

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

SURAIYA I. ALVI, M.D. : CIVIL ACTION
: :
v. : :
: :
PHILADELPHIA HEALTH SERVICES, : :
t/a THE FAIRMOUNT HEALTH CENTER : NO. 98-5846

MEMORANDUM ORDER

This is an employment discrimination case. Plaintiff has asserted claims for discrimination based on national origin, race and age in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 623(a)(1), 623(a)(2), and the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. § 951, et seq. Presently before the court is defendant's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6).

Plaintiff alleges that defendant, her former employer, terminated her position as a pediatric physician on August 1, 1996. She states that her race and national origin are "Asian/Indian" and that she is fifty-eight years old. Plaintiff alleges that she "maintained a satisfactory job performance rating and at all time fulfilled all of the duties and obligations commensurate with her employment," that she was the only person in her position discharged at the time although she had greater seniority than another employee and that defendant told her she was let go due to a "shrinking pediatric population" although defendant subsequently filled her position with a younger, African-American and also hired a thirty-five year old

African-American shortly before plaintiff's termination.

It does not appear beyond doubt from these allegations that plaintiff will be unable to sustain her claims and obtain relief and defendant does not contend otherwise.

Rather, defendant contends that plaintiff will be unable to prove her claims because the circumstances surrounding her termination and the hiring of her replacement do not show a discriminatory motive on the part of defendant. Defendant relies upon materials outside the pleadings and requests the court to convert its 12(b)(6) motion to one for summary judgment.

It is difficult to comprehend why defendant would file a Rule 12(b)(6) motion which clearly cannot be granted or why if it wished to move for summary judgment, it simply did not do so. In any event, plaintiff has not had any discovery. It would be inappropriate to grant summary judgment at this stage. See Brug v. Enstar Group, Inc., 755 F. Supp. 1247, 1251 (D. Del. 1991) (inappropriate to convert motion to dismiss to motion for summary judgment where no discovery had been conducted).

ACCORDINGLY, this day of August, 1999, upon consideration of defendant's Motion to Dismiss Complaint (Doc. #4) and plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.