

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

TANYA SMITH

PLAINTIFF

v.

No. 4:12-cv-517-DPM


CONAGRA FOODS, INC. and
TERRY STEEN

DEFENDANTS

ORDER

The Court's draft certification order is attached for consideration. The parties should file any suggested changes, objections, or acceptance by 31 January 2013.

So Ordered.



D.P. Marshall Jr.
United States District Judge

17 January 2013

DRAFT

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PLAINTIFF

v.

No. 4:12-cv-517-DPM

**CONAGRA FOODS, INC. and
TERRY STEEN**

DEFENDANTS

CERTIFICATION ORDER

Which statute of limitation applies to employment-related retaliation claims under the Arkansas Civil Rights Act will resolve important issues in this case. Tanya Smith worked for ConAgra. She says the company discriminated against her and fired her for taking sick leave and requesting an accommodation upon her return. She brought employment-based retaliation and discrimination claims against ConAgra. The discrimination claim, which had a one-year statute of limitation, was dismissed as time-barred. ARK. CODE ANN. § 16-123-107(c)(3). She also asserts an employment-based retaliation claim against her former supervisor, Terry Steen. The statute, however, contains no explicit limitation period for the employment-related retaliation claims. ConAgra says that the Court should

look to the one-year limit in § 16-123-107(c)(3). Smith argues that the three-year statute applies – the provision that catches all statutory causes of action that otherwise have no limitations period. ARK. CODE ANN. § 16-56-105. No Arkansas precedent decides between these statutory options. *Crites v. Cowan*, 2011 Ark. App. 11.

Here is the timeline:

- **February or March 2010** ConAgra terminated Smith and allegedly discriminated against her.
- **20 July 2010** Smith filed a complaint with the EEOC against only ConAgra, not Terry Steen.
- **29 August 2011** EEOC closed the case and issued a right-to-sue letter.
- **29 November 2011** Smith filed her first lawsuit in Pulaski County.
- **28 March 2012** The 120-day limit to serve ConAgra and Steen ended. Neither was served. Smith says she tried to serve Steen, but could not find him.
- **26 April 2012** Smith non-suited the complaint.
- **7 May 2012** Smith filed the current action in Pope County, Arkansas.
- **18 August 2012** ConAgra removed the case to Federal Court.
- **17 September 2012** After this Court granted a motion to extend time for service, Smith served Steen.

Smith's retaliation claims against ConAgra and Steen are untimely if the one-year statute of limitation applies. ARK. CODE ANN. § 16-123-107(c)(3). If the three-year statute applies, her claims are timely. ARK. CODE ANN. § 16-56-105. The Arkansas savings statute, ARK. CODE ANN. § 16-56-126, does not benefit Smith because there was no completed but imperfect service in the original Pulaski County action. *Clouse v. Ngau Van Tu*, 101 Ark. App. 260, 274 S.W.3d 344 (2008). Her retaliation claims therefore rise or fall depending on the applicable statute of limitations.

The Court therefore certifies the following question, subject to the Arkansas Supreme Court's power to reformulate it:

Are employment-related retaliation claims under the Arkansas Civil Rights Act, ARK. CODE ANN. § 16-123-108, subject to the one-year statute of limitation provided in another part of the Act, ARK. CODE ANN. § 16-123-107(c), or the three-year limitation period applicable when a statutory cause of action contains no limitations period? ARK. CODE ANN. § 16-56-105; *Chalmers v. Toyota Motor Sales, USA, Inc.*, 326 Ark. 895, 901, 935 S.W.2d 258, 261 (1996).

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So Ordered.

D.P. Marshall Jr.
United States District Judge
