

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

JANICE BULLOCK,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	NO. 05-00386
	:	
PENNSYLVANIA HUMAN	:	
RELATIONS COMMISSION,	:	
Defendant	:	

MEMORANDUM

STENGEL, J.

September 14, 2005

Plaintiff Janice Bullock commenced this case under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621, *et seq.* ("ADEA") and Title I of the Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.* ("ADA") seeking any relief as may be appropriate. Based upon the U.S. Supreme Court's rulings in Bd. of Tr. Univ. of Alabama v. Garrett, 531 U.S. 356 (2001); and Kimmel v. Fla. Bd. of Regents, 538 U.S. 62 (2000), I will grant Defendant's Motion to Dismiss.

BACKGROUND

On July 21, 2003, plaintiff Janice Bullock ("Bullock") was hired by defendant Pennsylvania Human Relations Commission ("Commission") as a State Human Relations Representative. At that time Bullock was 59 years old and had been receiving disability benefits as a qualified disabled individual since 1999. Bullock's supervisors were aware of her disability. The Commission terminated Bullock's employment on January 8, 2004.

Following her termination, Bullock filed a complaint with the Equal Employment Opportunity Commission (“EEOC”). The EEOC investigated the complaint and failed to find any violations of the ADA or ADEA. The EEOC terminated its investigation on September 8, 2004. Included with the EEOC’s disposition letter was Bullock’s notice of her right to sue in Federal District Court. Bullock, proceeding pro se, filed her complaint on January 27, 2005.

The Commission, an agency of the Commonwealth of Pennsylvania, now seeks to dismiss Bullock’s complaint pursuant to Fed. R. Civ. Proc. 12(b)(1) and 12(b)(6), and in accordance with the Eleventh Amendment of the U.S. Constitution.

STANDARD OF REVIEW

When considering a motion to dismiss under Fed. R. Civ. Proc. 12(b)(1) and 12(b)(6), the court must accept the complaint’s allegations as true and draw all reasonable inferences in plaintiff’s favor. Zimmerman v. HBO Affiliate Group, 834 F.2d 1163, 1164-65 (3d Cir. 1987).

Under Rule 12(b)(6), a Defendant may move to dismiss a complaint for “failure to state a claim upon which relief can be granted.” The rule is designed to screen out cases where “a complaint states a claim based upon a wrong for which there is clearly no remedy, or a claim which the Plaintiff is without right or power to assert and for which no relief could possibly be granted.” Port Auth. v. Arcadian Corp., 189 F.3d 305, 311-12 (3d Cir. 1999). Under Rule 12(b)(6), a complaint should not be dismissed for failure to state a claim “unless it appears beyond doubt that the Plaintiff can prove no set of facts in

support of his claim which would entitle him to relief.” Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The issue, therefore, is not whether the Plaintiff will ultimately prevail, but whether she is entitled to offer evidence to support her claims. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); See also Maio v. Aetna, Inc., 221 F.3d 472, 482 (3d Cir. 2000). Further, when reviewing a pro se complaint a court “is less stringent than that of pleadings prepared by lawyers.” Milhouse v. Carlson, 662 F.2d 371, 373 (3d Cir. 1981). “A pro se complaint may be dismissed for failure to state a claim only if it appears ‘beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’” Id. (quoting Haines v. Kerner, 404 U.S. 519, 520-21 (1972).)

DISCUSSION

The Commission argues that the Eleventh Amendment bars Bullock’s suit. I agree. Historically, the Eleventh Amendment immunizes states, and their agencies, from suits in federal courts by private parties. Idaho v. Coeur d’Alene Tribe of Idaho, 521 U.S. 261 (1997); Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996); Laskaris v. Thornburgh, 661 F.2d 23 (3d Cir. 1981). The Commission itself has been found eligible for Eleventh Amendment immunity. Foster v. PA Human Rels. Comm’n, No.Civ.A. 03-1890, 2004 U.S. Dist. Lexis 28121, at 9-10 (A civil rights case in which the Honorable Chris Conner of the Middle District of Pennsylvania specifically found the Pennsylvania Human Relations Commission eligible for Eleventh Amendment immunity).

There are, however, three exceptions to a state’s Eleventh Amendment’s immunity: 1) congressional abrogation, 2) state waiver, and 3) suits against individual

state officers for protective relief to end ongoing violations of federal law. MCI Telecomms. Corp. v. Bell Atlantic-Pennsylvania Serv., 271 F.3d 491 (3d Cir. 2001).

The issue of Congressional abrogation regarding Title I claims under the ADA and claims under the ADEA is settled. The U.S. Supreme Court has specifically held that Congress failed to abrogate the states' Eleventh Amendment immunity with regard to both Title I ADA and ADEA claims. Bd. Of Tr. Univ. of Al. v. Garrett, 531 U.S. 356 (2001); Kimmel v. Fla. Bd. of Regents, 528 U.S. 62, 91 (2000).

With regard to state waiver, Pennsylvania has not consented to be sued under either the ADA or the ADEA. 42 Pa. C.S. § 8521(b); See also Davis v. Commw. of PA, No.Civ.A. 01-3091, 2002 U.S. Dist. Lexis 3357(A case in which the Honorable Jan Dubois of the Eastern District of Pennsylvania dismissed plaintiff's Title I ADA and ADEA claims against the state police department based in part upon the Eleventh Amendment); Scott v. Commw. Dept. of Pub. Welfare, No. Civ.A. 02-3799, 2003 U.S. Dist. Lexis 18081 (An ADA, ADEA case in which the Honorable Jan Dubois found that Pennsylvania explicitly reserved its right to immunity from suits in federal court pursuant to 42 Pa. Cons. Stat. Ann. § 8521(b)).

As for the suits against individual state officers for protective relief, the history behind this exception has its roots in Ex Parte Young, 209 U.S. 123 (1908). In that case, the U.S. Supreme Court held that the Eleventh Amendment did not prohibit a federal court from enjoining a state Attorney General from enforcing an unconstitutional state law. This exception was confirmed in Garrett, 531 U.S. at 374. For purposes of this

exception, and considering Bullock is proceeding pro se, I will assume that she is also seeking injunctive relief. Although Bullock alleges the discrimination against her is ongoing, there is no basis for that claim in her complaint. No factual averments nor any inferences fairly drawn from the factual averments support her claims of ongoing discrimination. Bullock worked for the Commission for slightly more than five months and then left in January of 2004. Injunctive relief would not be appropriate in this case where there is no longer an employer-employee relationship. I am unable to find that the Commission poses any future threat to Bullock's rights. Therefore, I am unable to find any set of facts that could possibly lead Bullock to injunctive relief.

Bullock's brief also poses two additional grounds for denying the Commission's motion. The first is a public policy argument geared towards holding the Commission to a higher standard for discrimination cases, while the second argues that the Commission has waived its immunity pursuant to the Pennsylvania Human Rights Act. With regard to the public policy argument, regardless of the Commission's purpose to prevent employment discrimination of the type complained of in this case, I do not see any reason to deny the Commission its Eleventh Amendment immunity. No cases have been cited to support this contention and no legal basis has been given to hold the Commission to a separate standard. With regard to the PHRA argument, although it is true that the Commonwealth has waived its sovereign immunity for suits filed in state courts under the PHRA, the Commonwealth has specifically retained its Eleventh Amendment immunity for suits filed in federal court. Dennison v. Pa. Dep't of Corr., 268 F.Supp2d

387, 405 (M.D. Pa. 2003).

For the reasons described above, I find that Plaintiff has failed to state a claim upon which relief can be granted. I therefore will grant Defendant's Motion to Dismiss.

An appropriate order follows.

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ORDER

AND NOW, this day of , 2005, upon consideration of Defendant's Motion to Dismiss and Plaintiff's response thereto, and for the reasons set forth in the attached Memorandum, it is **ORDERED** that said Motion to Dismiss is **GRANTED**. Plaintiff's claims against the Pennsylvania Human Relations Commission are hereby **DISMISSED**.

It is further **ORDERED** that the Clerk of the Court shall mark this case closed for all purposes.

BY ORDER OF THE COURT

Lawrence F. Stengel, J.