

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

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BRANDI LYNN WEIGEL,

Plaintiff,

v.

QUICKSILVER BROADCASTING,

Defendant.  
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OPINION AND ORDER

07-C-0005-C

This civil case for money damages for alleged discrimination is before the court on defendant QuickSilver Broadcasting's motion to dismiss for plaintiff Brandi Lynn Weigel's failure to file a timely charge of discrimination with the Equal Employment Opportunities Commission. Plaintiff does not deny that her suit was untimely. However, she has argued that principles of equitable estoppel and equitable tolling should exempt her from the requirement that discrimination charges be filed either with the Equal Employment Opportunities Commission or the appropriate state agency within 300 days of the alleged discriminatory act. In an order entered on May 11, 2007, I denied plaintiff's contention that she could rely on the principle of equitable estoppel but I reserved a ruling on her contention that she might be entitled to claim equitable tolling because of her mental and

physical health problems. I gave her an opportunity to file additional documentary evidence to support her assertion that she was so disabled that she could not have filed this lawsuit within the 300 days she had for filing.

In response to the court's order, plaintiff submitted additional documents but none of them is sufficient to show that plaintiff was so disabled during the entire 300-day filing period that she could not have filed a timely charge of discrimination. As I explained in the May 11 order, the principle of equitable tolling could be used to give a claimant extra time if factors beyond the claimant's control prevented him from filing, although there is no absolute rule requiring tolling for mental disability. Lopez v. Citibank, N.A., 808 F.2d 905 (1st Cir. 1987) (collecting cases and concluding that even in discrimination actions against non-governmental entity, application of tolling for mental disability requires a "case-specific analysis"). In a later First Circuit case, the court suggested that tolling would require a showing that "the particular plaintiff's illness rendered him 'unable to protect his legal rights because of an overall inability to function in society,' or . . . unable to manage his business affairs, or to comprehend his legal rights and liabilities." Nunnally v. MacCausland, 996 F.2d 1, 5 (1st Cir. 1993) (quoting Decrosta v. Runyon, 1993 WL 117583 (N.D.N.Y. 1993)).

Plaintiff's new filings do not fill the gaps left by the exhibits she filed originally in support of her brief in opposition to defendant's motion to dismiss. They do not support

a conclusion that she could not have filed a claim with the EEOC promptly after she left her employment. Although the record contains exhibits showing that she suffered from stress, severe depression, alcoholism and attention deficit hyperactivity disorder during the period following her loss of employment, other exhibits suggest that for at least some of the time in question, she was doing well, that she had “a passion for employment” and that she promoted a local fund raising event for the Multiple Sclerosis Society. See, e.g., Plt.’s Exh. #15.

The record shows that plaintiff received a packet of information from the “ADA Center” on October 12, 2005, five days after her employment ended and that she obtained information about her rights from the Wisconsin Coalition for Advocacy in November 2005. These activities belie her claim that she was disabled during the entire 300-day period following the end of her employment. Also, it is evident from her filing in this court that plaintiff did not lack the knowledge and intelligence to set out her claim in an understandable manner.

I conclude that plaintiff has failed to show that she is entitled to equitable tolling. She did not meet the statutory requirements for filing a claim of discrimination with the Equal Employment Opportunities Commission or appropriate state agency within 300 days of the discrimination act she wants to challenge in this lawsuit. Her lawsuit must be dismissed.

ORDER

IT IS ORDERED that defendant QuickSilver Broadcasting's motion to dismiss for plaintiff Brandi Lynn Weigel's failure to meet the statute of limitations is GRANTED. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 21st day of June, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge