

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

FRANK P. KNOX : CIVIL ACTION
: :
v. : :
: :
WILLIAM J. HENDERSON, :
POSTMASTER GENERAL, :
UNITED STATES POSTAL SERVICE : NO. 99-586

O R D E R - M E M O R A N D U M

AND NOW, this 25th day of June, 1999, the motion to dismiss of defendant William J. Henderson, Postmaster General, United States Postal Service, is denied. Fed. R. Civ. P. 12(b)(6).¹ Jurisdiction is federal question. 28 U.S.C. § 1331.

In this Title VII action, defendant is alleged to have terminated plaintiff's employment with the United States Postal Service because of his age. Defendant moves to dismiss the complaint because plaintiff did not file suit within ninety days of the receipt of the decision by the Equal Employment Opportunity Commission.

"Although a complaint is not formally filed until the filing fee is paid, we deem a complaint to be constructively filed as of the date that the clerk received the complaint - as long as the plaintiff ultimately pays the filing fee or the district court

¹Under Rule 12(b)(6), the allegations of the complaint are accepted as true, all reasonable inferences are drawn in the light most favorable to the plaintiff, and dismissal is appropriate only if it appears that plaintiff would prove no set of facts that would entitle her to relief. See Weiner v. Quaker Oats Co., 129 F.3d 310, 315 (3d Cir. 1997).

grants the plaintiff's request to proceed in forma pauperis." McDowell v. Del. State Police, 88 F.3d 188, 190 (3d Cir. 1996). "Once the filing fee requirement is satisfied (either through the remittance of the filing fee or the district court's grant of the plaintiff's IFP application), the filing date will relate back to the date on which the clerk received plaintiff's papers." Id. at 191.

On the basis of McDowell, the complaint was constructively and timely filed on February 4, 1999. On that day, the clerk's office received both the complaint and plaintiff's in forma pauperis application – which was ninety days after the right-to-sue letter was issued by the EEOC. On February 9, 1999, plaintiff's motion to proceed in forma pauperis was denied. However, one week later, on February 16, 1999, the filing fee was paid, and the complaint was filed, consequently relating back to February 4.

Edmund V. Ludwig, J.