

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

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October 14, 2022

Ms. Dawn Diane Rasmussen
Apt. 2
607 15th Street
Spirit Lake, IA 51360

RE: 22-2648 Dawn Rasmussen v. Spencer Community School Dist., et al

Dear Ms. Rasmussen:

Enclosed is a copy of the dispositive order in the referenced appeal. Please note that FRAP 40 of the Federal Rules of Appellate Procedure requires any petition for rehearing to be filed within 14 days after entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. This court strictly enforces the 14 day period. **No grace period for mailing is granted** for pro-se-filed petitions. A petition for rehearing or a motion for an extension of time must be filed with the Clerk's office within the 14 day period.

Michael E. Gans
Clerk of Court

NDG

Enclosure(s)

cc: Mr. Clerk, U.S. District Court, Northern Iowa

District Court/Agency Case Number(s): 5:21-cv-04047-CJW

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 22-2648

Dawn Diane Rasmussen

Plaintiff - Appellant

v.

Spencer Community School District; Julie Nemmers; Dave Hansen; Terry Hemann; Ronda
Mortenson

Defendants - Appellees

Appeal from U.S. District Court for the Northern District of Iowa - Western
(5:21-cv-04047-CJW)

JUDGMENT

Before SHEPHERD, KELLY, and GRASZ, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

October 14, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

DAWN DIANE RASMUSSEN,

Plaintiff,

vs.

SPENCER COMMUNITY SCHOOL
DISTRICT, et. al.,

Defendants.

No. 21-CV-4047-CJW-MAR

ORDER

This matter is before the Court on plaintiff Dawn Rasmussen's amended pro se complaint. (Doc. 5). Because the right-to-sue letter plaintiff filed with her amended complaint confirms plaintiff's original complaint was not timely, this case is **dismissed**.

I. BACKGROUND

Plaintiff brought this action under Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e-5, *et seq.*, and the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101, *et seq.*, alleging that her employer discriminated against her because of her disability, denying her reasonable accommodations and ultimately terminating her employment. This Court granted her motion to proceed in forma pauperis. On initial review, this Court denied her Title VII claim and granted her 30 days to file an amended complaint for her ADA claim and include her right-to-sue letter from the Equal Employment Opportunity Commission ("EEOC"). (Doc. 4).

II. AMENDED COMPLAINT

In plaintiff's original complaint, she alleged defendants violated the ADA. (Doc. 1-1, at 3). The ADA provides that it is unlawful to "discriminate against a qualified individual on the basis of disability 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." 42 U.S.C. § 12112(a).

Claims brought under the ADA are subject to time and exhaustion requirements. Before a plaintiff may file a complaint in federal court alleging violations of the ADA, she must first exhaust her administrative remedies. *See* 42 U.S.C. § 12117(a) (stating that the remedies and procedures set forth in Title VII, including those pertaining to exhaustion, apply to disability discrimination claims). Exhausting administrative remedies requires timely filing a charge with the Equal Employment Opportunity Commission ("EEOC") and receiving a right-to-sue letter from the EEOC. *See* 42 U.S.C.A. § 2000e-5(f)(1); *see also Hanenburg v. Principal Mut. Life Ins. Co.*, 118 F.3d 570, 573 (8th Cir. 1997). A plaintiff has 90 days from the receipt of the right-to-sue letter to file a civil complaint in district court. 42 U.S.C.A. § 2000e-5(f)(1); *see also McMillian v. Miss. Lime Co.*, No. 4:07CV960-DJS, 2007 WL 4482164, at *1-2 (E.D. Mo. Dec. 18, 2007), *aff'd*, 311 Fed. App'x 942 (8th Cir. 2009).

In plaintiff's original complaint, plaintiff asserted she received a right to sue letter from the EEOC on July 7, 2021. (Doc. 1-1, at 5). Plaintiff has now attached a right-to-sue letter from the EEOC to her amended complaint. (Doc. 5-1). That letter confirms that it issued on July 7, 2021. Courts presume that a plaintiff receives the notice three days after the mailing date. *See Hales v. Casey's Mktg. Co.*, 886 F.3d 730, 736 (8th Cir. 2018); FED. R. CIV. P. 6(d). Even adding those three days, though, plaintiff's complaint is untimely. Plaintiff would have had to file her initial complaint by October 8, 2021. Yet plaintiff did not file her complaint until October 20, 2021. Plaintiff does

not assert exceptional circumstances exist that warrant equitable tolling. Accordingly, her complaint is untimely.

III. CONCLUSION

For the reasons stated, plaintiff's claim is **denied** and this case is **dismissed**.

IT IS SO ORDERED this 13th day of June, 2022.



C.J. Williams
United States District Judge
Northern District of Iowa

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 22-2648

Dawn Diane Rasmussen

Appellant

v.

Spencer Community School District, et al.

Appellees

Appeal from U.S. District Court for the Northern District of Iowa - Western
(5:21-cv-04047-CJW)

ORDER

The petition for rehearing by the panel is denied.

November 30, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans