

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ELAINE MCALEER,  
Plaintiff,

vs.

WEST BRANCH REGIONAL AUTHORITY,  
Defendant.

: No. 19-0190

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: CIVIL ACTION - LAW

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: *Motion for Summary Judgment*

**ORDER**

AND NOW, following argument held May 5, 2020, on Defendant West Branch Regional Authority's Motion for Summary Judgment, the Court hereby issues the following ORDER.

On January 23, 2019, Plaintiff Elaine McAleer ("Plaintiff") filed a Complaint in this Court alleging that on November 18, 2016, her employer, Defendant West Branch Regional Authority ("Defendant"), unlawfully terminated her due to her age. Plaintiff's Complaint raises claims under the Pennsylvania Human Relations Act ("PHRA"), Title VII of the Civil Rights Act of 1965 ("Civil Rights Act"), and the Age Discrimination in Employment Act of 1967 ("ADEA"). Defendant previously filed a Charge of Discrimination with the Pennsylvania Human Relations Commission ("PHRC") on May 25, 2017, and thereafter filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC") on July 23, 2018.

On February 14, 2020, Defendant filed a Motion for Summary Judgment, accompanied by a Brief in Support. Defendant seeks summary judgment on three bases. First, Defendant asserts that Plaintiff's Charge of Discrimination with the PHRC is time-barred for her failure to file her claim with the PHRC within 180 days of the occurrence of the alleged unlawful discriminatory practice.<sup>1</sup> Next, Defendant asserts that Plaintiff's Charge of Discrimination with the EEOC is time-barred for Plaintiff's failure to file her claim within 180 days of the occurrence of the alleged unlawful

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<sup>1</sup> 16 Pa. Code § 42.14(a) ("The complaint shall be filed within 180 days from the occurrence of the alleged unlawful discriminatory practice, but the computation of the 180 days does not include a period of time which is excludable as a result of waiver, estoppel or equitable tolling. If the alleged unlawful discriminatory practice is of a continuing nature, the date of the occurrence of the practice will be deemed to be any date subsequent to the occurrence of the practice up to and including the date upon which the unlawful discriminatory practice shall have ceased.").

discriminatory practice, or within 300 days should the Court determine that the PHRC Charge of Discrimination was already pending.<sup>2</sup> Both parties concede 180 days from the alleged last unlawful discriminatory practice, namely Plaintiff's termination on November 18, 2016, would fall on May 17, 2017. Finally, Defendant asserts that Plaintiff has failed to make a prima facie case for age discrimination, and avers that Defendant has met its burden by demonstrating a legitimate business reason for Plaintiff's termination, thereby justifying the Complaint's dismissal on summary judgment.

The Court first addresses whether Plaintiff's PHRA claim is time-barred. Within Plaintiff's Brief in Opposition of Motion for Summary Judgment, Plaintiff notes that she mailed her Charge of Discrimination via overnight delivery to the PHRC on May 15, 2017. However, despite this measure, the claim was not docketed by the PHRC until May 25, 2017, more than 180 days after the occurrence of the alleged unlawful discriminatory practice.

As Defendant correctly identifies within its Brief in Support, the Pennsylvania courts have generally deemed late filing to the PHRC as fatal to a PHRA claim:

To bring suit under the PHRA for a hostile work environment claim, a plaintiff must first file an administrative complaint with the PHRC within 180 days after the alleged act of discrimination. If a plaintiff fails to file a timely complaint with the PHRC, then he or she is precluded from judicial remedies under the PHRA. Pennsylvania courts have strictly interpreted this time requirement, and have repeatedly held that persons with claims that are cognizable under the Human Relations Act must avail themselves of the administrative process of the Commission or be barred from the judicial remedies authorized in Section 12(c) of the Act.<sup>3,4</sup>

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<sup>2</sup> 42 U.S.C. § 2000e-5(e)(1) ("A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.")

<sup>3</sup> *Yeager v. UPMC Horizon*, 698 F. Supp. 2d 523, 535 (W.D. Pa. 2010) (citations omitted) (quoting *Woodson v. Scott Paper Co.*, 109 F.3d 913, 925 (3d Cir.1997), *cert. denied* 522 U.S. 914 (1997)); see also

However, there are certain exceptions for late filings: “[t]he limits for filing under any complaint or other pleading under [the PHRA] shall be subject to waiver, estoppel and tolling.”<sup>5</sup> The three “principal, although not exclusive” situations in which equitable tolling may apply include instances when: 1) the defendant has actively misled the plaintiff; 2) the plaintiff has in some extraordinary manner been prevented from asserting his or her rights; or, 3) the plaintiff has timely asserted his or her rights, but mistakenly in the wrong forum.<sup>6</sup> Plaintiff in her Brief in Opposition asserts that equitable tolling should also encompass the common law “mailbox rule.” As applied by the Third Circuit, the mailbox rule establishes that “[i]f a document is properly mailed, the court will presume that the United States Postal Service delivered the document to the addressee in the usual time.”<sup>7</sup> However, a defendant may rebut this presumption with evidence of untimely receipt.<sup>8</sup>

The Court can find no precedent supportive of Plaintiff’s contention that her timely mailing her claim to the PHRC excuses untimely filing. The mailbox rule is not apposite to this case, as Plaintiff argues not that her claim was timely received by the PHRC, but rather that it was timely mailed via overnight delivery on May 15, 2020, although said mail may not have been timely delivered. In other words, evidence of a properly addressed, prepaid mailing will create a presumption of receipt, but evidence of receipt does not create an inverse presumption of timely mailing.<sup>9,10</sup> Plaintiff therefore

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*Vincent v. Fuller Co.*, 616 A.2d 969, 974 (Pa. 1992) (citations omitted) (“[P]ersons with claims that are cognizable under the Human Relations Act must avail themselves of the administrative process of the Commission or be barred from the judicial remedies authorized in Section 12(c) of the Act. This rule of ‘exhaustion of remedies’ has long been applied by the courts of this Commonwealth to claims under the Act. . . . By necessary implication, one who files a complaint with the Commission that is later found to be untimely cannot be considered to have used the administrative procedures provided in the Act. To hold otherwise would be to permit any complainant to bypass the administrative mechanism established by the legislature by merely allowing the Act’s limitation period to pass, filing a complaint that would inevitably be dismissed, and then commencing an action in court.”).

<sup>4</sup> Plaintiffs are similarly required to exhaust all administrative remedies when bringing discriminatory discharge claims under federal statute. This requires the timely filing of a claim with the EEOC.

<sup>5</sup> 43 P.S. § 962(e).

<sup>6</sup> *Shaver v. Corry Hiebert Corp.*, 936 F. Supp. 313, 316 (W.D. Pa. 1996).

<sup>7</sup> *Phila. Marine Trade Ass’n-Int’l Longshoremen’s Ass’n Pension Fund v. Comm’r*, 523 F.3d 140, 147 (3d Cir. 2008).

<sup>8</sup> *Id.* (citing *Hagner v. U.S.*, 285 U.S. 427(1932)).

<sup>9</sup> See e.g., *Szymanski v. Dotey*, 52 A.3d 289, 293 (Pa. Super. 2012) (“Documentary evidence of mailing or testimony from the author that a document was mailed may establish the presumption of receipt.”) (emphasis added).

<sup>10</sup> Pursuant to Pennsylvania common law, untimely filing of timely mailed documents will be excused under the “prisoner mailbox rules” for the filings of *pro se* incarcerated litigants; however, this rule

does not benefit from a common-law presumption in her favor. Further, even if the mailbox rule were applicable, Plaintiff's claims that the Charge of Discrimination was timely mailed to PHRC is supported solely by her own self-serving testimony, and lacks any documentary evidence, such as a USPS shipping receipt or tracking information. Given that Plaintiff's claim with the PHRC was not docketed until a week after the applicable statute of limitations for filing, the Court finds that Plaintiff's testimony alone is insufficient to establish that her assertion that the claim was timely mailed.<sup>11</sup> Therefore, the Court determines that equitable tolling is not applicable in this instance.

In summary, the Court determines that Plaintiff's PHRC claim was untimely filed and is not subject to equitable tolling.<sup>12</sup> Determining that Plaintiff claims under the PHRA, Civil Rights Act, and ADEA must be dismissed for her failure to exhaust all administrative remedies, the Court declines to address Defendant's arguments regarding the merits of Plaintiff's claim.

Pursuant to the foregoing Opinion, Defendant's Motion for Summary Judgment is GRANTED. Plaintiff's Complaint is DISMISSED IN ITS ENTIRETY.

IT IS SO ORDERED this 13<sup>th</sup> day of May 2020.

BY THE COURT,

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Eric R. Linhardt, Judge

ERL/cp

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acknowledges the limitations faced by incarcerated inmates and is distinguishable from the general mailbox rule. See e.g., *Kittrell v. Watson*, 88 A.3d 1091, 1096-97 (Pa. Commw. 2014) (discussing prisoner mailbox rule).

<sup>11</sup> Cf. *Phila. Marine Trade Ass'n-Int'l*, 523 F.3d at 152 (holding that a taxpayer may avail himself or herself of the common-law mailbox rule to prove timely mailing of a refund request so long as the taxpayer can produce circumstantial evidence beyond his or her own testimony that the tax document was mailed early enough to allow timely physical delivery).

<sup>12</sup> Further, even accepting as true that Plaintiff indicated on her filing with the PHRC that the claim should be dual—filed with the EEOC, the Court's finding that Plaintiff's PHRC claim was untimely filed and is not subject to equitable tolling necessitates a finding that Plaintiff's EEOC claim was similarly untimely filed.