

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

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PATRICK WAYNE BARRETT, SR.,

Plaintiff,

v.

SENECA FOODS,

Defendant.

OPINION and ORDER

Case No. 16-cv-211-wmc

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Plaintiff Patrick Wayne Barrett, Sr. brings this civil lawsuit *pro se*, contending that Seneca Foods discriminated against him on the basis of his disability, sexual orientation, age and protected complaints he made about discrimination. Because Barrett is proceeding without prepayment of the full filing fee, his complaint must be screened under 28 U.S.C. § 1915(e) to determine whether any portion is frivolous or malicious, fails to state a claim on which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. For reasons explained below, the court concludes that Barrett may proceed with his claims for disability and sexual orientation discrimination, but his age discrimination claim must be dismissed for failure to state a claim upon which relief may be granted.

ALLEGATIONS OF FACT<sup>1</sup>

While living at a halfway house in Janesville, Wisconsin, Barrett was hired as a seasonal forklift driver by Seneca Foods. Before he was hired, Barret told Seneca's

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<sup>1</sup> In addressing any *pro se* litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the court assumes the facts above based on the allegations in Barrett's first amended complaint.

human resources department that he was concerned about whether he would be physically and mentally capable of handling the position. More specifically, he allegedly told human resources that he had a learning disorder as a result of a childhood brain tumor and that he was deaf in his right ear. He further explained that it had been difficult to keep up with his schooling when he was younger, but that he could learn if he was taught through a “hands on” approach. The human resources representative told Barrett that he would be “fine” and would receive training.

Barrett accepted the job and was trained one-on-one with the warehouse supervisor. With the supervisor’s help, Barrett became certified as a forklift operator. On September 1, 2015, he began employment as a seasonal position forklift operator at a starting salary of \$7.80 per hour. After a positive performance evaluation approximately 30 days later, he received a raise to \$12.15 per hour.

Eventually, Barrett applied and was hired for a permanent forklift position, contingent on him passing a math test. Because he did not understand math very well, Barrett was nervous about passing the test. On his first attempt, he failed. Human resources told him not to worry about it because he could just take some time to brush up on his math and take the test again. The plant supervisor also assured him that he could take the test again when he was ready, so Barrett proceeded to study for the math test.

In the meantime, Barrett continued to work as a forklift operator at his previous seasonal salary, supervised by a foreman named “Andy.” Andy allegedly treated Barrett poorly, frequently asking about his criminal history and the time Barrett spent in prison.

After Andy heard that Barrett had been hired for the permanent forklift position, Andy also allegedly told Barrett that there were a lot of people who deserved the job more. Andy further began making frequent, sexual comments to Barrett, allegedly calling him a “faggot” and suggesting that Barrett must be homosexual after spending so much time in prison. He also began assigning more difficult tasks to Barrett, then yelled at him in a humiliating way if he was unable to accomplish them.

Around the same time, a female coworker made a complaint that Barrett had made inappropriate comments to her, alleging that he had invited her over to clean his house. Two supervisors interviewed Barrett about the complaint and told him that they did not believe her because the alleged comments did not make sense, given Barrett’s housing situation in a halfway house. After the allegation, however, Andy and other coworkers began treating Barrett even more poorly, harassing him about his alleged sexual orientation and suggesting that he was going to be fired. Additionally, the female coworker who had initially accused Barrett of inappropriate comments, began contacting Barrett by phone and sending him sexual texts and photos.

Stressed by this whole situation, Barrett complained to management, but nothing was done. Barrett also asked management if he could retake the math test, so that he could be moved into the permanent forklift position, but management refused to schedule it. Ultimately, Barrett requested to be moved to a different department, but lasted only a few days in the new department because he felt humiliated by the treatment he received. Barrett then quit his employment with Seneca.

## OPINION

Plaintiff raises four claims against Seneca Foods: (1) discrimination under the Americans with Disabilities Act; (2) sexual orientation discrimination; (3) retaliation; and (4) age discrimination. Plaintiff's complaint does not contain any allegations that would support a finding, directly or by inference, that he was discriminated against because of his age, so the court will dismiss that claim without further discussion. The court discusses his other claims below.

### I. Americans with Disabilities Act

The ADA prohibits employers from discriminating against employees with disabilities who are otherwise qualified. 42 U.S.C. § 12112(a). The definition of “discriminate” in the act is broad, and includes discrimination in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. *Id.* In order to prove disability discrimination under the ADA, plaintiff must show that (1) he is disabled within the meaning of the ADA; (2) he is qualified to perform the essential functions of the job; and (3) he suffered from an adverse employment action because of his disability. *Nese v. Julian Nordic Construction Co.*, 405 F.3d 638, 641 (7th Cir. 2005).

Under the lenient pleading standard for a *pro se* litigant, *Haines*, 404 U.S. at 521, the court will infer that plaintiff's learning disability qualifies as a disability under the ADA and that plaintiff was qualified to perform the essential functions of his job as a forklift driver. This leaves the third element of his claim—whether defendant

discriminated against him because of his disability. Although plaintiff does not identify specifically the basis for his discrimination claim, the court infers that plaintiff is contending that defendant unfairly relied upon a qualification standard (the math test), which precluded him from moving into the permanent forklift position because of his learning disability. As such, plaintiff's allegations are sufficient to state an ADA claim at this early stage, particularly since plaintiff's allegations suggest that the test was unnecessary given his satisfactory performance of the same job, albeit on a seasonal basis and at a lower salary, without having taken the test. Accordingly, plaintiff will be permitted to proceed with his claim under the ADA.

## II. Title VII Sexual Harassment and Retaliation Claims

Although plaintiff does not cite any particular law as the basis for his remaining discrimination claims, the court construes his complaint as alleging claims for sexual harassment and retaliation under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. §§ 2000e - 2000e-17. Title VII prohibits employers from harassing employees "because of [their] sex." *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 78–79 (1998); 42 U.S.C. § 2000e-2(a)(1). Recently, the Court of Appeals for Seventh Circuit held that the statute prohibits sexual orientation discrimination as well. *Hively v. Ivy Tech Community College of Indiana*, 853 F.3d 339 (7th Cir. 2017).

Title VII also "protects persons not just from certain forms of job discrimination [and harassment], but from retaliation for complaining about the types of discrimination it prohibits." *Miller v. American Family Mut. Ins. Co.*, 203 F.3d 997, 1007 (7th Cir. 2000);

42 U.S.C. § 2000e-3(a). To prevail on a claim of retaliation, the plaintiff must prove that he: (1) opposed an unlawful employment practice under Title VII; (2) was the object of an adverse employment action; and (3) that the adverse employment action was caused by his opposition to the unlawful employment practice. *Cullom v. Brown*, 209 F.3d 1035, 1040 (7th Cir. 2000).

Plaintiff alleges specifically that his coworkers discriminated against and harassed him on the basis of his perceived sexual orientation. He also claims that defendant retaliated against him by refusing to reschedule the math test after he complained about this discrimination and harassment. At the pleading stage, these allegations are sufficient to state claims of discrimination and retaliation under Title VII. Therefore, plaintiff may proceed with those claims as well.

## ORDER

IT IS ORDERED that:

1. Plaintiff Patrick Wayne Barrett, Sr. is GRANTED leave to proceed on his claims that defendant Seneca Foods discriminated against him on the basis of (a) his disability in violation of the Americans with Disabilities Act and (b) sexual orientation in violation of Title VII. Barrett is DENIED leave to proceed on a claim of age discrimination.

2. For the time being, plaintiff must send defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendant. The

court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to the defendant's attorney.

3. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

4. The clerk's office will prepare summons and the U.S. Marshal Service shall affect service upon defendant.

5. If plaintiff changes his address while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendant or the court is unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 21st day of July, 2017.

BY THE COURT:

/s/

WILLIAM M. CONLEY  
District Judge