

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROBERT AMOROSO,	:	
Plaintiff,	:	
	:	
v.	:	3:00CV00432(AVC)
	:	
UNITED TECHNOLOGIES CORPORATION,	:	
PRATT & WHITNEY DIVISION,	:	
Defendant.	:	

RULING ON THE DEFENDANT'S MOTION TO DISMISS

The plaintiff, Robert Amoroso, brings this action for damages and injunctive relief against the defendant, United Technologies Corporation, Pratt & Whitney Division (UTC/Pratt), pursuant to the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et. seq.; the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 et. seq.; and the Connecticut Fair Employment Practices Act ("CFEPA"), Conn. Gen. Stat. § 46a-58 and 46a-60(a)(1). He has alleged that UTC/Pratt wrongfully discharged him and failed to recall him because of his age and disability. UTC/Pratt brings the within motion to dismiss the complaint in its entirety based on: 1) lack of subject matter jurisdiction; and 2) Amoroso's failure to state a cause of action upon which relief can be granted.

The issues presented are whether: 1) Amoroso's actions under state and federal discrimination laws are time-barred due to his failure to file a charge of discrimination within 300 days of the last discriminatory act he experienced, and 2) UTC/Pratt's actions give rise to a continuing violation or the doctrine of

equitable tolling, thereby relieving Amoroso from the applicable statute of limitations. The court concludes that: 1) all of Amoroso's actions are time-barred, and 2) he has not alleged facts sufficient to constitute a continuing violation or justify the application of the equitable tolling doctrine. For the following reasons, UTC/Pratt's motion to dismiss is GRANTED.

FACTS

Examination of Amoroso's complaint and supporting papers discloses the following relevant facts:

On or about June 5, 1968, UTC/Pratt hired Amoroso upon his graduation from college.

Beginning in August 1996 until some unspecified time following his layoff, Amoroso was under a doctor's care for severe depression "due to an impending divorce . . . and then [his] layoff."

In October 1996, Amoroso began taking anti-depressant medication for his depression. During this time, Amoroso's supervisor at UTC/Pratt was on notice that he was taking this medication.

On or about February 12, 1997, UTC/Pratt notified Amoroso, who was then 52 years old, that it was laying him off as part of its effort to cut operating costs. At the time UTC/Pratt notified him of its "reduction in workforce," Amoroso held the

position of senior project engineer in the company's repair development division.

Following his discharge in February 1997, Amoroso "was so emotionally tramatize[d] [sic] and depressed from the layoff . . . and his previous divorce . . . that he was unable to commence civil action until almost two years" had passed.

"Throughout 1997, jobs [that] the plaintiff was qualified for were posted and filled without his recall."

On February 1, 1999, Amoroso filed a charge of discrimination with the Connecticut Commission on Human Rights and Opportunities (CCHRO).

On April 10, 1999, the CCHRO dismissed his case for "lack of jurisdiction" because he had not filed his charge within the required 180 day period.

On March 12, 1999, the plaintiff appealed the CCHRO's decision; the CCHRO "accepted the appeal, and forwarded the case to the [Equal Opportunity Employment Office ("EEOC")] Boston area office for review."

On December 11, 1999, the plaintiff received "from the EEOC a Notice of Suit Rights enabling the plaintiff to file suit in civil court." That notice, attached to Amoroso's complaint, provided that the EEOC "[could not] investigate [Amoroso's] charge because it was not filed with in the time limit required by law."

On March 7, 2000, Amoroso filed the complaint in this matter.

STANDARD

When ruling on a motion to dismiss brought pursuant to Rule 12(b)(6), the court must presume that the facts alleged in the complaint are true and draw all reasonable inferences from those facts in favor of the plaintiff. See Sykes v. James, 13 F.3d 515, 519 (2d Cir. 1993). A court may dismiss such a complaint only where "it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). This requirement "compels even more vigilance with respect to civil rights violations where the plaintiff is pro se." Easton v. Dundram, 947 F.2d 1011, 1015, (2d Cir. 1991). Thus, the court may consider statements contained in the plaintiff's opposition to the motion to dismiss.¹ See Lucas v. New York City, 842 F. Supp 101, 104 (S.D.N.Y. 1994).

DISCUSSION

I. Violations of State and Federal Discrimination Statutes

UTC/Pratt has moved to dismiss Amoroso's ADA, ADEA, and CFEPFA actions, arguing that each is time-barred. Specifically,

¹ Where a plaintiff proceeds pro se, a court must liberally construe his supporting papers and "interpret [them] to raise the strongest arguments that they suggest." Soto v. Walker, 44 F.3d 169, 173 (2d Cir. 1995).

it contends that the "[p]laintiff did not file a charge of discrimination with the CCHRO within 180 days of the alleged discriminatory conduct, and did not file a charge of discrimination with the EEOC within 300 days of [that same] conduct." Amoroso responds that he received a right-to-sue letter from the EEOC's Boston area office on December 11, 1999, which, he maintains, "allow[ed] [him] to file a lawsuit within 90 days of receipt[.]"

A plaintiff may not bring an ADA or ADEA action in federal court "unless the claim was properly raised with the EEOC." Miller v. International Tel. & Tel. Corp., 755 F.2d 20, 23 (2d Cir. 1985). "Under the ADEA, an aggrieved party must file a claim with the EEOC within 300 days of the discriminatory action or 180 days of the discriminatory action if the state involved has no agency authorized to investigate age discrimination." Dillman v. Combustion Eng'g, Inc., 784 F.2d 57, 59 (2d Cir. 1986). See 29 U.S.C. § 626(d)(2); 29 U.S.C. § 633(b). These same filing deadlines also apply to actions brought pursuant the ADA. See 42 U.S.C. § 12117(a). Under both federal statutes, the applicable time-frame in the present case is 300 days because Connecticut has an agency authorized to investigate charges of discrimination. See Conn. Gen. Stat. § 46a-54 (outlining powers of CCHRO). The time frame is more limited, however, under the CFEPa, pursuant to which a plaintiff must file a charge of

discrimination with the CCHRO "within one hundred and eighty days after the alleged act of discrimination" Conn. Gen. Stat. 46a-82(e); State v. Commission on Human Rights and Opportunities, 211 Conn. 464, 472 (1989).

Amoroso has failed to comply with the deadlines contained in either the federal or state statutes. The most recent discriminatory act Amoroso has alleged is UTC/Pratt's failure, "throughout 1997," to recall him for posted jobs for which he was qualified. Drawing all reasonable inferences in favor of Amoroso, then, UTC/Pratt's last discriminatory act occurred in December of 1997. According to his complaint, however, Amoroso did not file his charge of discrimination with the CCHRO until February 1, 1999, which is well outside the 300 day window provided by the ADA and the ADEA, as well as the more limited 180 day period mandated by the CFEPa.

Amoroso has argued that the right-to-sue letter he received from the EEOC entitles him to maintain the present action despite his failure to comply with the statutory deadlines. The court finds this argument misplaced. In its December 9, 1999 letter to Amoroso, the EEOC checked a box which stated that it was refusing to investigate his charge "because it was not filed within the time limit required by law." While the letter represents that he could "file a lawsuit against [UTC/Pratt]," it does not ensure that any such lawsuit will be successful. Accordingly, Amoroso's

ADA, ADEA, and CFEPAs² counts are time-barred absent facts supporting a continuing violation or the application of the doctrine of equitable tolling.³ As discussed below, his complaint contains no such facts.

II. Equitable Tolling

In order to excuse his failure to comply with the statutory deadlines of the ADA, the ADEA, and the CFEPAs, Amoroso submits that: 1) he was "so emotionally tramatize[d] [sic] and depressed from the layoff . . . and his previous divorce . . . that he was unable to commence civil action until two years" after UTC/Pratt's alleged discriminatory conduct; and 2) he understood that "the time frame within which he needed commence action" was two years. UTC/Pratt, like this court, has interpreted Amoroso's

² The Connecticut Supreme Court recently granted certification to determine whether the 180 day period for filing a discrimination complaint with the CCHRO was jurisdictional, and therefore not susceptible to waiver or equitable tolling. See Williams v. Commission on Human Rights and Opportunities, 252 Conn. 930 (1999). Because this court concludes that Amoroso has not alleged facts sufficient to trigger the equitable tolling doctrine, it does not reach the jurisdictional issue presented in Williams.

³ Amoroso's complaint alleges that UTC/Pratt laid him off as part of "a pattern and practice of discrimination against older employees[,]" words which ring of the standard for a continuing violation. See Cornwell v. Robinson, 23 F.3d 694, 703 (2d Cir. 1994). "When a plaintiff experiences a continuous *practice and policy of discrimination* . . . the commencement of the statute of limitations period may be delayed until the last discriminatory act in furtherance of it." Id. (emphasis added). Because Amoroso's complaint has failed to allege any act "in furtherance" of such a policy or practice that occurred within 300 days of his filing, he cannot show a continuing violation.

opposition as an argument for the equitable tolling of the statute of limitations.

"[T]he principles of equitable tolling . . . do not extend to what is at best a garden variety claim of excusable neglect."

Irwin v. Department of Veterans Affairs, 498 U.S. 89, 152 (1990). A plaintiff has the burden of showing that equitable tolling is appropriate. See Hedgepeth v. Runyon, 1997 WL 759438, at *4 (S.D.N.Y. Dec. 10, 1997). Courts have applied this doctrine "only sparingly" and, in particular, in the following circumstances:

where the [plaintiff] has actively pursued his judicial remedies by filing a defective pleading during the statutory period, . . . where the [plaintiff] has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass[,], . . . where the court has led the plaintiff to believe that [the plaintiff] had done all that was required of [him], where affirmative misconduct on the part of the defendant may have lulled the plaintiff into inaction, where the [plaintiff] has received inadequate notice, and where a motion for the appointment of counsel [was] pending.

South v. Saab Cars USA, Inc., 28 F.3d 9, 11 (2d Cir. 1994) (internal quotation marks and citations omitted). Equitable tolling is not available, however, when a plaintiff fails to diligently pursue his rights. See id. at 12. Likewise, a plaintiff's allegation that he was incapable of complying with the requirements due to emotional distress or "deep depression" is similarly insufficient. See Boos v. Runyon, 201 F.3d 178, 185 (2d Cir. 2000) (holding that "paranoia, panic attacks, and

depression" insufficient to justify further inquiry into tolling); Lloret v. Lockwood Greene Eng'r, Inc., No. 97 CIV 5750, 1998 WL 142326, at *3 (holding pro se plaintiff's "deep depression" did not toll time limitations of ADA and ADEA).

Here, Amoroso has not alleged any facts to support an equitable tolling argument. As noted above, he maintains that the emotional trauma and depression he experienced due to his layoff and simultaneous divorce rendered him unable to commence this action in a timely fashion. In the alternative, he asserts that his understanding was that he had two years to file a complaint with the CCHRO. Under Boos and Saab, neither of these reasons justify the application of the equitable tolling doctrine. Amoroso's pro se status does nothing to change this result. Cf. Blaizin v. Caldor Store #38, No. 97 CIV. 1604(DAB), 1999 WL 97899, at *2 (S.D.N.Y. Feb. 23, 1999) (holding equitable tolling not appropriate despite plaintiff's pro se status and limited English skills). Accordingly, the court concludes that Amoroso's ADA, ADEA, and CFEPA⁴ actions are time-barred.

⁴ While the court has dismissed Amoroso's federal law causes of action, in the interest of judicial economy, it has chosen to retain jurisdiction over his pendant state law action. See 28 U.S.C. § 1367(c); Itar-Tass Russian News Agency v. Russian Kurier, 140 F.3d 442, 446-47 (2d Cir. 1998).

CONCLUSION

Based on the foregoing reasons, UTC/Pratt's motion to dismiss (document no. 6) is GRANTED with prejudice. The clerk of the court is ordered to enter judgment for the defendant.

It is so ordered this ___ day of November, 2000 at Hartford, Connecticut.

Alfred V. Covello
Chief United States District Judge