

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

KATHERINE SZARMACH,	:
Plaintiff,	:
	:
-vs-	: Civil No. 3:01cv699 (PCD)
	:
SIKORSKY AIRCRAFT,	:
Defendant.	:

RULING ON DEFENDANT’S MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant moves for summary judgment on the complaint to the extent it is based on allegations of discrimination occurring prior to December 1, 1998. The motion is granted.

I. BACKGROUND

Plaintiff is fifty-five-years-old. From September 1988 to October 1997, she worked as a Senior Systems Analyst for defendant. On September 17, 1997, plaintiff complained to defendant’s Human Resources Department (“HRD”) of an incident between her and a manager, Alan D. Mortensen, in which he, after losing computer data from a system she had serviced, threatened that she would “pay” for her actions and blamed his loss of data on her. In October 1997, Human Resources Department ordered her transferred to Business Systems Department (“BSD”). She had no further contact with Mortensen after the incident on September 17, 1997.

During 1999, plaintiff notified HRD that she was dissatisfied with her job and inquired as to why Mortensen was not transferred after the incident as well. On September 2, 1999, her job in BSD was outsourced to another company. On September 27, 1999, plaintiff filed her administrative complaint with the Connecticut Commission on Human Rights and Opportunities (“CHRO.”)

Plaintiff filed the present complaint on April 23, 2001 alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.* (“Title VII”) and the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634 (1994 & Supp. IV 1998) (“ADEA”).

II. DISCUSSION

Defendant moves for summary judgment on claims of discrimination arising prior to October 1997 arguing that there is no jurisdiction over such claims because the CHRO complaint was not filed within 300 days of such discriminatory acts as required by statute. Plaintiff responds that defendant’s motion should be denied because her administrative complaint alleges a continuing violation by defendant encompassing all conduct alleged to be discriminatory.

A. Standard

A party moving for summary judgment must establish that there are no genuine issues of material fact in dispute and that he is entitled to judgment as a matter of law. FED. R. CIV. P. 56 (c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). In determining whether a genuine issue has been raised, all ambiguities must be resolved and all reasonable inferences be drawn against the moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962); *Quinn v. Syracuse Model Neighborhood Corp.*, 613 F.2d 438, 445 (2d Cir. 1980). The nonmovant cannot rest on the pleadings; *Anderson*, 477 U.S. at 256; but must supplement the pleadings with affidavits, depositions, and answers to interrogatories, *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

B. ADEA and Title VII Claims

A claimant under either the ADEA or Title VII must file a timely complaint with the CHRO or

EEOC as a precondition to pursuing a claim in federal court,. *See Legnani v. Alitalia Linee Aeree Italiane, S.P.A*, 274 F.3d 683, 686 (2d Cir. 2001). An administrative complaint must be filed within 300 days of the discriminatory act. *See Flaherty v. Metromail Corp.*, 235 F.3d 133, 136 n.1 (2d Cir. 2000). Defendant argues that there is no jurisdiction over discriminatory acts occurring prior to December 1, 1998, which is the outer bound of the 300-day limitation from the filing of plaintiff's CHRO complaint.

Plaintiff argues that jurisdiction over acts involving Mortensen exist because they are part of a policy or practice of discrimination that may be considered under the continuing violation doctrine. *See Lambert v. Genesee Hosp.*, 10 F.3d 46, 53 (2d Cir. 1993). If such doctrine is implicated, a complaint "that is timely as to any incident of discrimination in furtherance of an ongoing policy of discrimination, all claims and acts of discrimination under that policy will be timely even if they would be untimely standing alone." *Id.* A continuing violation typically involves specific discriminatory seniority policies or mechanisms, such as discriminatory seniority lists or employment tests, but may also be found where specific and related acts of discrimination are left unremedied by an employer. *Van Zant v. KLM Royal Dutch Airlines*, 80 F.3d 708, 713 (2d Cir. 1996); *Cornwell v. Robinson*, 23 F.3d 694, 704 (2d Cir. 1994). Completed acts of discrimination, such as discharge or transfer, do not constitute continuing violations. *Lightfoot v. Union Carbide Corp.*, 110 F.3d 898, 907 (2d Cir. 1997).

The acts of which plaintiff alleges as discriminatory cannot be considered under the umbra of the continuing violation doctrine. She alleges that her unhappiness in her new position was due to her lack of suitability for the position and rude treatment by her new supervisor. She further states that

“each and every day that [she] reported to [her] position in BSD (Business Systems Department) after having been transferred there in October 1997 served as a condonation of Mortensen’s bad conduct towards her. . . . Each day further serves as a continuation of what Mortensen had done to her.” She does not allege any further specific acts or incidents of discrimination affecting her after the transfer other than general unhappiness in her new position that might implicate the “more of the same” discrimination inherent in the continuing violation doctrine. To implicate the continuing violation doctrine based on acts occurring more than 300 days before the CHRO complaint was filed, she must provide some support constituting “proof of specific ongoing discriminatory policies or practices, or where specific and related instances of discrimination are permitted by the employer to continue unremedied for so long as to amount to a discriminatory policy or practice.” *Cornwell*, 23 F.3d at 704. Plaintiff alleges no discriminatory acts after her transfer but only the effect on her resulting from her transfer. Those allegations do not constitute a continuing violation. *See Lightfoot*, 110 F.3d at 907.

Plaintiff cites to *Cornwell* and *Ass’n Against Discrimination v. Bridgeport*, 647 F.2d 256 (2d Cir. 1981), as support for her continuing violation theory. Those cases are easily distinguished from the facts of her case. *Cornwell* involved gender discriminatory personnel policies accompanied by a failure of supervisory personnel to address ongoing discrimination. *Cornwell*, 23 F.3d at 704. The plaintiff in *Cornwell* experienced the same discrimination in 1986 as in 1981-1983. The discriminatory pattern ceased with the plaintiff’s leave of absence attributable to illness precipitated by earlier harassment. *See id.* This pattern was accompanied by male co-workers engaging in conduct designed to force female coworkers out of the organization until the plaintiff was forced out in 1986. *See id.* *Ass’n Against Discrimination* involved a continuing practice of egregious discrimination

against black and hispanic persons, a pattern that pervaded conduct and hiring practices both before and after the plaintiff filed the administrative charge. *Ass'n Against Discrimination*, 647 F.2d at 275. The existence of pervasive discriminatory practices and policies affecting those similarly situated or repeated discriminatory acts as to the individual plaintiff was well-supported by fact in both cases.

Unlike *Cornwell* and *Ass'n Against Discrimination*, the continuing violation asserted by plaintiff is her lingering dissatisfaction with her responsibilities after her transfer. She alleges that her new supervisor was “rude” and “did not seem to want her there,” and that she was not well-suited for the position. She does not, however, allege or support how such dissatisfaction was discrimination at all, let alone how it constitutes a discriminatory policy or practice.¹ Having failed to allege a policy or practice which permitted the conduct prior to December 1, 1998 and conduct thereafter, there is no jurisdiction over acts occurring prior to December 1, 1998 on the basis of continuing violations.

¹ In plaintiff's affidavit, she states that “[t]he above mentioned conduct of Sikorsky Aircraft was similar to that instituted and perpetrated upon many other women at Sikorsky who had been treated similarly by Mortensen. Sikorsky always ignored [the] conduct of Mortensen toward women and forced the women to transfer or quit their position at Sikorsky. Such conduct of Sikorsky was effectively a pattern or policy.” The nonmoving party must offer more than “[c]onclusory assertions in affidavits” which are “generally insufficient to resolve factual disputes that would otherwise preclude summary judgment.” *Allen v. Coughlin*, 64 F.3d 77, 80 (2d Cir. 1995). Even if such a conclusory assertion were appropriate, it does not connect plaintiff's contact with Mortensen in 1997 to a practice involving herself or others between December 1, 1998 and the filing of the administrative charge in 1999.

III. CONCLUSION

Defendant's motion for summary judgment (Doc. 34) is **granted**.

SO ORDERED.

Dated at New Haven, Connecticut, April __, 2002.

Peter C. Dorsey
United States District Judge