

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

JESSICA A. LAUBE,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 99-1325
v.	:	
	:	
SECRETARY OF THE AIR FORCE,	:	
	:	
Defendant.	:	

MEMORANDUM

Buckwalter, J.

May 12, 1999

On April 13, 1998, Plaintiff Jessica Laube filed her complaint in the United States District Court for the District of Columbia requesting that a May 19, 1995 settlement agreement between her and Defendant, the Secretary of the Air Force, be set aside. On September 18, 1998, Defendant filed a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(3) for improper venue and Rule 12(b)(1) for failure to exhaust administrative remedies. On November 25, 1998, the court concluded that venue was improper and transferred the action to the United States District Court for the Eastern District of Pennsylvania, leaving the remaining portion of Defendant's motion to dismiss pursuant to Rule 12(b)(1) for failure to exhaust administrative remedies before this Court.

Because the issue of whether Plaintiff has appropriately exhausted her administrative remedies is not a jurisdictional question, the Court decided to treat Defendant's motion to dismiss as a motion under Rule 12(b)(6). As Defendant relied on material outside the

pleadings, the Court, by order dated March 26, 1999, converted Defendant's motion into a motion for summary judgment, granting leave to the parties to present all pertinent material by April 20, 1999. Presently before this Court is Defendant's motion for summary judgment and Plaintiff's response. For the foregoing reasons, Defendant's motion will be **GRANTED**.

I. Background

Plaintiff was a civilian employee of the Air Force at the Willow Grove Air Force Base in Willow Grove, Pennsylvania. Plaintiff alleges in her complaint that, while working at the base, she was a victim of gender discrimination and harassment, and as a result, developed Post Traumatic Stress Disorder ("PTSD"). In April of 1995, Plaintiff received a notice of termination for failing to fulfill a condition of her employment and physical incapacitation. Plaintiff had previously filed several discrimination complaints, and in May 1995, a hearing was held before the Equal Employment Opportunity Commission ("EEOC"). Plaintiff alleges that during the course of that hearing she was coerced into entering an administrative settlement agreement with Defendant.

Under the terms of the settlement agreement, Plaintiff's employment was terminated. Plaintiff also waived her discrimination claims in exchange for \$30,000.00 and Defendant's agreement not to contest Plaintiff's application for disability benefits from the U.S. Department of Labor's Office of Worker Compensation Programs. The settlement agreement was accepted by the EEOC judge. Immediately following the hearing, Plaintiff was admitted to a psychiatric hospital. Plaintiff alleges that her PTSD made her forget signing the agreement and that she did not realize she had entered into a settlement until she had called her attorney to check

on the status of her case. Plaintiff also alleges that she later learned that Defendant had already disputed her disability benefit claim before signing the settlement agreement.

On July 15, 1995, Plaintiff sought to appeal Defendant's decision to terminate her and the entire settlement agreement to the U.S. Merit Systems Protection Board ("MSPB"). In a decision dated October 17, 1995, the MSPB dismissed Plaintiff's appeal for lack of Board jurisdiction. Plaintiff filed a petition for review, which was granted. On September 19, 1996, a jurisdictional hearing was held before the Northeastern Regional Office of the MSPB. Plaintiff argued that her removal from the Air Force pursuant to the settlement agreement was involuntary because she was not competent to sign the agreement due to her PTSD and depression. In a decision dated February 27, 1997, the MSPB found that Plaintiff had voluntarily entered into the settlement agreement, and thus, the Board concluded that it did not have jurisdiction over her case.

On December 17, 1997, Plaintiff filed a petition with the EEOC for a review of the Board's final decision. In a decision dated March 11, 1998, the EEOC concluded that the Board had dismissed the appeal for lack of jurisdiction without addressing Plaintiff's underlying discrimination claims. Thus, the EEOC denied Plaintiff's petition for review as it had jurisdiction only over allegations of discrimination addressed in connection with an action appealable to the MSPB. The instant complaint followed.

II. Discussion

Summary judgment is appropriate "if 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.” Fed. R. Civ. P. 56(c). The moving party has the burden of demonstrating the absence of any genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A factual dispute is “material” if it might affect the outcome of the case under the governing substantive law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Additionally, an issue is “genuine” “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Id.

If the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party to “set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). In doing so, the non-moving party must “do more than simply show that there is some metaphysical doubt as to the material facts.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). If the evidence of the non-moving party is “merely colorable,” or is “not significantly probative,” summary judgment may be granted. Anderson, 477 U.S. at 249-50.

Defendant asserts that this Court lacks jurisdiction over Plaintiff’s complaint with respect to Plaintiff’s request to set aside the February 27, 1997 MSPB decision because the Federal Circuit is the proper forum in which to adjudicate that appeal. Plaintiff argues that her case is a “mixed case” - one in which the MSPB heard claims of both discrimination and procedural deficiencies - and that this Court may exercise jurisdiction pursuant to 5 U.S.C. § 7702.

The proper basis for an appeal from an adverse MSPB decision depends on whether the employee raises allegations of unlawful discrimination in the initial MSPB appeal. If a federal employee does not allege that the employment action was a result of unlawful

discrimination, the employee may seek review of the MSPB's final decision only before the United States Court of Appeals for the Federal Circuit, which would review the decision using an abuse of discretion standard. See 5 U.S.C. §§ 7703(b)(1), (c)(1).

Conversely, if the employee alleges that the employment action was motivated by discrimination, the employee may seek a de novo judicial review of the merits of the MSPB appeal before the appropriate federal district court. See 5 U.S.C. §§ 7703(b)(2)-(c). The employee can seek review of both the discrimination claim and other non-discrimination aspects of the MSPB decision. Such an appeal is known as a “mixed case.” See generally Kean v. Stone, 926 F.2d 276 (3d Cir. 1991). Jurisdiction then lies with the district court since the Court of Appeals for the Federal Circuit and a local district court may not exercise concurrent jurisdiction over different aspects of the case. See Williams v. Dep’t of the Army, 715 F.2d 1485 (Fed. Cir.1983) (en banc). Alternatively, before filing suit in the district court on a discrimination claim raised in a MSPB appeal, the employee may first petition the EEOC to review the MSPB’s decision regarding the discrimination aspects of the employee’s complaint and wait to file suit after the EEOC’s final decision. See 5 U.S.C. § 7702(b); 29 C.F.R. § 1613.421.

Under the foregoing authority, this Court lacks jurisdiction over Plaintiff’s complaint. Plaintiff is seeking judicial review of the MSPB’s decision upholding the May 19, 1995 settlement agreement. Plaintiff’s MSPB appeal focused entirely on her competence in entering into the settlement agreement, and relatedly, her right to appeal her termination.

While there is a passing reference to discrimination in her appeal form filed with the MSPB, it is clear that the discrimination claims were never adjudicated by that body and that

no determination was made concerning the validity of Plaintiff's discrimination claims. See Def.'s Mem. (Exhibits A and D thereto). See, e.g., Jones v. Boyd, No. CIV. A. 97-3363, 1998 WL 314668, at *3 (E.D. Pa. June 11, 1998) (holding that regardless whether discrimination claims were presented to the MSPB, if the claims were not adjudicated, the Federal Circuit retains exclusive jurisdiction). In fact, the administrative judge in his initial decision did not even make reference to the merits of Plaintiff's discrimination claims, but rather determined only that the MSPB did not have jurisdiction over Plaintiff's appeal. See Def.'s Mem. (Exhibit A thereto). This was the decision that was affirmed by the MSPB. See Laube v. Dep't of Air Force, 77 MSPR 204 (1997). Consequently, the Court concludes that Plaintiff's case is not a "mixed case," which means that there is no jurisdiction in the district court to entertain Plaintiff's request to review her appeal from the MSPB's decision and to set aside the settlement agreement. Plaintiff's only recourse is to file an appeal with the Court of Appeals for the Federal Circuit.

Accordingly, Defendant's motion for summary judgment is **GRANTED**. An appropriate order follows.

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SECRETARY OF THE AIR FORCE,	:	
	:	
Defendant.	:	

ORDER

AND NOW this 12th day of May 1998, upon consideration of Defendant's Supplemental Memorandum of Law in Support of Motion for Summary Judgment (Docket No. 6) and Plaintiff's memorandum in opposition thereto (Docket No. 4), it is hereby **ORDERED** that Defendant's motion is **GRANTED**. Judgment is entered in favor of Defendant, the Secretary of the Air Force, and against Plaintiff, Jessica A. Laube. The Clerk of Court shall mark this case **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.