

**NONPRECEDENTIAL DISPOSITION**

To be cited only in accordance with FED. R. APP. P. 32.1

**United States Court of Appeals**

**For the Seventh Circuit  
Chicago, Illinois 60604**

Submitted June 23, 2023\*

Decided June 28, 2023

**Before**

DIANE P. WOOD, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-2892

AGNES M. CHOWANIEC,  
*Plaintiff-Appellant,*

*v.*

CITY OF CHICAGO,  
*Defendant-Appellee.*

Appeal from the United States District  
Court for the Northern District of  
Illinois, Eastern Division.

No. 22 C 4197

Virginia M. Kendall,  
*Judge.*

**ORDER**

Agnes Chowaniec applied to become an officer in the Chicago Police Department, but after delays in the screening process, she aged out of eligibility before the department meaningfully considered her. She sued the City of Chicago, alleging

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\* The appellee was not served with process and is not participating in this appeal. We have agreed to decide the case without oral argument because the brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

discrimination based on her age. At screening, the district court dismissed her complaint as untimely, and we affirm.

In reviewing this dismissal at the pleading stage, we accept the factual allegations in the complaint as true and draw reasonable inferences in Chowaniec's favor. See *Schillinger v. Kiley*, 954 F.3d 990, 994 (7th Cir. 2020). When Chowaniec was 35 years old, in 2016, she applied to be a Chicago police officer. That same year, she passed some of the required tests and background checks. Then, the department took no action on her application for years. Because people 40 and older cannot be hired as first-time police officers, Municipal Code of Chicago § 2-152-410(e), Chowaniec contacted the department multiple times after she turned 39 to check on the status of her application. In April 2020, a human resources agent left her a voicemail admitting that the delay in processing her application was "on their part" and encouraging her to apply to other departments that had no age limit. Chowaniec turned 40 later that month, and the city notified her that, because of her age, she was not eligible to be hired as a police officer.

That same month, Chowaniec filed a charge with the Equal Employment Opportunity Commission, alleging that the City of Chicago discriminated against her because of her age. The agency declined to take up her case and sent her a right-to-sue letter that she received on May 11, 2022. The letter explained that she had 90 days (until August 9) from receiving it to file a lawsuit in federal court.

Chowaniec did not file a complaint within 90 days. The lawyer who had represented her at the administrative level told her on June 17 (53 days before the deadline) that he would not represent her in federal court. At 12:13 a.m. on August 10, 2022—91 days after she received the right-to-sue notice by email—Chowaniec, pro se, electronically submitted a federal complaint in which she asserted that the city had violated the Age Discrimination in Employment Act, 29 U.S.C. §§ 621–634. She also moved to proceed in forma pauperis.

In a comprehensive order, the district court granted Chowaniec pauper status and then screened her complaint. 28 U.S.C. § 1915(a), (e)(2). The court explained that the Act gave Chowaniec 90 days to file her lawsuit after receiving the right-to-sue letter. 42 U.S.C. § 2000e–5(f)(1). Because Chowaniec's own allegations established that she had filed on day 91, the court concluded that it could dismiss the case on the pleadings. It entered a final judgment on September 19, 2022. Thirty days later, Chowaniec filed both a timely notice of appeal and a motion for relief from the judgment. She did not amend her notice of appeal or file a new one when the district court denied the motion.

Chowaniec now argues that the district court should have excused her short delay instead of dismissing her case. We review a dismissal at screening *de novo*. *Schillinger*, 954 F.3d at 994. As the district court noted, it is appropriate to dismiss a complaint for failure to state a claim based on the affirmative defense of untimeliness only “when the allegations of the complaint reveal that relief is barred by the applicable statute of limitations.” *Logan v. Wilkins*, 644 F.3d 577, 582 (7th Cir. 2011).

Chowaniec admits that she electronically submitted her complaint early on day 91 but argues that “excusable neglect” created the delay. FED. R. CIV. P. 6(b)(1)(B), 60(b)(1). But that argument is not properly before us because she first raised it in her post-judgment motion, and she did not appeal the denial of that motion. See FED. R. APP. P. 4(a)(4)(B)(ii). In any event, what occurred here is not excusable neglect. From Chowaniec’s complaint, we glean that she knew of the deadline yet waited until the last day to file her complaint; her technical difficulties explain only the last hours of her delay. See *Sherman v. Quinn*, 668 F.3d 421, 427 (7th Cir. 2012) (“entirely voluntary” choice to run for political office was not excusable neglect for four-day delay); *Spears v. City of Indianapolis*, 74 F.3d 153, 157 (7th Cir. 1996) (declining to excuse one-day filing delay attributed to computer trouble because “the problem was really that [filer] waited until the last minute to get his materials together”).

Chowaniec’s filing deadline under 42 U.S.C. § 2000e–5(f)(1) was August 9, 2022. Failing to meet this deadline warrants dismissal. See *Lax v. Mayorkas*, 20 F.4th 1178, 1182–83 (7th Cir. 2020) (affirming dismissal of untimely discrimination complaint filed 91 days after receipt of notice). Because she did not file until the 91st day, the district court properly dismissed her case as time-barred. See *id.*

AFFIRMED