

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

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JOYCE ALDRICH,

Plaintiff,

v.

MEMORANDUM AND ORDER

BEST BUY CO., INC.,

05-C-226-S

Defendant.

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Plaintiff Joyce Aldrich commenced this civil action under Title VII and the Age Discrimination in Employment Act (ADEA) alleging that defendant Best Buy Co. Inc. discriminated against her on the basis of her gender and her age when she was demoted in March 2003. She also alleges that she was constructively discharged from her employment in January 2004.

On August 15, 2005 defendant moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of fact, conclusions of law and a brief in support thereof. This motion has been fully briefed and is ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affined is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

#### FACTS

For purposes of deciding defendant's motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Joyce Aldrich is an adult female resident of Wisconsin. Her date of birth is November 16, 1961. Defendant Best Buy is a retail and on-line business specializing in electronics, major appliances, home office products, entertainment software and photographic equipment.

Plaintiff was hired by Best Buy on September 8, 1987 to work as a Merchandising Senior in its Eau Claire, Wisconsin store. On September 11, 1987 plaintiff received a copy of Best Buy's employee handbook. Beginning in January 1988 Leland Fletcher was plaintiff's supervisor.

On January 17, 1999 Fletcher promoted plaintiff to the position of Merchandising Manager at the Eau Claire store. In August 2002 Fletcher was promoted to district manager and Jeffrey Wilcox became plaintiff's supervisor. Plaintiff alleges that Fletcher made inappropriate comments to her about her age.

On September 13, 2002 plaintiff received a Performance Counseling Record and was placed on an Action Plan because she was not successfully performing the duties of her position. Plaintiff signed the plan acknowledging that failure to comply with the plan would result in further disciplinary action up to and including termination.

On January 31, 2003 plaintiff was placed on another Action Plan which she signed. On February 10, 2003 plaintiff received a written warning for her failure to meet the minimum job expectations as outlined in the action plan. On March 1, 2003 plaintiff received a Performance Counseling Record for failure to comply with the action plan.

On March 13, 2003 Wilcox and Dale Bruford met with plaintiff to discuss plaintiff's failure to meet the minimum expectations of

the Merchandising Manager position. According to plaintiff, Brufoldt gave her two days to decide whether to accept a demotion or be terminated. On March 23, 2003 plaintiff accepted a demotion to the position of Media Specialist.

On September 30, 2003 plaintiff took a Family Medical Leave Act (FMLA) leave of absence to have foot surgery. She was on FMLA leave until January 24, 2004. Plaintiff resigned from her employment at Best Buy on January 26, 2004 without returning to work.

On August 27, 2003 plaintiff filed an EEOC charge questionnaire. The EEOC assigned a charge number to her case, 260-2003-00325C. Wendy Martin, an EEOC investigator, advised plaintiff by letter dated August 29, 2003 that her charge could not be filed until she obtained more information. Plaintiff filed her formal charge on February 10, 2004 alleging that she was discriminated against when she was demoted from the position of Merchandising Manager in March 2003. Defendant received notice of the February charge and filed its response in May 2004.

#### MEMORANDUM

Plaintiff claims that she was discriminated against by the defendant when she was demoted in March 2003. Defendant claims that this claim is time barred because it occurred more than 300 days prior to February 10, 2004, the date she filed her EEOC

charge. It is well established that an employee must file a Title VII claim within 300 days of the alleged discriminatory incident. 42 U.S.C. § 2000e-5(e)(1); Dasgupta v. University of Wisconsin Bd. of Regents, 121 F. 3d 1138, 1139 (7<sup>th</sup> Cir. 1997).

Plaintiff contends that her charge was actually filed August 27, 2003 when she filed her intake questionnaire with the EEOC. The Court has held that completing an intake questionnaire can constitute a formal charge where it satisfied the requirements for a formal charge and was considered such by the Commission. Steffen v. Meridian Life Ins. Co., 859 F. 2d 534, 542-44 (7<sup>th</sup> Cir. 1988). But in Perkins v. Silverstein, 939 F. 2d 463, 470 (7<sup>th</sup> Cir. 1991), the Court held that an intake questionnaire was not sufficient to constitute a charge where the EEOC informed the employee that his questionnaire contained insufficient information.

Although the Court in Early v. Bankers Life and Cas. Co, 959 F.2d 75, 80 (7<sup>th</sup> Cir. 1992), held that the EEOC had considered Early's questionnaire as a formal charge, the Court stated as follows:

To treat Intake Questionnaires willy-nilly as charges would be to dispense with the requirement of notification of the prospective defendant, since that is a requirement only of the charge and not of the questionnaire. The short statutes of limitations in employment cases have a purpose-both backpay obligations and the difficulty of reintegrating a terminated worker into the workforce grow with each day that passes before an employment dispute is resolved-and it is ill served when the employer does not receive prompt notice of the dispute. (Citations omitted).

In plaintiff's case the August 29, 2003 letter sent by Wendy Martin to plaintiff stated in pertinent part as follows:

I have been assigned to contact you regarding the questionnaire that you mailed to us in the above captioned matter. Despite several attempts, I have been unable to reach you. It is necessary that I speak with you to obtain all the information that I need to draft your charge.

This letter makes plaintiff's case the same as Perkins because plaintiff's questionnaire contained insufficient information. The EEOC did not consider it a formal charge even though it assigned it a case number. Plaintiff's formal charge which notified the defendant of plaintiff's allegations was not filed until February 10, 2004. Accordingly, plaintiff's claim concerning her March 23, 2003 demotion was time barred because it occurred more than 300 days prior to filing the charge with EEOC.

Plaintiff argues that she is entitled to equitable tolling because she was provided misinformation by EEOC. She alleges that she filed the questionnaire and was told by an EEOC representative that when she filed her questionnaire her case would be filed. The August 29, 2003 letter plaintiff received from Wendy Martin corrected this misinformation and provided her the opportunity to supply the information in order that a formal charge could be filed within the statute of limitations period. Plaintiff is not entitled to equitable tolling. Early v. Bankers Life and Cas. Co,

959 F.2d at 81. Accordingly, plaintiff's claim concerning her demotion is time-barred and will be dismissed.

Plaintiff also pursues a constructive discharge claim. Defendant argues that plaintiff did not exhaust her administrative remedies on this claim. In Conner v. Illinois Dept. Of Natural Resources, 413 F.3d 675, 680 (7<sup>th</sup> Cir. 2005), the Court held that claims brought in judicial proceedings must be within the scope of the charges filed with the EEOC.

Plaintiff's EEOC charge concerned only her March 2003 demotion. Although she subsequently amended her charge with a document entitled "More Charges of Discrimination", this document did not include any allegation that she was constructively discharged. Her claim that she was constructively discharged almost a year later is not within the scope of her EEOC charge or amendment. Accordingly, her constructive discharge claim must be dismissed because she has failed to exhaust her administrative remedies and the time for doing so has expired.

Defendant's motion for summary judgment will be granted. Plaintiff's demotion claim will be dismissed as time barred and her constructive discharge claim will be dismissed for failure to exhaust administrative remedies.

#### ORDER

IT IS ORDERED that defendant's motion for summary judgment is GRANTED.

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IT IS FURTHER ORDERED that judgment be entered in favor of defendant against plaintiff DISMISSING her complaint and all claims contained therein with prejudice and costs.

Entered this 21<sup>st</sup> day of September, 2005.

BY THE COURT:

S/  
JOHN C. SHABAZ  
District Judge