

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

Mary Valestine Miller-Turner : CIVIL ACTION
v. :
Mellon Bank, N.A. : NO. 97-3738

MEMORANDUM AND ORDER

Norma L. Shapiro, J.

August 22, 1997

The present action, Miller-Turner v. Mellon Bank, Civil Action 97-3738, was filed as related to Miller-Turner v. Mellon Bank, N.A. and Veronica Betts, Civil Action No. 94-5409. Mary Valestine Miller-Turner ("Turner"), acting pro se, alleged in the previous action that Mellon Bank ("Mellon") discriminated against her because of her race, in violation of Title VII of the Civil Rights of 1964, 42 U.S.C. §2000(e). The court granted defendants' motion for summary judgment. Miller-Turner v. Mellon Bank, 1995 WL 298931 (E.D. Pa. 1995). The Court of Appeals affirmed. Miller-Turner v. Mellon Bank, 91 F.3d 124 (3d Cir. 1996).

In this action, Turner alleged Mellon subsequently discriminated against her by not rehiring her in 1995 to fill a field examiner position for which she claims she was qualified. The court granted Turner's motion to file in forma pauperis, but dismissed the complaint as frivolous since it sought relitigation

of legal issues already resolved in Mellon's favor. Miller-Turner v. Mellon Bank, 1997 WL 359262 (E.D. Pa. 1997). Before the court now is plaintiff's motion for reconsideration.

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco v. Zlotnicki, 799 F.2d 906, 909 (3d Cir. 1985) cert. denied, 476 U.S. 1171 (1986). Turner must establish one of three grounds: 1) the availability of new evidence, 2) an intervening change in controlling law, or 3) the need to correct a clear error of law or to prevent manifest injustice. Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994). Turner may not submit evidence available to her prior to the court's dismissal of the second complaint. Id. (citing DeLong Corp. v. Raymond International Inc., 622 F.2d 1135, 1139-40 (3d Cir. 1980)). A motion for reconsideration is "not properly grounded on a request that a court rethink what it has already considered." United States Fire Ins. Co. v. Aetna Casualty and Surety Co., 1997 WL 28710 (E.D. Pa. 1997) (citing Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993)).

Turner raises three reasons why the court should reconsider dismissal of her second complaint: 1) Turner, who filed a complaint with the EEOC in January, 1997, received her right to sue letter from the EEOC before she had a chance to rebut evidence provided to EEOC from Mellon; 2) the court's decision to dismiss the complaint as frivolous relied on the

previous summary judgment and failed to consider an allegedly fraudulent document; and 3) Mellon was wrong to use Turner's performance in the coding position at issue in the previous action when it denied her the field examiner position at issue in this action.

Turner claims the EEOC issued its right to sue letter before she had the full ten days to rebut evidence produced by Mellon. Turner does not specify what additional evidence she would have raised with the EEOC in rebuttal, had she time to do so. Filing a complaint with the EEOC permits the agency "to use informal, non-judicial means of reconciling the differences between the charging party and an employer." Hicks v. ABT Assoc., Inc., 572 F.2d 960,963 (3d Cir. 1978). If the EEOC investigation is deficient, that is no bar to the civil suit. Id. at 966. The court did not base its dismissal of this action on an EEOC determination of the merits of the case, so Turner was not prejudiced by any deficiencies in the EEOC procedure.

The court's decision in 1995 to grant summary judgment in favor of defendants took into account that one of two performance documents Mellon issued to Turner was alleged to be fraudulent. In deciding a motion for summary judgment, all allegations are construed in the non-movant's favor, so the court accepted as true Turner's assertion that one document was not accurate. That was not sufficient to raise an issue of disputed fact or for a reasonable jury to find that Turner had been discriminated against. The Court of Appeals affirmed that

ruling; it is no longer an issue this court can consider or reconsider.

Mellon had legitimate non-discriminatory reasons for not hiring Turner as a field examiner in 1991 after she had worked for Mellon in a temporary capacity and in 1992 after she had been discharged from a coding position. Mellon was entitled to rely on those non-discriminatory reasons in again refusing to hire Turner as a field examiner in 1995. Turner has supplied no new evidence to show that Mellon was not relying on the existing legitimate non-discriminatory reasons for not hiring her in 1995. In the absence of new evidence, or new case law, the court cannot grant Turner's motion for reconsideration.

For these reasons, the court will deny Turner's motion for reconsideration. An appropriate order follows.

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ORDER

AND NOW, this 22nd day of August, 1997, after consideration of plaintiff's Motion for Reconsideration, it is **ORDERED** that:

1. Plaintiff's Motion for Reconsideration is **DENIED**.

J.