

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

JAMES R. LANCIA, JR.	:	CIVIL ACTION
	:	
v.	:	NO. 06-1655
	:	
STEVEN O. MCDANIEL, et al.,	:	
	:	
Diamond, J.		September 25, 2006

MEMORANDUM

James R. Lancia, Jr. alleges that Defendants violated his civil rights when they terminated his probationary employment with the Pennsylvania State Police. 42 U.S.C. § 1983. Defendants, the State Police and Troopers Steven O. McDaniel, Thomas McClung, Douglas O'Connor, have moved to dismiss for lack of subject matter jurisdiction and for failure to state a claim. Fed. R. Civ. P. 12(b)(1), (6). I agree that sovereign immunity bars the claims brought against the State Police and the Troopers in their official capacities, and that Plaintiff has otherwise failed to make out a claim against the Troopers in their individual capacities. Accordingly, I will dismiss Plaintiff's Amended Complaint.

BACKGROUND

In 2004, Plaintiff applied to become a Pennsylvania State Trooper and was assigned to the Avondale Barracks for a one year probationary period. Plaintiff had previously served for eleven years as a Clairton City Police Officer and as an Allegheny County Sheriff's Department Investigator. Plaintiff alleges that once at Avondale, he perceived a bias against probationary Troopers with prior municipal police experience. For instance, Defendant O'Connor allegedly stated that "prior police service was, or would be, a hindrance to success as a Pennsylvania State Police Trooper." *Pl. Opposition to Motion to Dismiss at 2*. Plaintiff claims that Defendants

harassed and otherwise treated him differently than probationary officers without police experience. Id. at 3. Plaintiff nonetheless initially maintained “largely favorable” performance ratings and was recommended for retention. Id. at 4. Shortly before the end of his probationary period, however, Defendant McClung reported that Plaintiff mishandled an investigation. As a result, the Pennsylvania State Police terminated Lancia’s employment as a Trooper because of sub-standard work and inability to follow directions. Plaintiff alleges that this was merely a pretext – that the “real reason” Defendants fired him was his prior municipal police experience. *Trans. of Oral Arg. at 13, 14, 15.*

Plaintiff’s Amended Complaint – which includes both federal and pendant state law claims – is not a model of clarity. For instance, he does not indicate whether he is suing the Defendant Troopers in their individual or official capacities. Similarly, although Plaintiff has alleged that his termination violated the First and Fourteenth Amendments, he has not set out any supporting theories of liability. Nevertheless, as I describe below, I have construed Plaintiff’s constitutional claims broadly. See F. R. Civ. P. 8(f).

LEGAL STANDARDS

In deciding a motion to dismiss for lack of subject matter jurisdiction, I must accept the complaint’s factual allegations as true and ensure that the complaint contains necessary jurisdictional elements. Fed. R. Civ. P. 12(b)(1); Turicento., S.A. v. Am. Airlines Inc., 303 F.3d 293, 300, n. 4 (3d Cir. 2002). I am not, however, obligated to make inferences favorable to the plaintiff. Halstead v. Motorcycle Safety Found., Inc., 71 F. Supp.2d 464, 468 (E.D. Pa. 1999). Rather, the plaintiff has the burden to establish jurisdiction. Hedges v. U.S., 404 F.3d 744, 750 (3d Cir. 2005).

In deciding a motion to dismiss for failure to state a claim upon which relief may be granted, I must accept as true the factual allegations and reasonable inferences in the complaint. Fed. R. Civ. P. 12(b)(6); In re Rockefeller Center Properties, Inc., 311 F. 3d 198, 215 (3d Cir. 2002); Allah v. Seiverling, 229 F. 3d 220, 223 (3d Cir. 2000). “The inquiry is not whether plaintiffs will ultimately prevail on the merits, but whether they should be afforded an opportunity to offer evidence in support of their claims.” Rockefeller Center, 311 F. 3d at 215. I may dismiss a case at this early stage only “if it is certain that no relief can be granted under any set of facts which could be proved.” Klein v. General Nutrition Companies, Inc., 186 F.3d 338, 342 (3d Cir. 1999).

DISCUSSION

Earlier this year, Judge J. Curtis Joyner of this Court dismissed a companion case for lack of subject matter jurisdiction and for failure to state a claim. Gabiak v. Pennsylvania State Police, 2006 WL 2381766 (E.D. Pa. 2006). At oral argument, Plaintiff’s counsel – who also represented Gabiak – admitted that he “can’t point to any factual distinctions” between the instant case and Gabiak. *Trans. of Oral Arg. at 4*. Plaintiff’s counsel is certainly correct. Gabiak, a probationary Trooper with prior municipal police experience who served with Lancia at Avondale, sued the same parties as Lancia, also alleging that they unconstitutionally based his termination on his prior police service. As I discuss below, the only significant distinction between the instant case and Gabiak is that Lanica alone has alleged an equal protection violation.

Eleventh Amendment Immunity

I will construe the Amended Complaint to include claims brought against the Defendant

Troopers in both their official and individual capacities. Judge Joyner concluded that Eleventh Amendment immunity barred Grabiak's claims against the State Police and the Troopers in their official capacities. Grabiak, 2006 WL 2381766 at *2-3. In the instant case Defendants ask me to reach the same conclusion. Evidently, Plaintiff concedes this point. *Pl. Opposition to Motion to Dismiss at 9*. Nonetheless, in an abundance of caution, I will address the merits of Defendant's jurisdictional motion.

The Eleventh Amendment deprives federal courts of subject matter jurisdiction in suits against states or state officials in their official capacities. Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 693, n. 2 (3d Cir. 1996). There are three narrow exceptions to Eleventh Amendment immunity: 1) where the state has consented to suit in federal court, Kimel v. Florida Bd. of Regents, 528 U.S. 62, 72-73 (2000); 2) where Congress has explicitly abrogated sovereign immunity, Id.; and 3) where a suit is brought against named state officials for injunctive relief only, Edelman v. Jordan, 415 U.S. 651, 677 (1974); Ex Parte Young, 209 U.S. 123, 159-60 (1908).

None of the exceptions apply here. First, Pennsylvania has explicitly withheld its consent to federal lawsuits against itself and its agencies. 42 Pa.C.S. § 8521. Moreover, claims brought against state actors in their official capacities are legally the same as claims brought against the state itself. Hafer v. Melo, 502 U.S. 21, 25 (1991). Second, Congress did not abrogate state immunity in enacting § 1983. Seminole Tribe of Florida v. Florida, 517 U.S. 44, 56 (1996). Third, Plaintiff seeks only monetary damages, not injunctive relief.

It is, thus, apparent that sovereign immunity bars all claims Plaintiff has brought against the Pennsylvania State Police and the Troopers in their official capacities. Accordingly, I grant

Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction.

Due Process

I will construe the Amended Complaint as including both procedural and substantive due process claims against the Defendant Troopers in their individual capacities. I agree with Judge Joyner's disposition of those claims. Grabiak, 2006 WL 2381766 at *4-5. To make out a procedural due process violation, Plaintiff must show that the Commonwealth deprived him of something in which he has a protected property interest. Arnett v. Kennedy, 416 U.S. 134, 164-65 (1974). The Third Circuit has held that Pennsylvania law affords probationary State Troopers no property interest in their continued employment. Blanding v. Pennsylvania State Police, 12 F.3d 1303, 1304 (3d Cir. 1993). Remarkably, Plaintiff contends that the Third Circuit "missed the boat" in Blanding, and asks me to conclude that he has a property interest in his continued employment with the State Police. *Trans. of Oral Arg. at 6*. I will decline Plaintiff's invitation to contravene controlling authority, and, instead, dismiss his procedural due process claim.

The Troopers also contend that because Plaintiff has no fundamental right under the Constitution to continued public employment, there can be no substantive due process violation. See Lawrence v. Texas, 539 U.S. 558, 593 (2003) ("[Supreme Court] opinions applying the doctrine known as 'substantive due process' hold that the Due Process Clause prohibits States from infringing fundamental liberty interests ..."). I agree. The Third Circuit has held that tenured public employment is not a fundamental right. Nicholas v. Pa State Univ., 227 F.3d 133, 140 (3d Cir. 2000). In these circumstances, Plaintiff – who was only a probationary employee – has no fundamental right to work for the State Police.

First Amendment

I will broadly construe Plaintiff's Amended Complaint to include a claim that his prior employment as a municipal police officer is protected conduct under the First Amendment's Freedom of Association Clause. *Pl. Opposition to Motion to Dismiss at 15*. Thus, in Plaintiff's view, his termination because of that prior employment constituted impermissible retaliation against him by the Troopers in their individual capacities. *Id.* To recover for a retaliatory employment action, Plaintiff must "show the activity in question was protected" under the First Amendment. Holder v. City of Allentown, 987 F.2d 188, 194 (3d Cir. 1993); See also Pi Lamda Phi Fraternity, Inc. v. Univ. Of Pittsburgh, 229 F.3d 435, 441 (3d Cir. 2000). Not surprisingly, Plaintiff presents no authority suggesting that his prior employment was itself protected conduct. Indeed, as Judge Joyner wisely observed, accepting Plaintiff's contention could well transform any adverse employment action into a First Amendment violation. Grabiak, 2006 WL 2381766 at *5. In these circumstances, I am obligated to conclude that Plaintiff has failed to state a First Amendment claim on which relief may be granted.

Equal Protection

Plaintiff apparently alleges that the Troopers in their individual capacities violated the Fourteenth Amendment's Equal Protection Clause when they treated him differently than Troopers who did not have prior municipal police experience. *Pl. Opposition to Motion to Dismiss at 19*. Once again, I disagree.

The Supreme Court has said that the Equal Protection Clause is "essentially a direction that all persons similarly situated should be treated alike." City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439 (1985). The Court has held, however, that disparate treatment

that does not interfere with a fundamental right or does not apply to a suspect class member “cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose.” Heller v. Doe by Doe, 509 U.S. 312, 320 (1993). Rational basis review tolerates the use of broad generalizations about different classes of individuals, “so long as the classification is not arbitrary or irrational.” Tuan Anh Nguyen v. I.N.S., 533 U.S. 53, 75 (2001). See also Kimel v. Florida Bd. of Regents, 528 U.S. 62, 84 (2000). Lancia concedes that a rational basis test applies here. *Trans. of Oral Arg. at 10; Pl. Opposition to Motion to Dismiss at 19.*

I may find that the government had a rational basis for its actions where “there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 313 (1993). Accordingly, the inquiry before me is whether Defendants’ disparate treatment of Troopers with prior municipal experience rationally furthers a legitimate state interest. Nordlinger v. Hahn, 505 U.S. 1, 33 (1992); U.S. v. Pollard, 326 F.3d 397, 407 (2003).

Lancia alleges that Defendant’s bias against his prior municipal police experience – the “real” reason for his termination – furthers no rational interest. *Trans. of Oral Arg. at 13, 14, 15; Pl. Opposition to Motion to Dismiss at 19.* I disagree. The Commonwealth apparently believes that Troopers with such experience “are reluctant to break from habits used in their prior employment - habits which fall below or are inconsistent with PSP standards.” *Motion to Dismiss at 18.* This explanation is certainly rational, and reflects the Commonwealth’s legitimate interest in maintaining the quality of the State Police. Plaintiff nonetheless contends that he needs discovery from the State Police to show that there is no objective reason to prefer Troopers

without prior municipal experience. *Trans. of Oral Arg. at 14*. The Supreme Court has held, however, that rational basis review does not require the state to place any evidence on record. Heller, 509 U.S. at 319. On the contrary, minimal scrutiny is “not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.” Beach Communications, 508 U.S. at 315.

In these circumstances, I am compelled to conclude that Plaintiff has not stated a valid Equal Protection claim. Accordingly, I dismiss the claim with prejudice.

Qualified Immunity

Defendants argue that even if I were to find that Plaintiff adequately pled his constitutional claims, they are nonetheless entitled to qualified immunity. Once again, I agree. Qualified immunity would shield the Troopers from liability unless Plaintiff could establish that they violated a clearly established constitutional right. Conn v. Gabbert, 526 U.S. 286, 290 (1999). The Supreme Court has held that courts should resolve questions of qualified immunity at the earliest stage. Saucier v. Katz, 533 U.S. 194, 201 (2001). Judge Joyner ruled that none of the rights asserted by Grabiak can be described as clearly established. Grabiak, 2006 WL 2381766 at *5. I agree with Judge Joyner’s analysis. The additional claim Lancia brings here – Equal Protection – fares no better. Accordingly, I conclude in the alternative that the doctrine of qualified immunity would bar Lancia’s lawsuit.

State Claims

Finally, I decline to exercise supplemental jurisdiction over Lancia’s state law claims where he has failed to make out a claim under federal law. 28 U.S.C. § 1367(c)(3). See also Grabiak at *5.

Accordingly, I grant Defendants' Motion to Dismiss the Complaint for Lack of Subject Matter Jurisdiction and for Failure to State a Claim Upon Which Relief May Be Granted.

An appropriate Order follows.

/s Paul S. Diamond

Paul S. Diamond, J.

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

JAMES R. LANCIA, JR.	:	CIVIL ACTION
	:	
v.	:	NO. 06-1655
	:	
STEVEN O. MCDANIEL, et al.,	:	

ORDER

AND NOW, this 25th day of September, 2006, upon consideration of Defendants' Motion to Dismiss Plaintiff's Amended Complaint, Plaintiff's response, the oral arguments presented by counsel, and all related materials, it is hereby ORDERED that Defendant's Motion is GRANTED for the reasons set forth in the accompanying Memorandum. This case is DISMISSED with prejudice.

The Clerk's Office shall close this case for statistical purposes.

AND IT IS SO ORDERED.

/s Paul S. Diamond

Paul S. Diamond, J.