

United States District Court  
Southern District of Texas

**ENTERED**

January 08, 2018

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

SANDRA FLOWERS,  
Plaintiff,

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§

v.

CIVIL ACTION NO. 4:17-cv-02704

TEXAS MILITARY DEPT. 401,  
Defendant.

**MEMORANDUM AND ORDER**

Plaintiff Sandra Flowers filed a Complaint on August 22, 2017, which the Court refiled under a different civil action number on September 5, 2017, alleging that the termination of her employment by Defendant Texas Military Department (“TMD”) constituted discrimination based on her age, in violation of the Age Discrimination in Employment Act (“ADEA”), and race, in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”). On October 12, 2017, TMD moved to dismiss Plaintiff’s Complaint in its entirety. Defendant’s Motion to Dismiss [Doc. # 7]. On November 13, 2017, this Court referred the case to United States Magistrate Judge Dena Palermo for all pretrial proceedings, including report and recommendation on dispositive motions. Order [Doc. # 9]. *See* 28 U.S.C. § 636(b)(1)(B). On December 20, 2017, Magistrate Judge Palermo issued a Report and Recommendation (the “Report and Recommendation”) [Doc. # 18] recommending that Plaintiff’s ADEA

claim be dismissed because TMD is entitled to the protection of sovereign immunity under the Eleventh Amendment of the United States Constitution and that Plaintiff's Title VII claim should not be dismissed because her race discrimination claim was timely filed. The time for objections to the Report and Recommendation has expired without any objections being filed. The Court finds that the Magistrate Judge's Report and Recommendation is well founded, and that the Magistrate Judge's recommended disposition should be adopted.<sup>1</sup> It is therefore

**ORDERED** that the Report and Recommendation [Doc. # 18] is **ADOPTED** as this Court's Memorandum and Order. If is further

**ORDERED** that Defendant's Motion to Dismiss [Doc. # 7] is **GRANTED in part** and **DENIED in part**. Plaintiff's claim under the ADEA is **DISMISSED WITH PREJUDICE**. In all other respects, the Motion to Dismiss is **DENIED**.

SIGNED at Houston, Texas, this 8<sup>th</sup> day of **January, 2018**.

  
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NANCY F. ATLAS  
SENIOR UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Since there are no objections, the Court has not made a *de novo* review of this matter. *See* 28 U.S.C. § 636(b)(1).