

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

TAMMY TAYLOR :  
 :  
 : CIVIL ACTION  
 :  
 v. :  
 : NO. 03-CV-2484  
 :  
 WHY, INC. :

**SURRICK, J.**

**SEPTEMBER 20, 2006**

**MEMORANDUM & ORDER**

Presently before the Court is Defendant's Motion To Dismiss Plaintiff's Complaint And Motion To Vacate The Court's June 30, 2005 Order (Doc. No. 13). The issue raised by this Motion is whether Plaintiff Tammy Taylor's action against her former employer, WHY, Inc., ("WHY"), brought pursuant to Title VII of the Civil Rights Act, the Americans with Disabilities Act, (the "ADA"), and the Pennsylvania Human Relations Act ("PHRA"), is time-barred by the statute of limitations set forth in 42 U.S.C. §2000e-5(f)(1). For the following reasons, the Motion will be denied.

**I. BACKGROUND**

Plaintiff, an African-American woman, worked for WHY from October 1991 to August 2001, starting in the Data Entry Department and earning three promotions during her tenure at WHY. (Doc. No. 7 ¶¶ 11-13.) In 1998, Plaintiff was diagnosed with Crohn's disease, an illness affecting the small intestine that can lead to abdominal pain, weight loss, fever, and bleeding. (*Id.* ¶¶ 15-16.) In February 2001, Plaintiff informed WHY of her disease. (*Id.* ¶ 18.) Shortly after disclosing her illness to WHY, Plaintiff was briefly hospitalized in May 2001. (*Id.* ¶¶ 19-20.) When Plaintiff returned to work, she was assigned only menial tasks and was

ignored by WHY Y's staff. (*Id.* ¶ 21.) In July, Plaintiff requested leave under the Family Medical Leave Act ("FMLA") after suffering a Crohn's episode. (*Id.* ¶ 22.) During Plaintiff's leave, she received numerous phone calls from several WHY Y employees telling her to return to work or forfeit both her sick pay and any chance at future promotions. (*Id.* ¶¶ 28-29.) On August 2, 2001, three days after returning to work, Plaintiff was ordered off the WHY Y premises by her supervisors and was told not to return without a note from her doctor. (*Id.* ¶¶ 32-33.) Plaintiff returned on August 6, 2001, only to be demoted to the Data Entry Department. (*Id.* ¶¶ 36-37.) She resigned from WHY Y shortly thereafter. (*Id.* ¶ 38.)

On August 2, 2001, just prior to her resignation, Plaintiff filed discrimination claims against WHY Y with both the Pennsylvania Human Relations Commission ("PHRC") and the Equal Employment Opportunity Commission ("EEOC"). (*Id.*) On February 4, 2003, the EEOC sent Plaintiff a right-to-sue letter, which stated in pertinent part:

This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this Notice**; otherwise your right to sue based on this charge will be lost.

(*Id.* at Ex. A (emphasis in original.)) On April 22, 2003, Plaintiff filed a Motion To Proceed In Forma Pauperis along with a document entitled "Complaint." The Motion was denied by Order dated April 30, 2003. That Order provided as follows:

AND NOW, this 30th day of April, 2003, upon consideration of the Pro Se Plaintiff Tammy L. Taylor's Motion For Leave To Proceed In Forma Pauperis (Doc. No. 1), it is ORDERED that the Motion is DENIED. Plaintiff's Complaint provides no information from which this Court can determine whether her claim has any arguable basis in law or in fact. The Complaint simply recites "Jurisdiction is pursuant to the Pennsylvania Human Relations Act 43 P.S. 951-96" and nothing more.

(Doc. No. 2.) As a result of the April 30th Order, the Clerk of Court marked this case “Terminated” on the Court Docket. On May 2, 2003, Plaintiff, acting pro se, sent a Complaint and a request for appointment of counsel to the Court. The Complaint was not entered on the docket by the Clerk. However, it was time-stamped as received on May 8, 2003. (Doc. No. 6 at Ex. A.) On September 19, 2003, an Order was entered directing that Plaintiff’s action be reopened, that Plaintiff’s Complaint of May 8, 2003 be filed of record, and that counsel be appointed to represent Plaintiff. (Doc. No. 3.) The Clerk then began the process of attempting to find counsel to represent Plaintiff.<sup>1</sup> On July 12, 2004, we appointed counsel. (Doc. No. 6.) WHYI has filed this Motion to Dismiss, arguing that the Court lacks subject matter jurisdiction over this case, because Plaintiff failed to comply with the ninety-day statute of limitations. (Doc. No. 13 ¶¶ 19-33.)

## II. LEGAL STANDARD

A motion to dismiss will be granted under Federal Rule of Civil Procedure 12(b)(1) when the court lacks subject matter jurisdiction over a claim. *EEOC v. Creative Playthings, Ltd.*, 375 F. Supp. 2d 427, 431 (E.D. Pa. 2005) (citing *Hedges v. United States*, 404 F.3d 744, 750 (3d Cir. 2005)). When ruling on a 12(b)(1) motion, courts distinguish between “facial” attacks and factual attacks on a court’s subject matter jurisdiction. *In re Kaiser Group Int’l Inc.*, 399 F.3d 558, 561 (3d Cir. 2005). Courts review a “facial” attack based on the parties’ pleadings but may look beyond the pleadings to determine jurisdiction in reviewing a factual attack. *Id.* In either case, the plaintiff bears the burden of demonstrating that the court has proper jurisdiction over

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<sup>1</sup> Plaintiff’s request for counsel came at a time when the Clerk’s Office was inundated with such requests.

the claim. *Id.* When considering a “facial” challenge, we must accept all of the allegations in the Complaint as true and construe them in the light most favorable to the plaintiff. *In re Kaiser Group Int’l*, 399 F.3d at 561; *Mash Enterprises, Inc. v. Prolease Atl. Corp.*, 199 F. Supp. 2d 254, 256 (E.D. Pa. 2002). We may also consider exhibits attached to the Complaint, matters of public record, and “undisputedly authentic” documents that a defendant attaches to the motion to dismiss. *EEOC v. Equicredit Corp. of Am.*, Civ. No. 02-844, 2002 WL 31371968, at \*2 (E.D. Pa. Oct. 8, 2002) (citing *Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993)).

### **III. LEGAL ANALYSIS**

WHYY’s Motion to Dismiss is based on Plaintiff’s failure to comply with the relevant ninety-day statute of limitations set forth under § 2000e-5(f)(1). (Doc. No. 13 ¶¶ 19-33.) Defendant presents a facial attack on this court’s jurisdiction since Plaintiff’s compliance with the statute of limitations can be determined through consideration of Plaintiff’s Complaint coupled with the relevant filing dates reflected on the court docket. *See Creative Playthings, Ltd.*, 375 F. Supp. 2d at 431 n.1. WHYY argues that Plaintiff’s May 8, 2003 Complaint is time-barred under § 2000e-5(f)(1), because it was filed three days after the ninety-day period expired. (Doc. No. 13 ¶¶ 19-33.) We conclude that Plaintiff’s Complaint is not time-barred.

Under 42 U.S.C. § 2000e-5(f)(1), the statute of limitations for discrimination claims is triggered by two events. *Ebbert v. DaimlerChrysler Corp.*, 319 F.3d 103, 108 (3d Cir. 2003). First, the EEOC must dismiss the charges filed by the plaintiff. *Id.* Next, the EEOC must give

notice to the plaintiff that a private civil action may be brought against his or her employer.<sup>2</sup> *Id.* Although § 2000e-5(f)(1) is silent as to the date on which the ninety-day period begins to run, courts have identified two possibilities. If the date of receipt is either known or undisputed, that date controls for statute of limitations purposes. *Seitzinger v. Reading Hosp. & Med. Ctr.*, 165 F.3d 236, 239 (3d Cir. 1999). If the date of the receipt of a right-to-sue letter is either unknown or in dispute, there is a presumption that the ninety-day period begins to run three days after the right-to-sue letter was mailed. *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 148 n.1 (1984) (per curiam). In *Baldwin*, the Supreme Court determined that this three-day period was consistent with Federal Rule of Civil Procedure 6(e), which stated that three days should be added to a limitations period when notice is made by mail. *Id.* (citing Fed. R. Civ. P. 6(e) (effective Aug. 1, 1983-Apr. 28, 1995)). WHY Y argues that *Baldwin* is not controlling because the 2001 amendments to Rule 6(e) preclude its application to right-to-sue letters. (Doc. No. 16 at 6.) We disagree.

At the time the court decided *Baldwin*, Rule 6(e) read as follows:

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper served upon him by mail, 3 days shall be added to the prescribed period.

Fed. R. Civ. P. 6(e) (effective Aug. 1, 1983–Apr. 28, 1985). After the 2001 Amendments, Rule 6(e) provided:

Whenever a party has the right or is required to do some act or take some

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<sup>2</sup> 42 U.S.C. § 2000e-5(f)(1) states, in pertinent part: “If a Charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission . . . the Commission . . . shall so notify the person aggrieved and within ninety-days after giving of such notice a civil action may be brought against the respondent named in the charge . . . .” 42 U.S.C. § 2000e-5(f)(1).

proceedings within a prescribed period after the service of a notice or paper is served upon the party under Rule 5(b)(2)(B), (C), or (D), 3 days shall be added to the prescribed period.

Fed. R. Civ. P. 6(e).<sup>3</sup> Courts in this circuit have continued to apply Rule 6(e) to the ADA's ninety-day requirement even after the 2001 amendments. It is clear, however, that the 2001 Amendments do raise some question about the propriety of continuing to apply Rule 6(e) in this context given the added reference to Federal Rule of Civil Procedure 5. *See DeFrancesco v. Weir Hazelton, Inc.*, Civ. No. 05-2043, 2005 WL 3488877, at \*2 (E.D. Pa. Dec. 20, 2005). Rule 5 deals with service of process on actual parties in a litigation. Fed. R. Civ. P. 5. The recipient of a right-to-sue letter is not a party to an action. *DeFrancesco*, 2005 WL 3488877, at \*2. Thus, it would appear that Rule 5 puts EEOC right-to-sue letters outside the purview of Rule 6(e). Nevertheless, district courts within the Third Circuit continue to apply *Baldwin* in situations involving right-to-sue letters. *See, e.g., Black v. U.S. Postal Serv.*, Civ. No. 04-2393, 2005 WL 1388629, at \*3 n.1 (E.D. Pa. June 7, 2005); *Dupree v. United Food & Commercial Workers Union*, No. 03-930, 2005 WL 41562, at \*2 (D. Del. Jan. 7, 2005); *Allen v. AMTRAK*, Civ. No. 03-3497, 2004 WL 2830629, at \*3 (E.D. Pa. Dec. 7, 2004).

Recently, in *DeFrancesco v. Weir Hazelton, Inc.*, Civ. No. 05-2043, 2005 WL 3488877 (E.D. Pa. Dec. 20, 2005), the court directly addressed this issue. *Id.* at \*5. Although the *DeFrancesco* Court recognized that “using Rule 6(e) as an analogous grace period does violence to the evident purpose of the amendment’s authors, who manifestly wanted to confine the Rule’s grace to court filings,” it nevertheless applied Rule 6(e) to a right-to-sue letter. *Id.* at \*4. The court was guided by the Third Circuit’s decision in *Wilson v. Beard*, 426 F.3d 653 (3d Cir. 2005).

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<sup>3</sup> We note that Rule 6(e) was again amended effective December 1, 2005.

In *Wilson*, the Third Circuit rejected the government’s argument that the one-year statute of limitations for habeas petitions was not covered under Rule 6(e), because the prisoner was not a party to a suit within the meaning of Rule 6(e). *Id.* at 663. The *Wilson* Court concluded that “[g]iven that federal courts must add some additional period of days to the limitations period to account for the time it takes for a letter to be received, we think it eminently sensible to apply Rule 6(e).” *Id.* at 664. We find this reasoning persuasive from both a legal and practical standpoint.

To accept WHY Y’s argument that Plaintiff’s claim is time-barred by the ninety-day statute of limitations is to determine that she received her right-to-sue letter in the mail on the same day on which it was sent. (Doc. No. 13 at 7-8.)<sup>4</sup> We recognize the clear tension between Rule 6(e) and its application to EEOC right-to-sue letters. Nevertheless, the reality is that mail generally does not arrive on the same day on which it is sent. As the Third Circuit noted in *Wilson*, there must be some accounting for this lapse in time. *Wilson*, 426 F.3d at 664. Moreover, if Congress had intended the ninety-day period to begin on the day the right-to-sue letter was sent, it could have specifically so stated. We conclude that Plaintiff filed her Complaint on May 8, 2003, exactly ninety days after the receipt of her right-to-sue letter, given a three day grace period. Accordingly, WHY Y’s Motion to Dismiss will be denied.

An appropriate Order follows.

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<sup>4</sup> The court in *DeFrancesco* certified this issue for interlocutory appeal to the Third Circuit. However, the parties in *DeFrancesco* reached an out-of-court settlement before the circuit court could render a decision. *See DeFrancesco*, 2005 WL 3488877, at \*5 (“[W]e shall certify this question for interlocutory appeal: Does Federal Rule of Civil Procedure 6(e), as amended effective December 1, 2001, continue to apply to EEOC right-to-sue letters?”).

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CIVIL ACTION

NO. 03-CV-2484

**ORDER**

AND NOW, this 20th day of September, 2006, upon consideration of Defendant's Motion To Dismiss Plaintiff's Complaint And Motion To Vacate The Court's June 30, 2005 Order, and all papers submitted in support thereof and in opposition thereto, it is ORDERED that the Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

/s/ R. Barclay Surrick  
U.S. District Court Judge