

**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

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. ARK. CODE ANN. § 16-123-108. This provision, 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 limitation 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 limitation.

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 limitation 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).

Counsel for Tanya Smith

Luther O'Neal Sutter
Sutter & Gillham, PLLC
Post Office Box 2012
Benton, AR 72018

Counsel for ConAgra Foods Inc.

Brittany M. Ems
Husch Blackwell - St. Louis
190 Carondelet Plaza
Suite 600
St. Louis, MO 63105

Josef S. Glynias
Husch Blackwell - St. Louis
190 Carondelet Plaza
Suite 600
St. Louis, MO 63105

Carolyn B. Witherspoon
Cross, Gunter, Witherspoon &
Galchus, P.C.
Post Office Box 3178
Little Rock, AR 72203-3178

So Ordered.

D.P. Marshall Jr.
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United States District Judge

4 February 2013