NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 23-1091 & 23-1140

CARLA SLATER,
Appellant

v.

JANET LOUISE YELLEN, SECRETARY DEPARTMENT OF THE TREASURY; STEPHANIE SPROSS, FRONTLINE MANAGER TEAM 426, EXAM OPERATIONS, IRS; LISA CHAN, OPERATION MANAGER, EXAM OPERATIONS, IRS; CHARLOTTE A. BURROWS, CHAIR EEOC

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2:21-cv-02763)
District Judge: Honorable Paul S. Diamond

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 26, 2023

Before: KRAUSE, PHIPPS, and SCIRICA, Circuit Judges

(Opinion filed: October 4, 2023)

OPINION*

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Pro se appellant Carla Slater appeals from a judgment of the United States District Court for the Eastern District of Pennsylvania. For the following reasons, we will affirm the District Court's judgment.

I.

In 2021, Appellant Carla Slater, a former seasonal employee of the Internal Revenue Service ("IRS"), initiated this pro se employment discrimination action against Treasury Secretary Janet Yellen. She later amended the complaint to include IRS employees Stephanie Spross and Lisa Chan, and EEOC Chair Charlotte Burrows as defendants. In the operative second amended complaint, Slater alleged that in January of 2015, she was appointed as a delegate to a religious conference occurring in Thailand the following November. On February 23, 2015, Slater signed a seasonal contract with the IRS, agreeing to work for a term of nine to eleven months. She further alleged that, in March of 2015, she submitted a request for leave without pay to attend the conference, which Spross denied on March 23, 2015. On October 29, 2015, Slater allegedly informed her "Lead" that she was leaving to attend the conference in Thailand. ECF No. 9-1 at 8.

Slater alleges that, upon returning from the conference, she assumed that she was furloughed, applied for (and was granted) unemployment benefits, and waited to receive a new seasonal offer. On January 22, 2017, Slater's position was terminated, which she alleges was the result of Spross purposely keeping her on "AWOL status" so she would

be fired. On March 24, 2017, Slater had an unemployment compensation hearing, where she alleges that Spross falsely testified that Slater abandoned her job. The Unemployment Compensation Board determined that Slater voluntarily quit and was ineligible for unemployment compensation. On May 5, 2017, Slater alleges that she contacted the Equal Employment Opportunity Commission ("EEOC") to schedule a meeting and received Notice of Right to File but did not file a formal EEOC complaint at that time. Slater ultimately filed an EEOC complaint on August 17, 2020.[1] She initiated this action in June of 2021, alleging violations of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, et seq., and the Due Process Clause.

The District Court screened the complaint and dismissed the due process claims and all claims against Spross, Chan, and Burrows, as well as the claims related to Slater's unemployment benefits proceedings and federal criminal charges. Yellen subsequently filed a motion to dismiss the remaining Title VII claims, which the District Court granted in a lengthy memorandum order. Slater appealed from those orders (C.A. No. 23-1091). She later filed an unnecessary motion to reopen the time to appeal pursuant to Federal

[1] In the interim, Slater was criminally charged with one count of theft of government money and one count of making false statements concerning unemployment compensation to the Pennsylvania Department of Labor. Because the Government subsequently obtained information that counseled against proceeding with the case in the interest of justice, the Government filed a motion to dismiss the case with prejudice, which the court granted in June 2022. See United States v. Slater, E.D. Pa. Crim. No. 2:18-cr-00467, Dkt. #64 (dismissing the charges).

Rule of Appellate Procedure 4(a)(6).[2] The District Court denied the motion to reopen, and Slater filed a timely notice of appeal (C.A. No. 23-1140). The appeals have been consolidated for all purposes.

II.

We have jurisdiction under 28 U.S.C. § 1291. We exercise plenary review over the dismissal of the claims. See Chavarriaga v. N.J. Dep't of Corr., 806 F.3d 210, 218 (3d Cir. 2015); Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000).

III.

On appeal, Slater challenges the dismissal of her religious discrimination and retaliation claims under Title VII against Spross, Chan, and Yellen.[3] As for the claims against Spross and Chan, we agree with the District Court's dismissal of the complaint as against them because "individual employees are not liable under Title VII." Emerson v. Thiel College, 296 F.3d 184, 190 (3d Cir. 2002) (per curiam).

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[2] Because the order granting Yellen's motion to dismiss contained procedural history, factual background, and the District Court's reasoning for the disposition, it did not comply with the separate judgment rule set forth in Rule 58(a) of the Federal Rules of Civil Procedure. See Witasick v. Minn. Mut. Life Ins. Co., 803 F.3d 184, 187 (3d Cir. 2015). Thus, the District Court's judgment was not entered until 150 days after the order was entered on the docket, see Fed R. Civ. P. 58(c)(2)(B), and Slater timely appealed.

[3] In her brief, Slater does not address the District Court's rulings on any other claims or on any other motions that she filed, including her Rule 4(a)(6) motion to reopen the time to appeal, so we will not reach those issues. See M.S. by & through Hall v. Susquehanna Twp. Sch. Dist., 969 F.3d 120, 124 n.2 (3d Cir. 2020) (holding that the appellant forfeited claims by failing to raise them in the opening brief).

As for the claims against Yellen, Slater challenges the District Court's ruling that the claims were time-barred and unexhausted. She contends that she exhausted her claims about her placement on AWOL status, her termination, and Spross's testimony during the unemployment compensation hearing through a complaint filed with the Merit System Protection Board filed on June 25, 2017. However, even assuming arguendo that she could and did exhaust those claims that way, the District Court properly dismissed those claims because they failed to state a claim upon which relief can be granted under Rule 12(b)(6).

To allege plausibly a disparate-treatment claim under Title VII, a plaintiff must allege that (1) she is a member of a protected class; (2) she is qualified for the position she sought to retain or attain; (3) she suffered an adverse employment action; and (4) the adverse action occurred under circumstances that may give rise to an inference of intentional discrimination. See Makky v. Chertoff, 541 F.3d 205, 214 (3d Cir. 2008). The allegations in Slater's second amended complaint do not "raise a reasonable expectation that discovery will reveal evidence" of these elements. Connelly v. Lane Const. Corp., 809 F.3d 780, 789 (3d Cir. 2016). Although her termination constitutes adverse action, see Abramson v. William Paterson Coll. of N.J., 260 F.3d 265, 288 (3d Cir. 2001), she has not pleaded facts supporting the requisite discriminatory intent behind her termination, or behind the other actions that she alleges were adverse. Particularly, she has failed to allege that similarly situated employees were treated more favorably.

See Jones v. Sch. Dist. of Phila., 198 F.3d 403, 413 (3d Cir. 1999). That is, she has not claimed that other seasonal employees had previously taken unapproved leave and not returned to work without being placed on AWOL status and eventually terminated. We accordingly agree with the District Court's dismissal of Slater's discrimination claims based on her termination, AWOL status, and Spross's testimony.

Related to her denial of leave request (which she admittedly did not include in any MSPB complaint), she argues that she timely contacted the Equal Employment Opportunity Commission ("EEOC") and received Notice of Right to File on May 5, 2017, which was within 45 days of when she discovered the alleged discrimination, which she claims was March 24, 2017. Putting aside any other issues with the timeliness of suit based on this claim, Slater's own allegations in the complaint indicate that she was aware of Spross's denial of her request for leave when it was issued in 2015. And, despite her argument to the contrary, those claims are not rendered timely by the continuing violations doctrine, which allows a "court [to] grant relief for . . . earlier related acts that would otherwise be time barred" if the "defendant's conduct is part of a continuing practice" of discrimination and "the last act evidencing the continuing practice falls within the limitations period." Tearpock-Martini v. Borough of Shickshinny, 756 F.3d 232, 236 (3d Cir. 2014) (quoting Brenner v. Local 514, United Bhd. of Carpenters & Joiners of Am., 927 F.2d 1283, 1295 (3d Cir. 1991)). Importantly, that doctrine does not apply to "isolated, sporadic, or discrete" acts, such as the denial of leave. Nat'l R.R.

Passenger Corp. v. Morgan, 536 U.S. 101, 107, 114 (2002); see O'Connor v. City of Newark, 440 F.3d 125, 127 (3d Cir. 2006). Accordingly, the District Court properly dismissed this claim as well.

Furthermore, to the extent that the second amended complaint raised retaliation claims, Slater was required to raise a reasonable expectation that discovery will reveal evidence that (1) she engaged in a protected activity; (2) she suffered an adverse employment action; and (3) there was a causal connection between the protected activity and the adverse employment action. See Moore v. City of Philadelphia, 461 F.3d 331, 340-41 (3d Cir. 2006). "Protected activities" within the meaning of that provision include participating in certain Title VII proceedings and opposing discrimination made unlawful by Title VII. See id. at 341-42.

Here, Spross alleged that she participated in protected activities by initiating EEOC proceedings and filing an MSPB complaint. However, she has failed to demonstrate any causal link between those activities and the adverse employment action; she initiated the EEOC and MSPB proceedings only *after* she was terminated and Spross had testified at her unemployment compensation hearing. The same is true with regard to Slater's second EEOC proceeding, which she initiated after the actions related to her criminal prosecution had already occurred. The District Court's dismissal of her retaliation claims was accordingly proper. Relatedly, we agree with the District Court that the actions related to her criminal prosecution—the grand jury investigation, her

arrest, and the prosecution's proposed plea deal—do not constitute adverse action within the meaning of Title VII under the facts of this case, especially as those actions were not conducted by the IRS. Thus, the District Court properly dismissed Slater's discrimination and retaliation claims relating to the criminal prosecution.[4] Slater's remaining arguments are without merit.

For the above reasons, we will affirm the District Court's judgment. Slater's motion to supplement the appendix is granted.

[4] We further agree with the District Court's decision to dismiss these claims with prejudice, as Slater had already amended her complaint twice. See USX Corp. v. Barnhart, 395 F.3d 161, 166 (3d Cir. 2006) (explaining that a District Court has the discretion to dismiss a complaint with prejudice where there have been "repeated failures to cure the deficiency by amendments previously allowed").

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CARLA SLATER,	:	
Plaintiff,	:	
	:	
v.	:	**Civ. No. 21-2763**
	:	
JANET YELLEN,	:	
Defendant.	:	

ORDER

Pro se Plaintiff Carla Slater alleges that Treasury Secretary Janet Yellen engaged in unlawful discriminatory and retaliatory acts in violation of Title VII. (Doc. No. 9 at 4-5; Doc. No. 9-1 at 1-5); 42 U.S.C. § 2000e, *et seq*. Defendant moves to dismiss contending, *inter alia*, that Slater's claims are time barred and that she has not pled a viable claim. (Doc. No. 2.) I will grant the Motion.

I. PROCEDURAL HISTORY

On June 21, 2021, Slater filed her Complaint and requested leave to proceed *in forma pauperis*. (Doc. No. 1.) On August 2, 2021, Slater filed an amended "Summary of Fact to replace the previous ones submitted." (Doc. No. 6.) I granted Slater's Motion to Proceed *in forma pauperis*, construed the Amended Summary of Facts as an Amended Complaint, dismissed the Amended Complaint because it did not meet the Rule 8 requirements, and granted her leave to file a Second Amended Complaint. (Doc. No. 8.)

On November 8, 2021, Slater filed a Second Amended Complaint, naming Defendants Treasury Secretary Janet Yellen, Internal Revenue Service employees Stephanie Spross and Lisa Chan, and Equal Employment Opportunity Commission Chair Charlotte A. Burrows. (Doc. No. 9.) Slater alleges employment discrimination claims pursuant to Title VII and a due process claim based on the investigation conducted by the EEOC. (Id.) Slater also asked me to dismiss criminal

charges pending against her that related to her unemployment benefits application. (Id.) I dismissed Slater's due process claims and all claims against Defendants Spross, Chan, and Burrows pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). (Doc. No. 11.)

Accordingly, only the Title VII claims brought against Yellen remain. (Doc. No. 11 at 6, 9.) On May 16, 2022, Yellen moved to dismiss those claims. (Doc. No. 15.) In response, Slater moved to set aside her "original" EEOC Complaint. (Doc. No. 18.) The matters have been fully briefed. (Doc. Nos. 15, 18, 19, 20, 21, 22, 23, 24.)

II. LEGAL STANDARDS

I must conduct a two-part analysis. Fowler v. PMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009). First, I accept Plaintiff's factual allegations, and disregard legal conclusions or mere recitations of elements. Id. I then determine whether the facts alleged make out a "plausible" claim for relief. Id. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Accordingly, the burden is on Defendant to show that Plaintiff has failed to allege facts sufficiently detailed to "raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007); Phillips v. Cnty. of Allegheny, 515 F.3d 224, 234 (3d Cir. 2008). I may dismiss claims with prejudice if amendment would be futile. Phillips, 515 F.3d at 228.

Because Slater is proceeding *pro se*, I construe her allegations liberally. Higgs v. Att'y Gen., 655 F.3d 333, 339 (3d Cir. 2011).

III. FACTUAL ALLEGATIONS

Slater worked for the IRS seasonally, and in November 2014 her seasonal contract ended and her application for unemployment benefits was approved. (Doc. No. 9-1 at 1.) In January

2015, Slater agreed to participate in a religious conference to be held in Thailand in November 2015. (Id.) On February 23, 2015, Slater signed a new seasonal contract to work for the IRS for nine to eleven months. (Id.) In March 2015, she informed her supervisor, Ms. Spross, about the religious event and submitted a leave request, which was denied. (Id.) On October 29, 2015, Slater informed her "Lead" that she was leaving for the religious convention in Thailand. (Id. at 2.)

After returning from Thailand in December 2015, Slater—who assumed she had been furloughed in accordance with the IRS' purported practice—applied for unemployment benefits, which were approved. (Id.) She listed "lack of work" as the reason for her application because "that is what the IRS told seasonals [*sic*] to put on the application in 2013." (Id.)

As alleged, Spross sent "a seasonal job offer dated December 16, 2015" to Slater's home by certified mail and her work email address, but she received neither. (Id.) Slater did not learn of the seasonal offer "until March 24, 2017 at [an] Unemployment Compensation [] hearing." (Id.) Spross "was inputting [Slater's] time as AWOL from November 2, 2015 through June 11, 2016." (Id.) Slater alleges that Spross "deliberately kept [Slater] in AWOL status for over a year so that [she] would be terminated." (Id.) In 2016, Slater continued to request seasonal work from Spross, who never responded to her requests. (Id. at 3.) On January 22, 2017, Slater's seasonal position with the IRS was terminated "even though [she] had voluntarily quit," and had not worked for the IRS since leaving for Thailand. (Id.)

At a March 24, 2017 unemployment compensation hearing, Spross testified that Slater abandoned her job, work was available to her, and that Spross did not know where Slater was when she was absent from work. (Id. at 3.) Although Slater disputes Spross' testimony, the Pennsylvania Commonwealth Court upheld the Unemployment Compensation Board's decision that Slater was ineligible for unemployment compensation, finding that she voluntarily quit. (Id.);

see also Slater v. Unemployment Comp. Bd. of Rev., No. 958 C.D. 2017, 2018 WL 1277211, at *7 (Pa. Commw. Ct. Mar. 13, 2018).

On May 5, 2017, Slater contacted an EEO Counselor to schedule an interview, and received a Notice of Right to File (NRTF). (Doc. No. 9-1 at 3.) Slater did not sign the NRTF or file a formal EEOC Complaint at that time. (Id.)

On June 20, 2017, Slater received a letter "stating [she] was targeted for a grand jury investigation for receiving [unemployment compensation] benefits while receiving wages at the IRS in 2015." (Id.) She was arrested on November 1, 2018. (Id.) On July 6, 2020, Slater's appointed attorney advised her to "take a plea deal." (Id.)

On July 13, 2020, Slater again contacted an EEO counselor. (Id.) She received a notice of right to file on July 20, 2020, and filed an EEOC Complaint on August 17, 2020. (Id.) On May 19, 2020, Slater received a right to sue letter. (Id.) She filed the instant Complaint on June 21, 2022. (Doc. No. 1.)

IV. DISCUSSION

Slater's Amended Complaint is difficult to follow. It appears that she brings Title VII claims for: (1) discrimination on the basis of her religion; and (2) retaliation. (Doc. Nos. 9 at 4-5, 9-1 at 1-5.) Defendant argues that Slater's claims are time barred, and even if they were not, she has not pled a viable claim. (Doc. No. 15.)

A. Statute of Limitations

Title VII is the "exclusive remedy for federal employees who allege discrimination in the workplace." Robinson v. Dalton, 107 F.3d 1018, 1020–21 (3d Cir. 1997). Before a plaintiff may bring a Title VII claim in federal court, she must "exhaust all required administrative remedies." Id. at 1020. To satisfy the exhaustion requirement, the federal employee must:

> (1) contact the agency's EEO counselor within 45 days of the alleged discriminatory action; (2) file a formal complaint with the EEOC within 15 days of the conclusion of the informal counseling process, if unsuccessful; and (3) appeal the agency's final decision to the EEOC or file a civil action in federal district court within ninety days of the agency's decision.

Broadnax v. Sec'y U.S. Dep't of Veterans Affairs, 860 F. App'x 800, 803 (3d Cir. 2021) (citing 29 C.F.R. §§ 1614.105–1614.109, 1614.401, 1614.407(a)). These time limits "operate[] akin to a statute of limitations." Grant v. Sec'y U.S. Dep't of Homeland Secur., 689 F. App'x 697, 699 (3d Cir. 2017).

Whether Slater's claims are time-barred turns on when the adverse actions occurred and when she contacted an EEO counselor. Liberally construing her Complaint, Slater alleges several adverse employment actions: (1) Defendant denied her request for leave; (2) Defendant placed her in "AWOL" status; (3) Defendant testified in her opposition to her application at unemployment compensation hearings; and (4) Defendant fired her. (Doc. No. 9-1.)

Defendant argues that I "previously dismissed Slater's claims arising out of her unemployment compensation benefits hearing and subsequent criminal case." (Doc. No. 15-2 at 15.) I dismissed only her request that I dismiss her pending criminal charges and that I review the merits of a state court judgment relating to her unemployment compensation proceedings. (Doc. No. 11 at 6-9.) I allowed Slater's Title VII claims to proceed. (Id.)

May 2017 EEO Counselor Interview

Slater first contacted an EEO counselor on May 5, 2017. (Doc. No. 9-1 at 3.) Of the alleged adverse employment actions, three occurred before this date: (1) Defendant denied Slater's request for leave on March 3, 2014; (2) Defendant put Slater in AWOL status November 2, 2015 through June 11, 2016; and (3) Defendant testified at Slater's unemployment compensation hearing on March 24, 2017. (See id. at 1-3.) The first two of these events did not occur within 45 days of contacting the EEO counselor—Slater's request for leave was denied two years earlier,

and she was last placed in "AWOL" status 11 months earlier. (Id.) Claims based on these adverse actions are thus time-barred. See Broadnax, 860 F. App'x at 803 (employee must contact EEO counselor within 45 days of alleged discriminatory action).

Spross testified at Slater's unemployment compensation hearings on March 24, 2017—43 days before Slater contacted the EEO Counselor. (Doc. No. 9-1 at 3.) Although Slater received a Notice of Right to File on June 19, 2017, she alleges that she "never filed a formal EEOC complaint." (Id.) Accordingly, Slater's claims based on Defendant's testimony at her unemployment compensation hearing are also time-barred. See Broadnax, 860 F. App'x at 803 (employee must file EEOC complaint within 15 days of the conclusion of the EEO counseling process).

June 2020 EEO Counselor Interview

Slater next contacted an EEO Counselor on July 13, 2020. (Id. at 4.) Slater was terminated some three years earlier on January 22, 2017, and claims based on this adverse action are thus time-barred. See id.

Slater alleges several discrete adverse actions related to her criminal prosecution: (1) she received a target letter on June 16, 2017; (2) she was arrested on November 1, 2018; and (3) her attorney advised her to take accept an offer for a plea deal on June 6, 2020. (Id. at 3-5.) None of these events is a Title VII adverse employment action.

I will dismiss as time-barred all claims based on Defendant's alleged adverse employment actions.

B. Failure to State a Claim

In the alternative, I conclude that Slater has failed to state a claim.

It appears that Slater brings religious discrimination and retaliation claims based the

"pressure" to accept a plea deal. (Doc. No. 9-1 at 1 ("I continue to experience religious discrimination and retaliation . . . in the form of criminal charges"; Doc. No. 20 at 5 ("The bases of my [August 2020 EEOC] complaint was religious discrimination and retaliation.")) Defendant argues that Slater has not pled facts that make out either claim. (Doc. No. 20.) I agree.

Discrimination

To make out a *prima facie* case of religious discrimination, a plaintiff must allege that: (1) she is a member of a protected class; (2) she was qualified for the position in question; (3) she suffered an adverse employment action, and; (4) the adverse action occurred under circumstances giving rise to an inference of discrimination. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973); see also Sarullo v. United States Postal Serv., 352 F.3d 789, 797 (3d Cir. 2003). Plaintiff fails to make out that she suffered an adverse employment action or that the adverse action occurred in circumstances giving rise to an inference of discrimination.

An adverse action is "an action by an employer that is 'serious and tangible enough to alter an employee's compensation, terms, conditions, or privileges of employment.'" Storey v. Burns Intern. Sec. Serv., 390 F.3d 760, 764 (3d Cir. 2004). The plea deal offer is not an adverse employment action. The offer of a plea deal was not an action by Defendant. Cf. Durham Life Ins. Co., 166 F.3d 139, 158 (3d Cir. 1999) (employer's filing of a criminal complaint, attempting to have an employee investigated, or otherwise "instigat[ing] government action" against the employee may be an adverse action). Slater does not allege that Defendant was in any way involved, or that it contacted Slater to pressure her into accepting the deal. Rather, she alleges that her "public defender [] advised [her] to take a plea deal because she and her team were not confident that [Slater] would win." (Doc. No. 9-1 at 4.) Her attorney, in fact, had a duty to present the offer to Slater. Missouri v. Frye, 566 U.S. 134, 145 (2012).

Slater also fails to allege facts giving rise to an inference of discrimination. To raise an inference of discriminatory action, Slater must plead facts showing "some causal nexus between [her] membership in a protected class" and the adverse employment action. Sarullo, 352 F.3d at 798. Other than Slater's statements that these adverse actions were discriminatory, she alleges no facts supporting such a conclusion. Slater has not pled any "comparator evidence to support an inference of discrimination" nor has she pled any "evidence of similar [religious] discrimination of other employees, or direct evidence of discrimination from statements or actions by her supervisors suggesting [discriminatory] animus." Golod v. Bank of Am. Corp., 403 F. App'x 699, n.2 (3d Cir. 2010). In fact, the only allegation Slater makes is that "the basis of the charge [did] not exist." (Doc. No. 9-1.)

I will dismiss Slater's discrimination claim.

Retaliation

To make out a *prima facie* case of retaliation, a plaintiff must allege "(1) that [she] engaged in a protected employee activity; (2) that [she] was subject to adverse action by the employer either subsequent to or contemporaneous with the protected activity; and (3) that there is a causal connection between the protected activity and the adverse action." Fasold v. Justice, 409 F.3d 178, 188 (3d Cir. 2005). Slater fails to make out both that she was subject to an adverse action and that there was a causal connection between any protected activity and an adverse action.

A plaintiff engages in protected activity when she "participate[s] in Title VII's statutory processes or who otherwise oppose[s] employment practices made illegal by Title VII." Curay-Cramer v. Ursuline Acad. of Wilmington, Del., Inc., 450 F.3d 130, 135 (3d Cir. 2006). Here, Slater engaged in protected activities when she contacted the EEO counselor and when she filed the EEOC and instant Complaints. See id. ("Title VII's opposition clause is triggered by formal

EEOC proceedings as well as informal protests of discriminatory employment practices.") (internal quotations and alterations omitted).

Slater also urges that she was punished for "practicing [her] religion," her "failure to accept a full-time position when offered" and her "request for leave to attend a religious conference." (Doc. No. 9-1 at 1; Doc. No. 20 at 9, 17.) Practicing one's faith is certainly a protected activity and so cannot be the subject of discrimination. Webb v. City of Philadelphia, 562 F.3d 256, 259 (3d Cir. 2009). To make out Title VII retaliation, however, Slater must make out that she was punished because she pursued Title VII claims against Defendant. Curay-Cramer, 450 F.3d at 135. Plaintiff has not made such a showing.

An adverse action is one that "might have dissuaded a reasonable worker from making or supporting a charge of discrimination." Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 68 (2006). For example, an employer subjects a current or former employee to adverse action when it "instigates government action against [the] employee." Durham, 166 F.3d at 158. As I have already discussed, Slater does not allege that Defendant was in any way involved in her criminal prosecution, or that Defendant contacted Slater to pressure her into accepting the deal. Accordingly, the plea deal offer does not constitute a retaliatory adverse action.

A causal connection may be established by "temporal proximity between the employee's protected activity and the adverse employment action," through "circumstantial evidence of a 'pattern of antagonism' following the protected conduct" or by viewing "the proffered evidence . . . as a whole." Kachmar v. SunGard Data Sys., Inc., 109 F.3d 173, 177 (3d Cir. 1997). The only protected activity before the plea deal offer occurred on May 5, 2017, when Slater first contacted an EEO counselor. This was some three years before Slater was offered a plea deal. Further, Slater has not alleged any facts related to the plea deal or her criminal prosecution other than that

"the basis of the charge [did] not exist." (Doc. No. 9-1 at 4.) Slater thus fails to make out a causal connection between the plea deal offer and her 2017 EEO Counselor interview. Because Slater's remaining protected activities each occurred after the plea deal offer, there can be no causal link. See Mazur v. Sw. Veterans Ctr., 803 F. App'x 657, 662 (3d Cir. 2020) (no causal connection where adverse action occurred before protected activity).

I will thus dismiss Slater's retaliation claim.

C. Motion to Set Aside

On June 25, 2022, Slater moved to "set aside [her] original EEO formal complaint." (Doc. No. 18.) It is unclear what relief she seeks. She argues that the "original EEO formal complaint is incomplete" and argues that there are several "[e]vents that need to be included." (Id. at 3.) Insofar as Slater asks for leave to amend her EEOC Complaint, she must make such a request before the EEOC. See 29 C.F.R. s 1601.11(b) ("A charge may be amended to cure technical defects or omissions . . . or to clarify and amplify allegations made therein."). Insofar as Slater asks me to not consider her 2017 EEOC Complaint, her request is moot because her Second Amended Complaint alleges that she "never filed a formal EEOC complaint" following her 2017 EEO counselor interview. (Doc. No. 9-2 at 3.) Accordingly, I will deny Slater's Motion.

* * *

AND NOW, this 22nd day of August, 2022, upon consideration of Plaintiff's Second Amended Complaint, (Doc. No. 9), Defendant's Motion to Dismiss (Doc. No. 15) and Plaintiff's Responses in Opposition (Doc. No. 21, 24), and upon consideration of Plaintiff's Motion to Set Aside (Doc. No. 18), and Defendant's Response (Doc. No. 23), it is hereby **ORDERED** that:

1. Defendant's Motion to Dismiss (Doc. No. 2) is **GRANTED** as follows:

    a. Because amendment would be futile, Plaintiff's Title VII claims based on the

plea deal offer are **DISMISSED with prejudice**; and

b. Because amendment would be futile, Plaintiff's Title VII claims based on all other adverse actions are **DISMISSED with prejudice;**

2. Plaintiff's Motion to Set Aside (Doc. No. 18) is **DENIED as moot**.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond
Paul S. Diamond, J.

BT 1539

No. _____

IN TH

SUPREME COURT OF THE UNITED STATES

Carla Slater — PETITIONER
(Your Name)

VS.

Janet Yellen, etal, — RESPONDENT(S)

PROOF OF SERVICE

I, Carla Slater, do swear or declare that on this date, _____, 2023, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Janet Yellen - 1500 Pennsylvania Ave, NW, Washington, D.C. 20220
Charlotte Burrows - 131 m street, N.E, Washington, DC 20507
Solicitor General of the U.S., Rm 5616, Dept of Justice, Washington, D.C. 20530-0001 see page 2

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 28, 2023

Carla Slater
(Signature)

Continuation of the names and addresses of those served are as follows:

Lisa Chan - IRS operation Manager
SBSE Service Centers
Exam Operations Philadelphia
2970 Market Street
Philadelphia, PA 19104

Stephanie Spross - IRS Supervisory Financial Tech
SBSE Service Centers
Exam Operations Philadelphia
2970 Market Street
Philadelphia, PA 19104