

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

MICHELLE S. DAHLKE,

Plaintiff,

v.

CLIFTONLARSONALLEN, LLP,

Defendant.

ORDER

12-cv-669-bbc

In an order dated February 8, 2013, dkt. #16, I stayed a decision on defendant CliftonLarsonAllen, LLP's motion to dismiss in which defendant argued that plaintiff Michelle Dahlke's Title VII claim was premature because she had not yet received a right to sue letter from the Equal Employment Opportunity Commission. I gave plaintiff two options: (1) dismiss her claim under Title VII with prejudice and proceed with her Equal Pay Act claim; or (2) dismiss her claim under Title VII without prejudice and administratively close the case pending the resolution of the proceedings before the EEOC.

Plaintiff has responded but she did not choose either option offered by the court. Instead, she filed a letter in which she informs the court that she has received a right to sue and that "she intends to proceed with her Title VII claim now that administrative proceedings are closed before the EEOC." Dkt. #17. Plaintiff should have realized from the February 8 order that she could not simply continue on with both claims once she finished

with administrative proceedings: “[p]laintiff was required to exhaust her administrative remedies *before* she filed her lawsuit; she cannot complete the exhaustion process while her case is pending.” Dkt. #17 at 2 (citing Ford v. Johnson, 362 F.3d 395, 401 (7th Cir. 2004); Hill v. Potter, 352 F.3d 1142, 1145 (7th Cir. 2003)).

Accordingly, I am dismissing plaintiff’s Title VII claim for her failure to exhaust her administrative remedies before filing this lawsuit. If plaintiff wishes to continue with the claim, she will have to move for leave to file an amended complaint.

Although it may seem to serve little purpose to dismiss a claim only for it to be refiled immediately, I am not free to ignore controlling circuit law. If I were to grant plaintiff’s request simply to allow the Title VII claim to move forward, she would run the risk of that claim being dismissed on appeal for lack of exhaustion. Plaintiff could have avoided this problem by following the instructions in Herrmann v. Cencom Cable Associates, Inc., 999 F.2d 223, 225 (7th Cir. 1993), for what a party should do when she has one claim that requires exhaustion and one claim that does not.

ORDER

IT IS ORDERED that defendant CliftonLarsonAllen, LLP’s motion to dismiss, dkt. #11, is GRANTED. Plaintiff’s complaint is DISMISSED WITHOUT PREJUDICE as to

her Title VII claim.

Entered this 19th day of February, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge