003, that Office affirmed the Administrative Judge's decision. Plaintiff thereafter filed a Request for Reconsideration with the Office of Federal Operations, which was denied on January 7, 2004. The Office of Federal Operations' decision advised Plaintiff that she could file an action in federal court within ninety days. However, Plaintiff did not file a Request for Leave to Proceed *In Forma Pauperis* until June 2, 2004, and her federal court complaint was not docketed until June 10, 2004.

On August 13, 2004, Defendant filed a Motion to Dismiss, which was granted as uncontested on October 6, 2004. Plaintiff subsequently filed a Motion for Reconsideration, which this Court granted on November 24, 2004. The November 24th Order also converted Defendant's 12(b)(6) Motion to Dismiss to a Motion for Summary Judgment. Moreover, the Order directed Plaintiff to present evidence in opposition to Defendant's Motion. Pursuant to this Court's November 24th Order, we review Defendant's Motion to Dismiss as a Motion for Summary Judgment.

#### **Standards Governing Summary Judgment Motions**

In deciding a motion for summary judgment under Fed.R.Civ.P. 56(c), a court must determine "whether there is a genuine issue

of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." Medical Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (internal citation omitted). Indeed, Rule 56(c) provides that summary judgment is properly rendered:

[I]f 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. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Stated more succinctly, summary judgment is appropriate only when it is demonstrated that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322-32 (1986).

In deciding a motion for summary judgment, all facts must be viewed and all reasonable inferences must be drawn in favor of the non-moving party. Troy Chemical Corp. v. Teamsters Union Local No. 408, 37 F.3d 123, 125-26 (3d Cir. 1994); Oritani Savings & Loan Assn. v. Fidelity & Deposit Co. of Md., 989 F.2d 635, 638 (3d Cir. 1993). An issue of material fact is said to be genuine "if 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 Celotex Corp. v. Catrett, supra, the Supreme Court articulated the allocation of burdens between a moving and

nonmoving party in a motion for summary judgment. Specifically, the Court in that case held that the movant had the initial burden of showing the court the absence of a genuine issue of material fact, but that this did not require the movant to support the motion with affidavits or other materials that negated the opponent's claim. Celotex, 477 U.S. at 323. The Court also held that Rule 56(e) requires the nonmoving party to "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Id. at 324 (quoting Fed.R.Civ.P. 56(e)). This does not mean that the nonmoving party must produce evidence in a form that would be admissible at trial in order to avoid summary judgment. Obviously, Rule 56 does not require the nonmoving party to depose its own witnesses. Rather, Rule 56(e) permits a proper summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings themselves, and it is from this list that one would normally expect the nonmoving party to make the required showing that a genuine issue of material fact exists. Id. See also, Morgan v. Havir Mfg. Co., 887 F. Supp. 759 (E.D. Pa. 1994); McGrath v. City of Phila., 864 F. Supp. 466, 472-73 (E.D. Pa. 1994).

### **Discussion**

Title VII sets forth time limits for filing a civil action

in federal court. Specifically, an aggrieved party must file a civil action within 90 days of receiving a notice of final action taken by the EEOC. 42 U.S.C. § 2000e-16(c). Occasionally, courts provide an exception and allow "equitable tolling," whereby the plaintiff's suit is not time-barred due to late filing. See, Irwin v. Dept. of Veteran Affairs, 498 U.S. 89, 90 (1990) (emphasizing that federal courts provide equitable tolling "only sparingly"). Equitable tolling is proper only when equitable principles make rigid application of a limitation period unfair. Miller v. N.J. Dept. of Corr., 145 F.3d 616, 618 (3d Cir. 1998) (citing Shendock v. Director, Off. of Workers' Compen. Programs, 893 F.2d 1458, 1462 (3d Cir. 1990)).

In determining whether equitable tolling is appropriate, courts consider the "extent of attorney misconduct, diligence of the client, and prejudice to the defendant." Seitzinger v. Reading Hosp. & Med. Ctr., 165 F.3d 236, 238 (3d Cir. 1999). Courts allow equitable tolling where the claimant has "actively pursued [her] judicial remedies" and merely "filed a defective pleading" or has been "induced or tricked by [her] adversary's misconduct into allowing the filing deadline to pass." See e.g., Irwin, 498 U.S. at 90. Similarly, courts provide equitable tolling where the claimant "diligently questioned" her attorney about filing on time, but the attorney failed to make a timely complaint. See e.g., Seitzinger, 165 F.3d at 237-38. Absent such extraordinary circumstances, however, courts usually grant

summary judgment where the complaint was time-barred. See, Seitzinger, 165 F.3d at 237 (agreeing with the District Court's "basic timeliness determination"). Equitable tolling principles do not extend to instances where the plaintiff merely showed "neglect" in making a timely filing. Irwin, 498 U.S. at 96.

Applying Title VII's statutory limitations period in the instant case, Plaintiff's Complaint is untimely. The EEOC issued a final decision with respect to Plaintiff's administrative proceedings on January 7, 2004. Exhibit 2. The EEOC's formal notice to Plaintiff specifically states "you have the right to file a civil action in an appropriate United States District Court within ninety calendar days from the date that you received this decision." Id. The notice further states that "failure to do so [file a civil action in 90 days] may result in the dismissal of your case in court." Id. The notice also contains a Certificate of Mailing which certifies that the EEOC mailed its final decision to Plaintiff on January 7, 2004. Id. Moreover, the Certificate of Mailing states that the EEOC will "presume that this decision was received within five calendar days after it was mailed."<sup>1</sup> Id. Applying such a presumption in the instant case, Plaintiff would be credited with receipt of the EEOC decision no later than January 12, 2004. Thus, Title VII

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<sup>1</sup> The EEOC's presumption is not the only applicable standard for determining the receipt of a mailing. Fed.R.Civ.P 6(e) provides a three-day presumption of receipt by mail when the date of receipt is unknown. However, adopting the stricter Rule 6(e) presumption would not benefit Plaintiff in this action.

required Plaintiff to file her Complaint in district court no later than April 11, 2004.

Plaintiff in this action, however, did not complete a Complaint form until May 22, 2004. Furthermore, Plaintiff did not file a request to proceed *In Forma Pauperis* until June 2, 2004, and her Complaint was not docketed until June 10, 2004. Generally, the statute of limitations is tolled when Plaintiff files a complaint and requests to proceed *In Forma Pauperis*. Scary v. Phila. Gas Works, 202 F.R.D. 148, 151 (E.D. Pa. 2001). Because Plaintiff in this action did not request to proceed *In Forma Pauperis* until June 2, 2004, her Complaint is untimely.<sup>2</sup>

Equitable tolling is not appropriate in this action. Plaintiff has failed to provide evidence to justify this Court's imposition of equitable tolling. As a *pro se* plaintiff, Plaintiff in this action did not demonstrate diligence in adhering to the 90-day filing deadline. Moreover, Plaintiff does not allege that opposing counsel prevented timely filing. Furthermore, Plaintiff fails to provide any other equitable reason which would warrant this Court's provision of equitable tolling. Finally, considering Plaintiff's *pro se* status, this Court has given Plaintiff several opportunities to provide

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<sup>2</sup> Even if this Court considered the statute of limitations tolled upon this *pro se* Plaintiff's completion of the Complaint form on May 22, 2004, Plaintiff still fails to meet the April 11, 2004, deadline imposed by Title VII's 90-day time filing requirement.

sufficient reasons for the untimely filing.<sup>3</sup> Accordingly, Defendant's Motion for Summary Judgment is properly granted.

An order follows.

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<sup>3</sup> This Court granted Plaintiff's Motion for Reconsideration, despite Plaintiff's apparent failure to file within the applicable statute of limitations. Thus, this Court gave Plaintiff an additional opportunity to submit evidence which would explain her untimely filing and enable this Court to provide equitable tolling. Plaintiff, however, has failed to submit any evidence which would explain why she failed to file suit by April 11, 2004, or which would otherwise justify our equitably tolling the applicable statute of limitations.

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UNITED STATES POSTAL SERVICE	:	
	:	
Defendant	:	

**ORDER**

AND NOW, this 7th day of June, 2005, upon consideration of Defendant United States Postal Service's Motion to Dismiss (Document No. 8), this Court's Order converting the Motion to Dismiss to a Motion for Summary Judgment (Document No. 10), and all Plaintiff's responses thereto (Document Nos. 15, 18, 19), it is hereby ORDERED that the Motion is GRANTED and Judgment as a matter of law is hereby entered in favor of the Defendant and against the Plaintiff in no amount.

Plaintiff is hereby advised that, pursuant to 28 U.S.C. § 2107(b), she must file a notice of appeal within sixty (60) days, should she wish to appeal this decision to the U.S. Court of Appeals for the Third Circuit.

BY THE COURT:

s/J. Curtis Joyner  
J. CURTIS JOYNER, J.