

[Cite as *Longstreet v. Indus. Comm. of Ohio*, 2007-Ohio-1883.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

LISA LONGSTREET

Plaintiff

v.

INDUSTRIAL COMMISSION OF OHIO

Defendant

Case No. 2005-11698

Judge J. Craig Wright

DECISION

{¶1} On February 7, 2007, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On March 13, 2007, plaintiff filed a response. On March 13, 2007, defendant filed a motion to strike plaintiff's summary judgment exhibits. On March 15, 2007, plaintiff filed a response. On March 15, 2007, the court conducted an oral hearing on the motions.¹

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} “*** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. ***” See, also, *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} In 1993, plaintiff began her employment with defendant. In 1994, plaintiff began to experience seizures and eventually was diagnosed with epilepsy. In 2001, plaintiff stopped working because of her condition and applied for disability retirement benefits through the Ohio Public Employees Retirement System (OPERS). Plaintiff began receiving benefits on February 1, 2002.

{¶5} In January and March 2003, plaintiff underwent two surgeries on her brain to treat the seizures. The surgeries were successful and plaintiff did not experience any seizures after March 2003.

{¶6} In May 2003, plaintiff informed defendant that her treating physician had determined that she was able to return to work on June 4, 2003. Defendant informed plaintiff that before she could return to work, she had to undergo an independent medical examination by a physician from OPERS. Plaintiff was also informed that she must contact

¹At the hearing, defendant withdrew its motion to strike plaintiff's exhibits.

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OPERS to terminate her disability retirement benefits before she could return to work. On June 18, 2003, an OPERS physician examined plaintiff and subsequently opined that plaintiff would be eligible to return to work if she were to remain “seizure-free” for a period of six months after the surgery.

{¶7} On September 29, 2003, plaintiff’s counsel sent defendant a letter inquiring why plaintiff had not been reinstated. On October 3, 2003, defendant sent plaintiff and her attorney a letter that stated, in part:

{¶8} “The Human Resources Department at the Industrial Commission has informed you in two separate telephone conversations that because you went out on disability retirement through the Ohio Public Employees Retirement System you must contact them in order to begin this process. PERS will perform an independent examination and notify the Industrial Commission if you are fit to return to work and delineate any restrictions that may or may not be involved.

{¶9} “We have not received any information or documentation from the Ohio Public Employees Retirement System to date. The Industrial Commission cannot begin this process until the appropriate documentation is submitted.” (Defendant’s Exhibit C.)

{¶10} On November 13, 2003, plaintiff filed with the EEOC a charge of discrimination based on disability. On May 18, 2004, plaintiff notified OPERS in writing of her desire to return to active employment and to have her benefits terminated. On June 18, 2004, the disability retirement unit from OPERS notified defendant that plaintiff’s disability benefits would be terminated effective September 30, 2004. Plaintiff returned to active employment with defendant on October 1, 2004.

{¶11} On May 6, 2005, the EEOC issued a “right-to-sue letter” which informed plaintiff that she had 90 days within which to file a civil action. On July 11, 2005, plaintiff filed a complaint in federal court. On December 5, 2005, plaintiff’s claim in federal court was dismissed. On December 21, 2005, plaintiff filed her complaint in this court.

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{¶12} Defendant asserts that both plaintiff's federal and state law claims are barred by the applicable statute of limitations. This court agrees.

{¶13} Plaintiff asserts claims pursuant to the federal Americans with Disabilities Act (ADA), Section 12101 et seq., Title 42, U.S.Code. To seek relief under the ADA, a plaintiff must file suit within 90 days of receipt of a right to sue letter from the EEOC. See Section 12117(a), Title 42, U.S.Code; *Peete v. American Standard Graphic* (C.A. 6, 1989), 885 F.2d 331. Plaintiff received her right to sue letter on May 6, 2005. Plaintiff filed her complaint on December 21, 2005.

{¶14} Plaintiff argues that because she timely filed a complaint in federal court, the Ohio savings statute operates to save her claim in this court. R.C. 2305.19(A) states, in relevant part: "In any action that is commenced or attempted to be commenced, *** if the plaintiff fails otherwise than upon the merits, the plaintiff *** may commence a new action within one year after the date of *** the plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later." However, a state savings statute cannot "save" a federal claim that contains a specific limitations period. *McNeeley v. Ross Correctional Institute*, Franklin App. No. 06AP-280, 2006-Ohio-5414.

{¶15} Plaintiff's claims under the ADA were filed more than 90 days after May 6, 2005, and such claims are now time-barred.

{¶16} Plaintiff's state law claims brought pursuant to R.C. 4112.02 and R.C. 4112.99² are also barred by the applicable statute of limitations. R.C. 2743.16(A) states, in relevant part: "*** civil actions against the state permitted by sections 2743.01 to 2743.20

²R.C. 4112.02 states, in relevant part: "It shall be an unlawful discriminatory practice: (A) For any employer, because of the *** disability *** of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment."

R.C. 4112.99 states: "Whoever violates this chapter is subject to a civil action for damages, injunctive relief, or any other appropriate relief."

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of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.” The two-year statute of limitations found in R.C. 2743.16 applies to claims that seek monetary damages for discrimination against the state. *McFadden v. Cleveland State University*, Franklin App. No. 06AP-638, 2007-Ohio-298. For discrimination claims under R.C. Chapter 4112, the statute of limitations begins to run when the plaintiff is “unequivocally informed” of the alleged adverse action underlying the complaint. *Kozma v. AEP Energy Services*, Franklin App. No. 04AP-643, 2005-Ohio-1157, ¶38.

{¶17} In her complaint, plaintiff asserts that defendant’s refusal to permit her to return to work on May 27, 2003, or, at the latest, by September 2003, was unlawful discrimination based on a perceived disability. The court finds that plaintiff’s cause of action accrued on September 29, 2003, the date when plaintiff’s counsel sent a letter to defendant inquiring about plaintiff’s reinstatement. Even if the court were to find that plaintiff’s cause of action accrued on October 3, 2003, the date of defendant’s letter, the fact that plaintiff filed her complaint on December 21, 2005, leads to the only conclusion from the evidence that plaintiff’s claims under R.C. Chapter 4112 are barred by the two-year statute of limitations found in R.C. 2743.16. Upon review of the evidence, the court finds that there is no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law.

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Case No. 2005-11698

Plaintiff

Judge J. Craig Wright

v.

JUDGMENT ENTRY

INDUSTRIAL COMMISSION OF OHIO

Defendant

An oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. CRAIG WRIGHT
Judge

cc:

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