

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

PHYLLIS D. RACY

PLAINTIFF

v.

No. 5:15cv00292-JLH

UNITED STATES DEPARTMENT  
OF AGRICULTURE

DEFENDANT

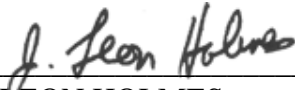
**OPINION AND ORDER**

Phyllis D. Racy brings this action pro se pursuant to Title VII of the Civil Rights Act of 1964 against the United States Department of Agriculture (“USDA”) alleging that she was discriminated against on the basis of race when she was denied employment as a Program Technician, first in November 2012 and again in December 2012. The USDA has filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), or in the alternative a motion for summary judgment pursuant to Rule 56, arguing that Racy failed to comply with the applicable statute of limitations. Document #23. Rule 12(d) provides that if matters outside the pleadings are presented to and not excluded by the court, a motion under Rule 12(b)(6) must ordinarily be treated as one for summary judgment under Rule 56 and all parties must be given a reasonable opportunity to present all the evidence that is pertinent to the motion. The USDA has presented matters outside the pleadings, which the Court will consider in determining whether this action must be dismissed. Therefore, the USDA’s motion to dismiss, or in the alternative a motion for summary judgment, will be treated as a motion for summary judgment and Racy will be given an opportunity to respond with evidence.

**CONCLUSION**

The plaintiff may submit to the Court evidence that is pertinent to the defendant's motion for summary judgment, but must do so within fourteen days from the entry of this opinion and order and the defendant may file a reply to that response within seven days from its filing.

IT IS SO ORDERED this 1st day of June, 2016.

  
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J. LEON HOLMES  
UNITED STATES DISTRICT JUDGE