

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
No. 2:13-CV-71-D

PAUL EUGENE CHERRY,)
)
 Plaintiff,)
)
 v.)
)
 ELIZABETH CITY STATE UNIVERSITY,)
)
 Defendant.)

ORDER

On February 4, 2014, Paul Eugene Cherry (“Cherry”) filed a pro se complaint alleging employment discrimination against Elizabeth City State University (“defendant” or “ECSU”) [D.E. 5]. On June 10, 2014, ECSU filed a motion for partial dismissal of Cherry’s amended complaint. See [D.E. 22]. On June 12, 2014, the court notified Cherry about the motion to dismiss, the due date for his response, and the consequences of failing to respond [D.E. 24]. Cherry did not respond to the motion to dismiss.

The court has reviewed ECSU’s motion to dismiss and the amended complaint. As for Cherry’s Title VII challenges to his non-promotion in June 2008 and late 2008 or early 2009 in count one, these claims are barred because Cherry failed to file an EEOC charge concerning these non-promotions within 300 days of the alleged discriminatory conduct. See, e.g., Webb v. N.C. Dep’t of Crime Control & Pub. Safety, 658 F. Supp. 2d 700, 709 (E.D.N.C. 2009); cf. Am. Compl., Ex. A [D.E. 21-1] (EEOC charge). As for Cherry’s state-law failure-to-promote claim under N.C. Gen. Stat. § 143-422.2 in count two, sovereign immunity bars this claim. See, e.g., Guthrie v. N.C. State Ports Auth., 307 N.C. 522, 534, 299 S.E.2d 618, 625 (1983); Paquette v. Cnty. of Durham, 155

N.C. App. 415, 418, 573 S.E.2d 715, 717–18 (2002). Alternatively, Cherry has failed to state a claim under section 143-422.2 in count two. See, e.g., Smith v. First Union Nat'l Bank, 202 F.3d 234, 247 (4th Cir. 2000); Mullis v. Mechs. & Farmers Bank, 994 F. Supp. 680, 687 (M.D.N.C. 1997). Finally, Cherry cannot recover punitive damages from ECSU. See, e.g., 42 U.S.C. § 1981a(b)(1); Googerdy v. N.C. Agric. & Tech. State. Univ., 386 F. Supp. 2d 618, 625 (M.D.N.C. 2005).

In sum, defendant's motion for partial dismissal of plaintiff's amended complaint [D.E. 23] is GRANTED. Plaintiff's Title VII failure-to-promote claims from 2008 and 2009 in count one are barred because Cherry failed to file a timely EEOC charge concerning the non-promotions. Plaintiff's state-law claim in count two is barred by sovereign immunity and fails to state a claim. Plaintiff's request for punitive damages is barred by statute. Defendant's motion to dismiss the original complaint [D.E. 15] is DISMISSED as moot. Defendant may answer the surviving claims in plaintiff's amended complaint not later than October 17, 2014.

SO ORDERED. This 23 day of September 2014.



JAMES C. DEVER III
Chief United States District Judge