

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

JANET A. BONCI,)
)
Plaintiff,)
)
v.) CASE NO. 1:09-CV-101-WKW [WO]
)
ARMY FLEET SUPPORT,)
)
Defendant.)

ORDER

On August 6, 2009, the Magistrate Judge issued a Report and Recommendation (“Recommendation”) (Doc. # 27), recommending that Defendant Army Fleet Support’s (“AFS”) motion to dismiss, or, in the alternative, for summary judgment, (Doc. # 10) be granted. Plaintiff Janet A. Bonci, proceeding *pro se*, filed an Objection (Doc. # 29) to the Recommendation; AFS filed a reply (Doc. # 30) to the Objection; and Ms. Bonci then filed a response (Doc. # 31) to the reply.

Substantially for the reasons given by the Magistrate Judge, Ms. Bonci’s Objection lacks merit. The adverse employment actions Ms. Bonci complains of occurred in 2005 and 2006. Regardless of whether Ms. Bonci did not obtain particular lab reports or other documents until 2008, she did not timely file a charge with the Equal Employment Opportunity Commission (“EEOC”) within the required 180-day period. She argues that the lab reports show that AFS falsified the results of drug tests, and perhaps also attendance records, in order to discipline her in 2005 or 2006. An individual falsely accused of failing

a drug test or not coming to work would be immediately aware that an error or injustice had occurred, since that person would know whether or not she had taken drugs or come to work on the dates in question. There is thus no basis for equitable tolling of the time to file an EEOC charge until Ms. Bonci actually obtained the reports. The additional discovery Ms. Bonci seeks could not cure this defect.

Accordingly, it is ORDERED that:

- (1) The Recommendation of the Magistrate Judge is ADOPTED;
- (2) Ms. Bonci's Objection (Doc. # 29) is OVERRULED;
- (3) Army Fleet Support's motion (Doc. # 10) to dismiss, or in the alternative for summary judgment, is GRANTED;
- (4) Summary judgment is GRANTED to Army Fleet Support with respects to counts 1-4 of the complaint, and those counts are DISMISSED with prejudice;
- (5) Counts 5-7 of the complaint (the state-law claims) are DISMISSED without prejudice;
- (6) Ms. Bonci's motion (Doc. # 21) to amend her complaint is DENIED as futile.

DONE this 5th day of October, 2009.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE