

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

MR. RICKEY TOWNSEND,

Plaintiff,

v.

STEVE LENTZ, JAMES WAYMAN,
DAVE SHY, JUDY (LANGHURST)
DEWAR and KEITH O'NEAL,

Defendants.

ORDER

01-C-0573-C

This is a civil action for monetary relief in which plaintiff Rickey Townsend contends that on October 26, 1992, defendants discriminated against him on the basis of his race. The exclusive remedy for discrimination in federal employment is Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972. See Brown v. General Services Administration, 425 U.S. 820, 835 (1976). In October 2001, plaintiff filed this lawsuit.

On March 11, 2002, defendants filed a motion to dismiss in which they argue, among other things, that plaintiff failed to exhaust his administrative remedies. See Patterson v.

McLean Credit Union, 491 U.S. 164, 181 (1989) (plaintiff may bring Title VII action in federal court only after exhausting administrative procedures set out in § 2000e-5 and obtaining a right-to-sue letter from EEOC); see also EEOC v. Harris Chernin, Inc., 10 F.3d 1286, 1288 n.3 (7th Cir. 1993); Bullard v Sercon Corp., 846 F.2d 463, 467 (7th Cir. 1988) (citing 42 U.S.C. § 2000e-5(e)). On May 13, 2002, I entered an order staying plaintiff's Title VII discrimination claim until May 30, 2002, so that he could provide the court with proof that he exhausted his administrative remedies by providing an Equal Employment Opportunity Commission right-to-sue letter. (To clarify the May 13 order, a federal employee alleging discrimination is required to provide an EEOC "final action" letter, rather than a "right-to-sue" letter. See 42 U.S.C. § 2000e-16(c); Davis v. Browner, 113 F. Supp. 2d 1223, 1225 n.2 (N.D. Ill. 2000). In any event, this labeling distinction is immaterial.) On May 24, 2002, plaintiff provided the court with two letters from the EEOC.

Plaintiff's EEOC correspondence reveals that on December 27, 2001, an EEOC administrative law judge informed plaintiff that the agency had 180 days to make a determination as to plaintiff's October 5, 2001 request for a hearing. See Aff. of Proof, dkt. #58, Exh. 1. On May 10, 2002, an EEOC staff member dismissed plaintiff's EEOC complaint (which was filed on September 26, 2001) pursuant to 29 C.F.R. § 1614.107(a)(3)

because the claim he was pursuing was also the basis of his lawsuit in this court. See id. at Exh. 2.

As a condition precedent to filing a race discrimination lawsuit, a plaintiff is required to exhaust his administrative remedies. See Gibson v. West, 201 F.3d 990 (7th Cir. 2000) (holding that federal or private employee must exhaust administrative remedies as condition precedent). This exhaustion requirement must be met in any employee's Title VII lawsuit, although the steps involved and the time limits imposed differ depending on the type of employer. In the case of a federal employer, a plaintiff must exhaust administrative remedies before filing a lawsuit by taking the following steps: (1) filing an informal complaint by contacting his or her employing agency's Equal Employment Opportunity counselor within 45 days of the alleged discrimination, 29 C.F.R. § 1614.105; (2) if the complaint is not resolved informally within 30 days, the complainant must file a formal written complaint within 15 days of the notice of failure of the informal resolution, 29 C.F.R. §§ 1614.105 and 1614.106; and (3) in order to pursue the matter in court, the complainant must then bring a lawsuit "[w]ithin 90 days of receipt of notice of final action taken by a department . . . or by the Equal Employment Opportunity Commission," 42 U.S.C. § 2000e-16(c).

As indicated in plaintiff's May 10 letter, his EEOC complaint was dismissed because he had commenced this lawsuit before the agency reviewed the matter. Thus, plaintiff filed this lawsuit prematurely. Because plaintiff failed to exhaust his administrative remedies

before filing suit in this court, I will grant defendants' motion to dismiss. See Gibson, 201 F.3d at 994.

If plaintiff is considering re-filing this lawsuit within 90 days of the May 10 EEOC letter, which is arguably a final action, he should be aware that this letter also suggests that he failed to comply with other required exhaustion steps in a timely manner. For example, under a federal employee's exhaustion requirements, plaintiff would have had to file his formal EEOC complaint within approximately 90 days (45 days to file informal complaint + 30 days for informal resolution + 15 days from receipt of a notice of failure to resolve informally) from the date of the alleged discriminatory act, October 26, 1992. See 29 C.F.R. §§ 1614.105 and 1614.106. As plaintiff's May 10 letter demonstrates, he filed his formal EEOC complaint on September 26, 2001, nearly nine years beyond this 90-day time frame. In other words, before plaintiff can file suit in court, he must have complied with every required administrative exhaustion step in a timely fashion. See White v. Bentsen, 31 F.3d 474 (7th Cir. 1994) (failure to pursue administrative remedies to extent required by Title VII operates as bar to judicial relief).

Because plaintiff failed to exhaust his administrative remedies before filing suit in this court, I will grant defendants' motion to dismiss. As a result, it is unnecessary to address defendants' alternative theories for dismissal.

ORDER

IT IS ORDERED that the motion of defendants Steve Lentz, James Wayman, Dave Shy, Judy (Langhurst) Dewar and Keith O'Neal to dismiss for failure to exhaust administrative remedies is GRANTED without prejudice. Because plaintiff cannot cure this defect in this suit, this order of dismissal is a final order. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 7th day of June, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge
