

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JONATHON H. BEDFORD,

Plaintiff,

v.

NEIGHBORHOOD CONNECTIONS, INC.,

Defendant.

ORDER

04-C-244-C

On June 18, 2004, judgment was entered dismissing this Title VII action without prejudice to plaintiff's refiling his case after he obtained a right-to-sue letter from the EEOC. Now plaintiff has moved to reopen the case. Attached to the motion is a copy of a right-to-sue letter dated November 19, 2004.

Under Title VII, a plaintiff is required to bring suit within 90 days of receipt of a Notice of Right-to-Sue from the EEOC. The 90-day period commences when a plaintiff receives "actual notice" of his right to sue. Houston v. Sidley & Austin, 185 F.3d 837, 839 (7th Cir.1999) (citations omitted). A plaintiff receives such "actual notice" on the date when he or his attorney obtains physical possession of the right to sue letter issued by the EEOC. Jones v. Madison Service Corp., 744 F.2d 1309, 1312 (7th Cir. 1984). Plaintiff's complaint

in this case was filed *before* plaintiff received his right-to-sue letter. Although it may be proper in some instances to allow a plaintiff to pursue a Title VII action in which a right-to-sue letter is issued after the lawsuit was commenced, see, e.g., Berg v. LaCrosse Cooler Co., 548 F.2d 211 (7th Cir. 1977) (plaintiff receiving right-to-sue letter pending appeal of district court dismissal allowed to reinstate class action lawsuit), I believe it would be more efficient to require plaintiff to file a new action.

Plaintiff will not be prejudiced by having to file a new lawsuit. First, he has incurred no expense in filing this lawsuit because he was allowed to proceed in forma pauperis. Unless his financial circumstances have changed dramatically in the past few months, he will qualify to proceed in a new action under the in forma pauperis statute. Second, plaintiff must rewrite his complaint in any event. The allegations of the complaint must assert affirmatively that plaintiff has received a right-to-sue letter. Gibson v. Kroger Co., 506 F.2d 647, 652-53 (7th Cir. 1974). Enclosed with this order for plaintiff's use in refileing his complaint is a form for an affidavit of indigency, a copy of his original complaint and a copy of his right-to-sue letter.

ORDER

IT IS ORDERED that plaintiff's motion to reopen this case is DENIED. Plaintiff is free to file a new complaint within 90 days of the date of receipt of his right-to-sue letter in

which he alleges his claims under Title VII and states affirmatively that he has received a right-to-sue letter.

Entered this 6th day of December, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge