

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

ROGER R. PHILBRICK,

Plaintiff,

v.

MARRIOTT MADISON WEST,

Defendant.

ORDER

03-C-0744-C

This is a civil action for monetary relief. Plaintiff Roger Philbrick alleges that on December 31, 2001, he was wrongfully discharged from his employment with defendant Marriott Madison West. Plaintiff contends that the discharge was based on his age and his race as an American Indian. Title VII of the Civil Rights Act of 1964, as amended, prohibits employers from discharging employees because of their race. See 42 U.S.C. § 2000e-2(a)(1). The Age Discrimination and Employment Act of 1967 (ADEA) prohibits large employers from discriminating on the basis of age. See 29 U.S.C. §§ 621-634. Defendant has filed a motion to dismiss plaintiff's claim pursuant to Fed. R. Civ. P. 12(b)(6) on the ground that plaintiff has failed to exhaust his administrative remedies.

Under Title VII, obtaining a right-to-sue letter from the Equal Employment

Opportunity Commission (EEOC) is tantamount to exhausting all administrative remedies, and is a precondition to filing a federal lawsuit. See McGinty v. United States Dept. of the Army, 900 F.2d 1114 (7th Cir. 1990); see also EEOC v. Harris Chernin, Inc., 10 F.3d 1286, 1288 n. 3 (7th Cir. 1993) (citing 42 U.S.C. § 2000e-5(b), (e) and (f)). Plaintiff has not submitted a right-to-sue letter. In plaintiff's response to defendant's motion to dismiss, plaintiff claimed that he was unable to obtain a right-to-sue letter because he had acquired a waiver of service of summons. Plaintiff appears to believe that obtaining the waiver relieves him of his obligation to exhaust administrative remedies. His belief is incorrect. The waiver of service of summons and these exhaustion requirements are completely unrelated matters.

Like Title VII, the ADEA requires plaintiffs to obtain a right-to-sue letter from the EEOC before filing a federal lawsuit. See Sauzek v. Exxon Coal USA, Inc., 202 F.3d 913 (7th Cir. 2000) (citing 29 U.S.C. § 623(d)). Because he has not filed the right-to-sue letter, plaintiff has failed to exhaust all administrative remedies for the ADEA claim as well. This requirement for both Title VII and ADEA claims is only a precondition and not a jurisdictional element of filing a claim, and is therefore subject to claims of equitable estoppel and waiver. Plaintiff has not made any such claim.

In plaintiff's response to defendant's motion to dismiss, plaintiff also listed both the Indian Civil Rights Act and his "rights as a retired, U.S. Army veteran" as possible causes of

action for his discharge. The Indian Civil Rights Act, however, governs the sovereignty of American Indian tribes, not discrimination based on one's status as an American Indian. See 25 U.S.C. §§ 1301-1341. Plaintiff has not introduced any evidence that he was discriminated against based on his status as a former member of the armed forces, which would be required for the Uniform Services Employment and Reemployment Act of 1994 to protect him from discriminating treatment. See 38 U.S.C. § 4311(b).

ORDER

IT IS ORDERED that Defendant Marriott Madison West's motion to dismiss is GRANTED. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 3rd day of June, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge