NONPRECEDENTIAL DISPOSITION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

Argued July 12, 2023
Decided August 1, 2023

Before

DIANE S. SYKES, *Chief Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 22-3183

ELVIN FARRIS, *Plaintiff-Appellant*,	Appeal from the United States District Court for the Central District of Illinois.
v.	No. 22-cv-2107
VECTOR CONSTRUCTION, INC., *Defendant-Appellee*.	Colin S. Bruce, *Judge*.

O R D E R

Elvin Farris, a construction worker, sued Vector Construction, his former employer, for discrimination and retaliation alleging that it fired him rather than accommodate his work-related disability. The district judge granted Vector's motion to dismiss, concluding that Farris's charge with the Equal Employment Opportunity Commission was untimely. Farris appeals, arguing that the judge should have found his charge timely or granted him leave to amend his complaint. Because the charge is untimely and amendment would have been futile, we affirm.

We accept the allegations in the complaint as true and draw all reasonable inferences in Farris's favor. *Chaidez v. Ford Motor Co.*, 937 F.3d 998, 1004 (7th Cir. 2019). Farris worked for Vector Construction for decades until August 2018 when he was discharged. Farris inhaled chemical insulation spray after he was denied an appropriate respirator given his preexisting asthma. Farris complained to his supervisor that safety regulations were being ignored, and on August 5 he was "sent home" from work until further notice. It is unclear what reason Vector gave Farris, but he believed Vector discriminated and retaliated against him by laying him off for raising safety concerns.

Farris learned later that his removal from work was permanent. In October 2018, believing he was still employed, Farris sought a loan from his company retirement plan. On October 25 a Vector employee informed him that Vector had fired him in August.

On July 29, 2019, nearly a year after being sent home, Farris filed a charge with the Equal Employment Opportunity Commission. He alleged that Vector had violated the Americans with Disabilities Act, 42 U.S.C. §§ 12101–12213, by discriminating against him for his asthma and retaliating against him for reporting unsafe working conditions. In the charge Farris listed August 5, 2018, as the date of Vector's latest discriminatory act; he did not mention that he learned he was fired in October. The EEOC dismissed Farris's charge and issued a Right to Sue letter.

Farris then filed a complaint under the ADA in federal court, and Vector moved to dismiss on timeliness grounds. Vector argued that Farris's EEOC charge was untimely because he filed it more than 180 days after August 5 when he alleged that Vector last discriminated against him. Farris responded that the EEOC found his charge timely and included an EEOC investigator's declaration acknowledging his claim as filed within 300 days of October 25 when he learned that his discharge was permanent. Farris also included corroborating notes from his intake interview and emails from the Vector staffer who informed Farris in October that he had been fired.

The judge granted Vector's motion and dismissed Farris's complaint with prejudice. Noting that Illinois is a "deferral" state, the judge explained that Farris had to file his EEOC charge within 300 days of the last allegedly unlawful act. *See Stepney v. Naperville Sch. Dist. 203*, 392 F.3d 236, 239 (7th Cir. 2004). The judge ruled that even if Farris did not know that he was fired until October 2018, his claims accrued in August when he suspected that Vector had discriminatory and retaliatory motives for sending him home from work. And because he could not amend his complaint to revive his

time-barred claims, the judge considered amendment futile and dismissed the complaint with prejudice. *See Atkins v. City of Chicago*, 631 F.3d 823, 832 (7th Cir. 2011).

On appeal Farris argues that the judge erred by rejecting his EEOC charge, and therefore his federal claims, as time-barred. Farris argues primarily that the judge erred by conflating two "separate and distinct adverse actions": the layoff in August and the firing in October. He argues that regardless of whether a "discriminatory layoff" claim accrued in August, a "discriminatory termination" claim did not accrue until he learned in October that he was fired.

The judge correctly dismissed Farris's claims as time-barred. In his EEOC charge, Farris alleged that Vector last discriminated against him by sending him home on August 5. He had 300 days—until June 1, 2019—to file a charge against Vector for doing so "or lose the ability to recover for it." *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 110–11 (2002); 42 U.S.C. § 2000e-5(e)(1). Because he filed his charge on July 29, 2019, nearly two months late, Farris may not bring federal claims arising from his removal from work.

Farris's later discovery of new information about the precise scope of the injury does not start a new limitations clock. A claim accrues when a plaintiff "knows or should know" that he has been injured. *See Draper v. Martin*, 664 F.3d 1110, 1113 (7th Cir. 2011). Here, that's August 5, 2018, when Farris first "awaken[ed] to the possibility" that Vector had illegally removed him from work. *Beamon v. Marshall & Ilsley Tr. Co.*, 411 F.3d 854, 861 (7th Cir. 2005). To rely on the discovery rule, Farris would have to show that he could not have learned sooner through reasonable diligence that Vector considered his position terminated. Farris makes no such showing, and he cannot use his October "discovery" that he was fired in August "to pull in the time-barred discriminatory act." *Nat'l R.R. Passenger Corp.*, 536 U.S. at 113.

Farris's October notice was not a separate and distinct adverse act: there is no meaningful difference between his "layoff" and his "termination" when it comes to Vector's alleged motive. Vector's allegedly discriminatory discharge, not its characterization, was the relevant conduct. *See Draper*, 664 F.3d at 1115. Farris was injured when Vector sent him home—and never called him back—not in October when he learned that he had been fired. *Id.* at 1113.

And if October were significant, it is too late for Farris to pursue a claim based on a "discrete" act then. We have long held that an EEOC charge limits and defines any

subsequent federal claims. *See Riley v. City of Kokomo*, 909 F.3d 182, 189 (7th Cir. 2018) (citing *Green v. Nat'l Steel Corp.*, 197 F.3d 894, 898 (7th Cir. 1999)). Farris filed one EEOC charge, which identifies only the removal from work as Vector's last discriminatory act. Any claims arising from "separate and distinct" actions in October, then, fall outside the scope of the charge and may not be brought in federal court. *Nat'l R.R. Passenger Corp.*, 546 U.S. at 113; *Riley*, 909 F.3d at 189. Because no amended complaint could state a claim for relief, the judge correctly dismissed Farris's complaint with prejudice.

AFFIRMED