APPENDIX

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[ENTERED: November 8, 2018]

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-5306

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 08, 2018
DEBORAH S. HUNT, Clerk

FAYE RENNELL HOBSON,

Plaintiff-Appellant,

v.

JAMES MATTIS, Secretary, Department of Defense,

Defendant-Appellee,

and

STEVEN WON, et al.,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

ORDER

Before: GRIFFIN and KETHLEDGE, Circuit Judges; HOOD, District Judge.*

Faye Rennell Hobson, a pro se Tennessee resident, appeals from the district court's orders dismissing her complaint against Secretary of Defense James Mattis and several employees of the United States Department of Defense and denying reconsideration of that decision. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Hobson, employed by the Department of Defense, alleged that she was the victim of discrimination under Title VII of the Civil Rights Act (Title VII) and under the Americans with Disabilities Act (ADA) when she was initially denied leave under the Family Medical Leave Act (FMLA), 29 U.S.C. §§ 2601-2654. She also argued that the defendants improperly denied her benefits under the FMLA, and made a brief, general reference to a violation of her rights under 42 U.S.C. § 1981. Hobson alleged that the defendants denied a request for leave in October 2014 in retaliation for her having filed several discrimination complaints against her employer, the Department of Defense Education Activity (DoDEA). She believed the defendants also denied her FMLA request because they erroneously suspected that she was using medical leave to seek employment at the Fort

* The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

Campbell Schools in Ft. Campbell, Kentucky, where her retired husband lives. Hobson was eventually granted leave without pay (LWOP) for the requested time, but it was not classified as FMLA leave.

The individual defendants moved to dismiss the complaint because Title VII and the ADA prohibited only employers from discriminating against employees and thus only the Department of Defense, represented by its Secretary, was properly named. The district court granted the motion. Mattis then filed a motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). The district court granted the motion because Hobson failed to timely file her Title VII action in the district court and failed to exhaust administrative remedies regarding her ADA claim. The court broadly construed Hobson's complaint to include allegations that the defendant interfered with her statutory right to leave under the FMLA, and it permitted this claim to go forward. Finally, the court dismissed Hobson's potential claim under § 1981 because any claims of unconstitutional discrimination by the federal employee were preempted by Title VII. *See Brown v. Gen. Servs. Admin.*, 425 U.S. 820, 835 (1976).

Mattis subsequently filed a motion to dismiss the FMLA claim pursuant to Federal Rule of Civil Procedure 12(b)(1), arguing that the court lacked jurisdiction to consider it because Hobson, as a federal employee, had no private right of action under the FMLA. The district court granted Mattis's motion, dismissed the case, and later denied reconsideration.

On appeal, Hobson challenges the district court's dismissal of (a) her Title VII claim as untimely, (b) her ADA claim as unexhausted, and (c) her FMLA claim for lack of jurisdiction.

Waived Claims

Although pro se filings should be liberally construed, "pro se parties must still brief the issues advanced and reasonably comply" with the briefing standards set forth in Federal Rule of Appellate Procedure 28. *Bouyer v. Simon*, 22 F. App'x 611, 612 (6th Cir. 2001) (citing *McNeil v. United States*, 508 U.S. 106, 113 (1993)); *see also* Fed. R. App. P. 28(a)(8). Because Hobson has developed arguments regarding only her Title VII and ADA claims, all other claims presented in her complaint have been abandoned. *See Dillery v. City of Sandusky*, 398 F.3d 562, 569 (6th Cir. 2005).

Dismissal for Failure to State a Claim

We review de novo the district court's dismissal of a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). *McCormick v. Miami Univ.*, 693 F.3d 654, 658 (6th Cir. 2012). To survive a motion to dismiss under this rule, Hobson's "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the allegations in the complaint are true." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). However, we need not assume that all of her legal conclusions, or legal conclusions that appear to be stated as facts, are true as well. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Threadbare recitals

of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679 (alteration in original) (quoting Fed. R. Civ. P. 8(a)(2)).

Underlying Facts and Relevant Procedural History

Hobson was a teacher at the Camp Humphreys Army Base in South Korea and has been an employee of the DoDEA since 2002, with a break in service from 2008 to 2010. When she requested FMLA leave in October 2014 for medical reasons, her school superintendent initially denied the request because she did not attach the necessary medical documentation. Hobson concedes, however, that leave was eventually granted. Hobson claimed that the defendants interfered with her right to FMLA leave by requiring her to submit four medical certifications before leave was approved and also misclassified her leave as LWOP rather than FMLA leave. Hobson states that, if her request had been properly approved as FMLA leave, she would have been eligible for leave donations from her colleagues. However, a letter dated December 2014 reveals that, after her FMLA leave was approved, she became eligible for donations of leave time through the Voluntary Leave Transfer Program for federal educators.

Hobson filed an Equal Employment Opportunity Commission (EEOC) complaint in

December 2014, alleging discriminatory retaliation, but she did not raise any claim under the ADA. From March 2015 through May 2015, the agency thoroughly investigated her claims of retaliation and interference with her request for FMLA leave and, in June 2015, Hobson requested a final agency decision. The DoDEA issued a decision on August 7, 2015, determining that no retaliatory discrimination had occurred and notifying Hobson that she could either appeal that decision within thirty days or file a civil action within ninety days after receiving the decision.

In a letter to the DoDEA, Hobson responded that she had received the agency's final decision on August 17, 2015, but that she would not be filing an appeal with the EEOC or, at that time, filing a civil suit. In the letter, Hobson stated that she "reserve[d] the right to file suit, if this matter [was] not properly handled by the appropriate agency," and would also be contacting the Department of Labor and the Office of Personnel Management about the matter. She reiterated that she would not be appealing "through the inappropriate channels listed by DoDEA" in its letter but that she would be filing a complaint "with the appropriate agency."

Title VII Claim

Under Title VII and under the ADA, a plaintiff must commence a civil action within ninety days of receiving a final agency decision from the EEOC. *See* 42 U.S.C. § 2000e-5(f)(1); 29 C.F.R. § 1614.407. Hobson does not deny that her complaint, filed in April 2016, was filed beyond

ninety days from the date she received the final agency decision, on August 17, 2015. She argues that the district court should have applied equitable tolling to consider the complaint as timely because the agency misled her into believing that she could still file her complaint beyond the ninety days; she stresses that the agency failed to correct her after she had informed the agency that she asserted, in her response to the agency's final decision, that she intended to postpone this filing.

In Title VII cases, the statutory time frame for filing suit in federal court after receiving a final decision and "right-to-sue" letter is not a jurisdictional requirement but, instead, is a timing requirement similar to a statute of limitations, subject to waiver, estoppel, and equitable tolling. *See Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982); *see also Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95 (1990); *Mitchell v. Chapman*, 343 F.3d 811, 820 (6th Cir. 2003). When the facts are undisputed, as in this case, we review de novo a district court's failure to apply the doctrine of equitable tolling. *See Dunlap v. United States*, 250 F.3d 1001, 1007 n.2 (6th Cir. 2001). That relief is "granted only sparingly," *Amini v. Oberlin Coll.*, 259 F.3d 493, 497 (6th Cir. 2001), and only in "compelling circumstances which justify a departure from established procedures." *Puckett v. Tenn. Eastman Co.*, 889 F.2d 1481, 1488 (6th Cir. 1989). We consider five non-exhaustive factors when determining whether equitable tolling is appropriate: (1) "lack of notice of the filing requirement," (2) "lack of constructive knowledge of the filing requirement," (3) "diligence in pursuing

one's rights," (4) "absence of prejudice to the [defendant]," and (5) "the [plaintiff's] reasonableness in remaining ignorant of the particular legal requirement for filing [her] claim." *Dunlap*, 250 F.3d at 1008.

Here, the agency provided clear instructions about the deadlines and options for Hobson to challenge the agency's decision. Hobson chose to simply ignore these instructions and the proper procedure and instead followed her own devised procedure, notifying the agency of her intent to do so. She cannot now rely on equitable tolling to excuse her failure to comply with the deadlines that the agency's decision clearly explained to her, nor can she argue that the agency misled her into believing that her intent to postpone filing a civil complaint would be acceptable. To the extent that Hobson implies that she was wholly unaware of the filing requirements, "ignorance of the law alone is not sufficient to warrant equitable tolling." *Rose v. Dole*, 945 F.2d 1331, 1335 (6th Cir. 1991).

Hobson has not explained how she was diligent in her efforts to file a timely complaint, nor has she explained how the defendant would suffer no prejudice. Even if we assume that Hobson's delay in filing did not prejudice the DoDEA, lack of prejudice, standing alone, will not justify tolling. *See Allen v. Yukins*, 366 F.3d 396, 404 (6th Cir. 2004). We have observed that a seven-month delay in filing "suggests that equitable tolling is not appropriate" and have, in fact, deemed shorter delays too long. *Id.* Hobson's five-month delay suggests that equitable

tolling is inappropriate. Accordingly, equitable tolling was properly withheld in this case.

ADA Claim

The ADA prohibits discrimination against a "qualified individual on the basis of disability." 42 U.S.C. § 12112(a). The ADA defines discrimination to include, among other things, "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability." 42 U.S.C. § 12112(b)(5)(A). A plaintiff has the burden of establishing she is disabled as defined in the ADA. *Kleiber v. Honda of Am. Mfg., Inc.*, 485 F.3d 862, 869 (6th Cir. 2007). A plaintiff seeking to bring employment-discrimination claims under the ADA must first exhaust administrative remedies, and failure to exhaust properly is an appropriate basis for dismissal of an ADA action. *Mayers v. Sedgwick Claims Mgmt. Servs., Inc.*, 101 F. App'x 591, 593 (6th Cir. 2004) (citing *Irwin*, 498 U.S. at 96). To meet the exhaustion requirement, a federal employee such as Hobson "must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action." *Green v. Brennan*, 136 S. Ct. 1769, 1775 (2016).

Generally, our jurisdiction is "'limited to the scope of the EEOC investigation reasonably expected to grow out of the charge of discrimination.'" *Weigel v. Baptist Hosp. of E. Tenn.*, 302 F.3d 367, 380 (6th Cir. 2002) (quoting *EEOC v. Bailey Co.*, 563 F.2d 439, 446 (6th Cir. 1977)). However, "where facts

related with respect to the charged claim would prompt the EEOC to investigate a different, uncharged claim, the plaintiff is not precluded from bringing suit on that claim"; this forms the basis for the "expected scope of investigation" test. *Id.*

In her administrative complaint, Hobson failed to check the box indicating that she had a disability that was the basis of discriminatory acts. Moreover, Hobson failed to assert any facts that would support a claim of retaliation or failure to accommodate a disability, other than citing the medical documentation supporting her request for FMLA leave. Throughout the record, Hobson consistently refers either to a violation of her rights under the FMLA or Title VII discrimination. Accordingly, the agency construed her complaint as a charge of discrimination based on reprisal for filing several EEOC complaints against the DoDEA. Hobson's argument that an ADA claim was within the agency's "expected scope of investigation" is meritless, and thus Hobson failed to exhaust her administrative remedies for such a claim. *See Parry v. Mohawk Motors*, 236 F.3d 299, 309 (6th Cir. 2000).

Based on the above, we **AFFIRM** the district court's orders dismissing the complaint and denying reconsideration.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

[ENTERED: February 26, 2018]

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

FAYE RENNELL HOBSON,	)	
	)	
Plaintiff,	)	
	)	**NO. 3:16-cv-0074**
v.	)	**CHIEF JUDGE CRENSHAW**
	)	
RETIRED GENERAL JAMES MATTIS, Secretary, Department of Defense,	)	
	)	
Defendant.	)	

ORDER

Before the Court is a Report and Recommendation (Doc. No. 91) from the Magistrate Judge concerning Defendant's Motion to Dismiss for Lack of Jurisdiction under Federal Rule of Civil Procedure 12(b)(1) (Doc. No. 59.) Plaintiff has timely filed Objections. (Doc. No. 92.)

Plaintiff's Title VII, ADA, and § 1981 claims previously have been dismissed, leaving one remaining claim against Defendant Mattis in his official capacity for interference with Plaintiff's rights under the Family and Medical Leave Act ("FMLA"). (See Doc. No. 56.) In the Court's previous Order, it noted that the Defendant had not acknowledged the FMLA claim or moved to dismiss

it, making dismissal unwarranted at that juncture. (Id.) Defendant now seeks dismissal of the FMLA claim on jurisdictional grounds.

In a nutshell, Defendant's argument for dismissal of the FMLA claim is that the allegations of the Complaint establish that Plaintiff, as a Department of Defense teacher, is covered by Title II of the FMLA, which does not create a private right of action for federal employees (as opposed to Title I, which creates a private right of action for non-federal employees). Rather, Defendant argued, a federal employee covered by Title II must file an administrative grievance. The Magistrate Judge has examined this question, agreed, and, as a result, recommended that this Court find that it lacks subject-matter jurisdiction and dismiss the case. (Doc. No. 91 at 2-7.) The Court has reviewed this matter de novo and finds that the Magistrate Judge's analysis is correct.

Plaintiff appears to make three Objections. First, Plaintiff objects on the ground that she was granted Leave Without Pay ("LWOP") and that "LWOP is not the same as FMLA." (Doc. No. 92 at 1.) This objection is unclear. But to the extent that Plaintiff is arguing that her claim should be maintained because it is something other than an FMLA claim, this is without merit when viewed in light of the Complaint and the progression of this case. The first substantive sentence of the Complaint states: "October 16, 2014 Plaintiff submitted a requested to be placed on (LWOP) Leave Without Pay status under the (FMLA) Family and Medical Leave Act, which was not granted even though

Plaintiff provided an abundance of medical documentation." (Doc. No. 1 at ¶ 9.) The Complaint then contains explicit factual allegations related to the FMLA. (See id. at ¶¶ 12-15.) Finally, Count One of the Complaint focuses exclusively and explicitly on the Defendant's alleged FMLA violation. (See id. at ¶¶ 23-30.) Plaintiff has pursued this FMLA claim throughout the case. Indeed, in a recent filing made on January 3, 2018, Plaintiff asserted: "The above stated case is a clear violation of plaintiff's FMLA rights, it's not a rocket science. . . ." (Doc. No. 86 at 1.) This objection is therefore overruled.

Second, Plaintiff objects on the grounds that she has already responded to the motion to dismiss in great detail and "nothing has changed." (Id.) Plaintiff refers the Court to multiple prior filings and states that "her stance and submission of facts remain firm and there are no new details." (Id. at 2.) This is insufficient to form the basis of a valid objection to the Report and Recommendation. Making general objections or vaguely pointing in the direction of prior filings do not constitute specific objections. See Cowherd v. Million, 380 F.3d 909, 912 (6th Cir. 2004) (noting that the Sixth Circuit "disfavors allowing parties to incorporate prior arguments into their objections to a magistrate judge's report and stating that "parties who fail to make specific objections do so at their own peril."); Neuman v. Rivers, 125 F.3d 315, 323 (6th Cir. 1997) (rejecting reference to prior arguments in objections because "reference was not sufficiently specific to satisfy the standards announced by [[the Sixth Circuit]"). Here, Plaintiff's general statements do not focus on any specific areas on disagreement and serve no helpful

purpose in directing the attention of the Court. Accordingly, this objection is also overruled.

Third, Plaintiff appears to – briefly – make a sort of judicial corruption argument by suggesting that the Magistrate Judge (1) is somehow in league with the Defendant and (2) is retaliating against Plaintiff for filing a complaint against U.S. District Judge Aleta Trauger in another case. (Doc. No. 92 at 2.) However, Plaintiff offers no evidence whatsoever to support these bald accusations. The Court has carefully reviewed the docket in this case and there is no sign of collusion between any of the judges that has handled it and any party. Nor is there any evidence that the Magistrate Judge's apt Report and Recommendation is based upon anything other than the alleged facts of this case and the applicable law. This unsupported objection is therefore overruled.[1]

The Court has one final observation. The Plaintiff has made numerous filings in this case that suggest that she believes motion practice is inappropriate and that Defendants should be required to answer complaints. (See, e.g., Doc. No. 84.) For example, the Plaintiff has filed three requests for entry of default, and in the third of these, filed while this motion to dismiss was pending, she stated: "Rules 8 and 12 of the Federal Rules of Civil Procedure are clear. Defendant is required to file an answer, but has not, and therefore is legally deemed to have admitted the allegations of

[1] Following the filing of this Objection, the Magistrate Judge (in a reasonable decision) elected to recuse herself from this case. As discussed here, however, the Court is satisfied with the Report and Recommendation and will proceed.

the Complaint. Motions do not replace answers." (Doc. No. 88 at 1.) It has been repeatedly explained to the Plaintiff that the filing of a motion to dismiss is an appropriate response to a complaint and tolls the time for the filing of an answer. (See, e.g., Doc. No. 90; Fed. R. Civ. P. 8) This Court does not see any indication that the Federal Rules of Civil Procedure have been abused here.

Accordingly, the Report and Recommendation (Doc. No. 91) is **APPROVED AND ADOPTED**. The Motion to Dismiss (Doc. No. 59) is **GRANTED** and Plaintiff's remaining FMLA claim is **DISMISSED** for lack of subject matter jurisdiction. This is a final order and the clerk shall close the case.

IT IS SO ORDERED.

/s/ Waverly D. Crenshaw, Jr.
WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE

[ENTERED: February 13, 2018]

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILE DIVISION

FAYE RENNELL HOBSON,	
Plaintiff,	Case No. 3:16-cv-00774
v.	Chief Judge Crenshaw
RETIRED GENERAL JAMES MATTHIS, Secretary, Department of Defense,[1]	Magistrate Judge Newbern
Defendant.	

To: The Honorable Waverly D. Crenshaw, Jr., Chief Judge

REPORT AND RECOMMENDATION

Pending in this civil action is a motion to dismiss for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) filed by Defendant James Mattis, Secretary of the United States Department of Defense (hereinafter, the Department). (Doc. No. 59.) The motion is accompanied by a memorandum (Doc. No. 60) and

[1] By order entered May 2, 2017, the Court took judicial notice that Retired General James Mattis was confirmed as Secretary of Defense on January 20, 2017, and was therefore properly substituted as defendant in this action by operation of Fed. R. Civ. P. 25(d). (Doc. No. 55, PageID# 642.)

supporting exhibits (Doc. No. 61). In response, Hobson, who appears pro se, has filed a memorandum (Doc. No. 65), her own declaration (Doc. No. 67), and other materials supporting her position (Doc. No. 64, 66, 68).

For the following reasons, the Magistrate Judge finds that the Court lacks jurisdiction over the action's remaining FMLA claim and therefore RECOMMENDS that the Department's motion to dismiss be GRANTED and the case be DISMISSED.

I. Background

The following facts are taken from the allegations of Hobson's complaint:

Hobson's claims stem from her employment by the United States Department of Defense Education Activity (DoDEA) on Camp Humphreys Army Base in South Korea as a teacher at the base's Humphreys High School. (Doc. No. 1, PageID# 1 ¶ 1; PageID# 3 ¶ 10; Doc. No. 16-1, PageID# 70.[2]) Hobson's husband retired from the military at Fort Campbell Army Base in Clarksville, Tennessee, and Hobson has unsuccessfully sought employment at Fort Campbell schools since relocating to the United States.[3] (Doc.

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[2] The Court has found that the documents contained in Doc. No. 16 appear to "be intended to supplement the Complaint." (Doc. No. 54, PageID# 636–37.) They are construed as part of Hobson's complaint for purposes of this motion.

[3] The timing of Hobson's relocation to the United States is not clear from her complaint. She states that she began employment with DoDEA in August 2002 and began working in Korea in August 2010. Hobson states that she "has been

No. 1, PageID# 3 ¶ 11.) In October 2014, Hobson submitted a request for leave without pay under the FMLA. (*Id.* at PageID# 3 ¶ 9.) The request for leave was initially denied on grounds that it lacked sufficient supporting documentation. Hobson filed an internal complaint alleging that the denial was in retaliation for numerous employment discrimination claims she has filed against the Department. (*Id.* at ¶¶ 9, 11.) Hobson also believes leave was denied because Department employees think she is "using her medical condition to seek employment at Fort Campbell Schools." (*Id.* at PageID# 4 ¶ 12.)

Hobson concedes that she was ultimately granted FMLA leave. (*Id.* at PageID# 4 ¶ 12.) However, she states that "DoDEA misclassified her leave as Non-FMLA," which resulted in "a loss in benefits and entitlements." (*Id.* at PageID# 5, ¶ 26.) Specifically, Hobson alleges that only an employee on FMLA leave can accept donations of leave from co-workers and that the designation of her unpaid leave as non-FMLA denied her that benefit. *Id.* Hobson also appears to claim injury from being required to submit four medical certifications before her FMLA leave was granted. (*Id.* at PageID# 4, ¶ 13.)

Hobson filed an administrative complaint with the Department of Labor (DOL) asserting these alleged FMLA violations. (*Id.* at PageID# 4, ¶ 15.) The DOL responded that its enforcement authority is limited to claims under Title I of the FMLA and Hobson's status as "a federal employee who may be

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employed at Humphreys High School since 2013– present (2016)." (Doc. No. 1, PageID# 3 ¶ 10.)

covered by the provisions of Title II" of the FMLA required her to seek enforcement of such rights from the Office of Personnel Management (OPM). (Doc. No. 16-19, PageID# 400– 01.) By subsequent letter, the DOL "confirmed that [its] enforcement authority under Title I of the FMLA excludes any federal officer or employee covered under subchapter V of Chapter 63 of Title 5 of the United States Code and subject to regulations at 5 C.F.R. Part 630," and that it therefore had "no authority to enforce the provisions of the FMLA in [Hobson's] case." (*Id.* at PageID# 407.) Hobson states that, when she contacted OPM, they referred her back to DOL. (Doc. No. 1, PageID# 4, ¶ 17.)

Hobson filed this lawsuit a few months later, naming Mattis in his official capacity as Secretary of the Department of Defense and six individual defendants. The complaint explicitly asserts discrimination claims under Title VII and the Americans with Disabilities Act (ADA), but also includes allegations regarding Hobson's rights under the FMLA and 42 U.S.C. § 1981. In separate orders entered on May 2, 2017, the Court granted a motion to dismiss all claims against the individual defendants (Doc. No. 54) and granted the Department's motion to dismiss Hobson's Title VII, ADA, and § 1981 claims (Doc. No. 56). The Court construed the allegations of Hobson's pro se complaint broadly and found one claim remaining against Mattis in his official capacity. The Court characterized that claim as one for "interference with the plaintiff's rights under the FMLA by improperly denying leave in reprisal for the plaintiff's having previously engaged in activity

protected by Title VII." Noting that the Department had not acknowledged the FMLA claim or moved to dismiss it, the Court found dismissal unwarranted "at this juncture." (*Id.* at PageID# 651.) The Department now seeks dismissal of the FMLA claim on jurisdictional grounds.

II. Legal Standard

Whether a court has subject-matter jurisdiction is a "threshold determination" in any action. *Am. Telecom Co. v. Republic of Lebanon*, 501 F.3d 534, 537 (6th Cir. 2007). When a court's jurisdiction is challenged through a motion to dismiss under Rule 12(b)(1), the plaintiff has the burden of showing that jurisdiction exists. *Golden v. Gorno Bros., Inc.*, 410 F.3d 879, 881 (6th Cir. 2005). A motion to dismiss challenging subject-matter jurisdiction may make a facial attack or a factual attack. *Wayside Church v. Van Buren Cnty.*, 847 F.3d 812, 816 (6th Cir. 2017) (quoting *Carrier Corp. v. Outokumpu Oyj*, 673 F.3d 430, 440 (6th Cir. 2012)). A facial attack challenges the sufficiency of the plaintiff's complaint and, like a motion under Rule 12(b)(6), requires the Court to take all of the complaint's allegations as true. *Id.* A factual attack challenges the plaintiff's allegations supporting jurisdiction and requires the court "to 'weigh the conflicting evidence to arrive at the factual predicate that subject-matter [jurisdiction] does or does not exist.'" *Id.* at 817 (quoting *Gentek Bldg. Prods. v. Sherwin-Williams Co.*, 491 F.3d 320, 330 (6th Cir. 2007)). In reviewing a factual challenge, "a trial court has wide discretion to allow affidavits, documents, and even a limited evidentiary hearing to

resolve disputed jurisdictional facts." *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990).

Here, the Department primarily asserts a facial challenge to the Court's jurisdiction. It argues that the allegations of Hobson's complaint establish that she is covered by Title II of the FMLA and, because that statute does not contain a private right of action, subject-matter jurisdiction over Hobson's claim does not exist. The Department also makes a factual challenge that Hobson ultimately received FMLA leave and therefore has not stated a claim for denial of FMLA benefits. The Department and Hobson have filed declarations and related exhibits in support of their briefing of that challenge. (Doc. Nos. 61, 67.) Because the Department's facial challenge defeats the Court's jurisdiction, it need not weigh the parties' competing factual claims.

III. Analysis

The Department argues that the Court lacks subject-matter jurisdiction because Title II of the FMLA does not provide a private right of action for federal employees. "The doctrine of sovereign immunity shields the United States from lawsuits" unless Congress expressly waives that immunity by statute. *Jackson v. United States*, 751 F.3d 712, 716 (6th Cir. 2014); *Munaco v. United States*, 522 F.3d 651, 652–53 (6th Cir. 2008) ("It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction."). The United States' sovereign immunity "extends to agencies of the United States or

federal officers acting in their official capacities." *Muniz-Muniz v. U.S. Border Patrol*, 741 F.3d 668, 671 (6th Cir. 2013) (internal quotation marks omitted). Absent a statutory waiver of that immunity and authorization of a private right of action, "a court is without subject matter jurisdiction over claims against federal agencies or officials in their official capacities." *Id.* (citing *Reed v. Reno*, 146 F.3d 392, 397–98 (6th Cir. 1998)).

Title I and Title II of the FMLA are "basically identical in terms of the *substantive* rights provided for employees." *DeJesus v. Geren*, No. 3:08-CV-0043, 2008 WL 2558009, at *10 (M.D. Tenn. June 23, 2008). They "differ markedly in one critical respect: Title I explicitly provides a private right of action for employees who suffer violations under the Act, but Title II does not." *Id.* (comparing 29 U.S.C. § 2617(a) with 5 U.S.C. § 6387). "Instead of bringing a civil action, a federal employee covered by Title II of the FMLA seeking to redress a violation of the FMLA must file an administrative grievance." *Sutherland v. Bowles*, No. 94-71570, 1995 WL 367937, at *2 (E.D. Mich. Jan. 17, 1995). For this reason, a court must dismiss a plaintiff's claims under the FMLA for lack of subject-matter jurisdiction if she is covered by Title II instead of Title I. *See, e.g.*, *Burg v. U.S. Dep't of Health and Human Servs.*, 387 F. App'x 237, 240 (3d Cir. 2010); *Russell v. U.S. Dep't of the Army*, 191 F.3d 1016, 1019 (9th Cir. 1999); *Mann v. Haigh*, 120 F.3d 34, 37 (4th Cir. 1997); *Doucette v. Johnson*, No. CV 16-11809, 2017 WL 840406, at *3 (E.D. Mich. Mar. 3, 2017); *Mulvey v. Perez*, No. 3:14-cv-1835, 2015 WL 5697318, *3 (M.D. Tenn. Sept. 28, 2015);*Davis v. Thompson*, 367 F. Supp. 2d 792, 800

(D. Md. 2005); *Sullivan-Obst v. Powell*, 300 F. Supp. 2d 85, 99 (D.D.C. 2004).

Title I excludes from its definition of eligible employees "any Federal officer or employee covered under subchapter V of chapter 63 of Title 5 (FMLA Title II)." 29 U.S.C. § 2611(2)(B)(i). Department teachers are included in Title II, and thus excluded from Title I, when they have completed twelve months of service.[4] 5 U.S.C. § 6381(1). The facts alleged in Hobson's complaint, construed in her favor, establish that she is a Title II employee.

Hobson's complaint repeatedly states that she is a DoDEA employee and identifies the Department as her employer. (Doc. No. 1.) Hobson states that she worked for the Department between 2002 and 2008, resumed her employment in 2010, and "has been employed at Humphreys High School since 2013–present (2016)." (Doc. No. 1, PageID# 3 ¶ 10.) Hobson thus served as a Department teacher as defined by 20 U.S.C. § 901 and held that position for more than twelve months. Accordingly, Hobson's complaint establishes on its face that she is a Title II employee under 5 U.S.C. § 6381(1). Because the FMLA provides no private right of action for

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[4] The FMLA defines Department teachers' status through a somewhat-circuitous route of nested statutes. Department teachers are included in the definition of federal employees under 20 U.S.C. § 901. They are excluded from federal provisions regarding annual and sick leave under 5 U.S.C. § 6301(2)(B)(ix), but, through that provision, are specifically included as federal employees for purposes of the FMLA after completing twelve months of service. 5 U.S.C. § 6381(1).

Hobson's claim, the Court lacks subject-matter jurisdiction and must dismiss this case.

IV. Recommendation

The Magistrate Judge RECOMMENDS that the Department's motion to dismiss be GRANTED and that this case be DISMISSED for lack of subject-matter jurisdiction.

Any party has fourteen (14) days after being served with this Report and Recommendation in which to file any written objections to it with the District Court. Any party opposing said objections shall have fourteen (14) days after being served with a copy thereof in which to file any responses to said objections. Fed. R. Civ. P. 72(b)(2). Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of the matters disposed of therein. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir. 2004).

ENTERED this 13th day of February, 2018.

/s/ Alistair E. Newbern
ALISTAIR E. NEWBERN
United States Magistrate Judge

[ENTERED: May 2, 2017]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FAYE R. HOBSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 3:16-cv-0774**
	)	
RETIRED GENERAL JAMES MATTIS, Secretary, Department of Defense	)	**Judge Aleta A. Trauger**
	)	
Defendant.	)	

ORDER

Before the court is the remaining defendant's Motion to Dismiss. (Doc. No. 35.) For the reasons discussed in the accompanying Memorandum, the court **GRANTS** the motion to dismiss the plaintiff's claims under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e *et seq.*, and the Americans With Disabilities Act, 42 U.S.C. § 12101 *et seq.*

However, the Complaint also states a claim under the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 *et seq*. The defendant's motion does not address the plaintiff's FMLA claim, and it remains pending.

This case is referred back to the magistrate judge for further handling under the original referral order (Docket No. 4).

It is so **ORDERED**.

/s/ Aleta A. Trauger
ALETA A. TRAUGER
United States District Judge

[ENTERED: May 2, 2017]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FAYE R. HOBSON, Plaintiff,	)	
	)	Case No.
v.	)	3:16-cv-0774
	)	Judge
RETIRED GENERAL JAMES MATTIS, Secretary, Department of Defense, Defendant.	)	Aleta A. Trauger

MEMORANDUM

Before the court is the remaining defendant's Motion to Dismiss Under 12(b)(6). (Doc. No. 35.) For the reasons discussed herein, the court will grant the motion to dismiss the plaintiff's claims under Title VII of the Civil Rights Act ("Title VII"), 42 U.S.C. § 2000e *et seq.*, and the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.* However, because the motion does not address the plaintiff's claim under the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 *et seq.*, the court will not dismiss this action in its entirety.

I. Factual and Procedural Background

The plaintiff filed her Complaint initiating this action on April 22, 2016. (Doc. No. 1.) In addition, shortly after service of the Complaint on all defendants, the plaintiff filed a document titled "Index Complaint of FMLA Denial's [sic] and Documentation" (Doc. No. 16), to which are attached approximately 350 pages of exhibits, comprising the underlying administrative record and other documents. (Doc. Nos. 16-1 through 16-20.) It appears that this filing was intended to supplement the Complaint.

According to the allegations in the Complaint, the plaintiff resides in Montgomery County, Tennessee. She is employed by the Department of Defense Education Activity ("DoDEA") as a teacher at a U.S. overseas school operated on Camp Humphreys Army Base in South Korea. In October 2014, she requested leave without pay under the FMLA due to personal medical problems. She claims that she was denied the requested leave, at least initially. She believes that the denial of FMLA leave was in retaliation for her having previously filed discrimination complaints against the agency. (Compl. ¶ 9.) She also alleges that she was denied FMLA leave "because of Agency employees' belief that Plaintiff is using her medical condition to seek employment at Fort Campbell Schools." (Compl. ¶ 12.) She concedes that, eventually, "DoDEA Korea District Superintendent Dr. Judith J. Allen granted leave without pay for the requested time." (Compl. ¶ 26.) The plaintiff complains, however, that the leave was not classified as FMLA leave, as a result of

which she suffered a loss in benefits and entitlements. (*Id.*)

On December 15, 2015, the plaintiff filed an administrative complaint against the DoDEA alleging that she had been denied FMLA leave based on her previous complaints of race discrimination and retaliation. (Compl. ¶ 9; *see also* Complaint of Discrimination, Doc. No. 16- 3.) She was advised by letter dated January 7, 2015 that the complaint had been accepted for investigation. (Compl. ¶ 9; Jan. 7, 2015 Letter, Doc. No. 16-6, at 10–12.) The complaint was investigated from March through May 2015. On June 15, 2015, the plaintiff requested a Final Agency Decision ("FAD"). (Compl. ¶ 9; June 15, 2015 Letter, Doc. No. 16-5, at 3.) The DoDEA issued the FAD on August 7, 2015. (FAD, Doc. No. 16-5, at 13–21.) The plaintiff received the FAD on August 17 or 18, 2015. (Compl. ¶ 9; *see also* Pl.'s Resp. & Rebuttal ¶ 3, Doc. No. 41.)

The plaintiff filed her Complaint in this court on April 22, 2016, expressly asserting claims under Title VII (Compl. Count One, ¶¶ 23–30) and the ADA (Compl. Count Two, ¶¶ 31– 35). As indicated above, however, the Complaint also contains factual allegations and other statements indicating that the plaintiff intends to assert claims under the FMLA. (*See* Compl. ¶¶ 9, 36a–36f.) The Complaint also references 42 U.S.C. § 1981, but without expressly setting forth a factual or legal basis to support a claim under § 1981.

The court previously dismissed all claims asserted against the individual defendants named in

the Complaint. Accordingly, what remains are claims against the Secretary of the Department of Defense in his official capacity.

Now pending is the defendant's Motion to Dismiss (Doc. No. 35), filed with a supporting Memorandum (Doc. No. 36), and the Declaration of William Suddeth (Doc. No. 37). Attached to the Sudduth Declaration are parts of the underlying administrative record that the plaintiff already submitted, including the plaintiff's Formal Complaint of Discrimination (Doc. No. 37-2) and the FAD (Doc. No. 37-1), as well as documentation of the plaintiff's agency appeals in other administrative actions (Doc. Nos. 37-3, 37-4, 37-5). The plaintiff has filed her Response in opposition to the defendant's motion (Doc. No. 40) and a Rebuttal to Sudduth's Declaration (Doc. No. 41).

II. Standard of Review

The defendant's motion is filed under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Rule 12(d) provides that, if the moving party presents and the court relies on matters outside the pleadings, "the motion [under Rule 12(b)(6)] must be treated as one for summary judgment and disposed of as provided in Rule 56." Fed. R. Civ. P. 12(d). The Sixth Circuit has clarified the scope of what the court may consider without reaching "matters outside of the pleadings." Generally, while a plaintiff is not required to attach to the complaint documents upon which her action is based, under the Rules, "[a] copy of any written instrument which is an exhibit to a pleading . . . a part thereof for all purposes." Fed. R.

Civ. P. 10(c). In addition, "when a document is referred to in the pleadings and is integral to the claims, it may be considered without converting a motion to dismiss into one for summary judgment," even if the document was filed by the defendant rather than by the plaintiff. *Commercial Money Ctr., Inc. v. Ill. Union Ins. Co.*, 508 F.3d 327, 335–36 (6th Cir. 2007). Courts may also "take judicial notice of the administrative record reflecting plaintiff's exhaustion of administrative remedies without converting the motions into ones for summary judgment." *Allen v. Shawney*, No. 11-cv-10942, 2013 WL 2480658, at *13 (E.D. Mich. June 10, 2013). *See Lockett v. Potter*, 259 F. App'x 784, 786 (6th Cir. 2008) (affirming the district court order granting the defendant's motion to dismiss for failure to exhaust).

The court concludes that it is appropriate to consider the plaintiff's agency complaint as well as the FAD without converting the present motion into one for summary judgment. Both of these documents were submitted by the plaintiff as a supplement to her pleading, and she refers to both of them in her Complaint.

Accordingly, the standard applicable to Rule 12(b)(6) motions applies. Under that standard, the court must accept as true all of the allegations contained in the complaint and construe the complaint liberally in favor of the *pro se* plaintiff. *Kottmyer v. Maas*, 436 F.3d 684, 688 (6th Cir. 2006). Although a complaint does not need to contain detailed factual allegations, the plaintiff must provide the grounds for her entitlement to relief, and this obligation "requires more than labels and

conclusions, and a formulaic recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (applying *Twombly*). Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Twombly*, 550 U.S. at 557. To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Id.* at 570.

III. Discussion

The defendant argues that the plaintiff's claims under Title VII must be dismissed based on the statute of limitations and that any claims under the ADA must be dismissed for failure to exhaust. In her Response, the plaintiff does not argue that she fully exhausted her claims or that the deadline for filing her civil lawsuit should be equitably tolled. Rather, she argues that, as a resident of Clarksville, Tennessee, she is entitled to bring cases before the United States District Court for the Middle District of Tennessee in Nashville. She states: "When the Plaintiff is provided or granted the option to present a case before the Civil Court vs. the EEOC, Plaintiff will always select the Federal Civil Court." (Doc. No. 37, at 3.)

She also faults the defendant for failing to notify her that the FMLA has a three-year statute of limitations. The court understands her to be arguing that her FMLA claim is not barred.

A. Title VII Administrative Filing Requirements

Exhaustion of administrative requirements is a precondition to filing a Title VII suit. *Lockett v. Potter*, 259 F. App'x 784, 786 (6th Cir. 2008); *McFarland v. Henderson*, 307 F.3d 402, 406 (6th Cir. 2002). As the Sixth Circuit has recognized, administrative exhaustion requirements for federal employees include the following steps: (1) consultation with an EEO counselor within forty-five days of the allegedly discriminatory incident, 29 C.F.R. § 1614.105(a)(1); (2) filing an individual complaint of discrimination with the allegedly discriminatory agency, 29 C.F.R. § 1614.106(a); and (3) receipt of an FAD, 29 C.F.R. § 1614.110(a). *See Lockett*, 259 F. App'x at 786 (listing steps). Within thirty days after receiving the FAD, the employee *may* file a discretionary appeal to the Equal Employment Opportunity Commission ("EEOC"). 29 C.F.R. § 1614.402(a). If she opts not to file a discretionary appeal, then she has ninety days within which to file civil suit in a federal district court. 29 C.F.R. § 1614.407(a)–(d).

The statute of limitations is an affirmative defense; the defendant therefore bears the burden of pleading and proving it. *Lockett*, 259 F. App'x at 786. In this case, the plaintiff pleads in her Complaint that she received the FAD on August 18, 2014. (Compl. ¶ 9.) The FAD itself clearly provided notice to the plaintiff of her appeal options. It states:

APPEAL RIGHTS

> A. This is the final decision of the DoDEA on the substantive issues of this complaint of discrimination . . . . In accordance with the U.S. Equal Opportunity Commission (EEOC) regulations 29 CFR §§ 1614.401 and 402, Complainant may appeal the final decision of the Agency in this matter to EEOC within 30 days of receipt of this decision.
>
> . . . .
>
> F. In lieu of an appeal to EEOC, a civil action may be filed in a United States District Court within 90 calendar days of receipt of EEOC's final decision.

(Doc. No. 37-1, at 7.)

The defendant asserts, based on the underlying administrative record, that no EEOC appeal was filed, and the plaintiff concedes that she did not file an agency appeal. (Doc. No. 41, at 2.) Instead, she filed her Complaint in this action on April 22, 2015, more than eight months and well over ninety days after her receipt of the FAD.

The limitations period for filing a civil action is "subject to waiver, estoppel, and equitable tolling." *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393

(1982). This principle applies to the administrative requirements for federal employees. *Irwin v. Dep't of V.A.*, 498 U.S. 89, 95–96 (1990); *Lockett*, 259 F. App'x at 786. The plaintiff here, however, does not offer any basis for equitable tolling and the court perceives none. The plaintiff's Title VII claim is therefore subject to dismissal based on the plaintiff's failure to file suit within ninety days after her receipt of the FAD.

B. ADA Claim and Exhaustion

The defendant submits that the plaintiff failed to exhaust administrative remedies as to her ADA claims. The plaintiff did not respond to this assertion.

A district court's jurisdiction to hear cases arising under the ADA is "limited to the scope of the EEOC investigation reasonably expected to grow out of the charge of discrimination." *Johnson v. Cleveland City Sch. Dist.*, 344 F. App'x 104, 109 (6th Cir. 2009) (citing *Ang v. Procter & Gamble Co.*, 932 F.2d 540, 545 (6th Cir. 1991)). "Therefore, a plaintiff may bring suit on an uncharged claim if it was reasonably within the scope of the charge filed," or if the agency discovers evidence of the discrimination relating to the uncharged claim while investigating plaintiff's charge. *Id.*

The plaintiff's formal Complaint of Discrimination in the Federal Government asserts that the plaintiff was discriminated against in reprisal for previous EEO activity. (Doc. No. 16-3, at 4.) The plaintiff did not check the box to allege

discrimination on the basis of disability. (*Id.*) Because the plaintiff's prior EEO activity was based on claims of race discrimination and reprisal for having filed Title VII complaints, the FAD construed the plaintiff's complaint to be brought under Title VII. (*See* Doc. No. 37-1, at 3.) There is no indication in the record that the plaintiff had previously brought claims under the ADA or that she was claiming retaliation for having taken actions protected by the ADA. Moreover, the facts included in plaintiff's Complaint of Discrimination would not have prompted the EEOC to investigate an ADA retaliation claim. Because the plaintiff never raised an ADA claim administratively, any ADA claim in the Complaint is subject to dismissal for failure to exhaust.

C. FMLA Claim

The FMLA provides, in pertinent part: "It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter." 29 U.S.C. § 2615(a)(1). To state a *prima facie* case of FMLA interference, an employee must show that:

> (1) the employee was an eligible employee;
>
> (2) the defendant was an employer as defined under the FMLA;
>
> (3) the employee was entitled to leave under the FMLA;

(4) the employee gave the employer notice of his intention to take leave; and

(5) the employer denied the employee FMLA benefits to which he was entitled.

Donald v. Sybra, Inc., 667 F.3d 757, 761 (6th Cir. 2012). The FMLA defines the term employer to include "any agency of the United States." 29 U.S.C. § 203(x). The FMLA, unlike Title VII and the ADA, does not incorporate an administrative-exhaustion requirement.

The court construes the allegations in the *pro se* Complaint broadly as stating a claim against the defendant in his official capacity for interference with the plaintiff's rights under the FMLA by improperly denying leave in reprisal for the plaintiff's having previously engaged in activity protected by Title VII. The defendant does not acknowledge the FMLA claim or seek its dismissal. The court therefore finds that dismissal of the FMLA claim at this juncture is not warranted.

D. Section 1981 Claim

Although the Complaint suggests the plaintiff intended to state a claim under 42 U.S.C. § 1981, the defendant does not address such a claim in its motion. However, as set forth in the Memorandum accompanying the Order granting the defendant's Motion to Dismiss Improper Parties, it has long been recognized that Title VII provides the sole remedy

for racial discrimination claims asserted by federal employees. *See Brown v. General Servs. Admin.*, 425 U.S. 820, 835 (1976). Consequently, constitutional claims asserting race discrimination are preempted by Title VII. *See id.* (rejecting a § 1981 claim of racial discrimination brought by a federal employee). To the extent the plaintiff seeks to bring a § 1981 claim against the defendant, that claim is also subject to dismissal as a matter of law.

VI. Conclusion

For the reasons set forth herein, the court will grant the defendant's Motion to Dismiss, which seeks dismissal of the plaintiff's Title VII and ADA claims. The Complaint, however, also states a claim under the FMLA, which the defendant's motion does not address. That claim remains pending.

An appropriate Order is filed herewith

/s/ Aleta A. Trauger
ALETA A. TRAUGER
United States District Judge

United States Statutes

Title 42. THE PUBLIC HEALTH AND WELFARE

Chapter 21. CIVIL RIGHTS

Subchapter VI. EQUAL EMPLOYMENT OPPORTUNITIES

Current through P.L. 115-244

§ 2000e-16. Employment by Federal Government

(c)

Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a), or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department,

agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

§ 1614.407. Civil action: Title VII, Age Discrimination in Employment Act and Rehabilitation Act.

Code of Federal Regulations

Title 29. Labor

Subtitle B. REGULATIONS RELATING TO LABOR

Chapter XIV. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Part 1614. FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY

Subpart D. APPEALS AND CIVIL ACTIONS

Current through December 4, 2018

§ 1614.407. Civil action: Title VII, Age Discrimination in Employment Act and Rehabilitation Act

A complainant who has filed an individual complaint, an agent who has filed a class complaint or a claimant who has filed a claim for individual relief pursuant to a class complaint is authorized under title VII, the ADEA and the Rehabilitation Act to file a civil action in an appropriate United States District Court:

(a) Within 90 days of receipt of the final action on an individual or class complaint if no appeal has been filed;

(b) After 180 days from the date of filing an individual or class complaint if an appeal has not been filed and final action has not been taken;

(c) Within 90 days of receipt of the Commission's final decision on an appeal; or

(d) After 180 days from the date of filing an appeal with the Commission if there has been no final decision by the Commission.

Cite as 29 C.F.R. § 1614.407

History. 57 FR 12646, Apr. 10, 1992. Redesignated and amended at 64 FR 37659, July 12, 1999