

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JEFFREY D. HILL,	:	NO. 13 – 00,329
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
GROUNDWATER & ENVIRONMENTAL	:	
SERVICES,	:	
Defendant	:	Motion for Judgment on the Pleadings

OPINION AND ORDER

Before the court is Defendant’s Motion for Judgment on the Pleadings, filed September 23, 2013. Argument was heard November 20, 2013.

In his Complaint, Plaintiff alleges that Defendant wrongfully failed to hire him after he submitted several online job applications. Plaintiff asserts a claim of age discrimination, as well as claims of discrimination based on an undisclosed disability, an alleged wrongful conviction, his unemployed status, and his prior arrest. In its Answer and New Matter, Defendant denies the averments of the Complaint and contends that, *inter alia*, Plaintiff failed to exhaust administrative remedies and failed to state a cause of action as he does not (1) allege that Defendant knew or should have known of his protected class status, or (2) allege that the legitimate, non-discriminatory reason for its actions was pretextual.

The instant motion is based on the allegations of the New Matter as outlined above. The court agrees with Defendant’s contentions.

An aggrieved party must utilize administrative remedies available through the Human Relations Commission before bringing a cause of action in court. Clay v. Advanced Computer Applications, Inc., 559 A.2d 917 (Pa. 1989). The complaint filed by Plaintiff before the Pennsylvania Human Relations Commission asserted only a claim of age discrimination. See Exhibit “A” of

Defendant's Answer and New Matter, filed March 20, 2013. Although Plaintiff argues that he raised the other issues in the Questionnaire he filled out before filing the PHRC complaint, *see* Plaintiff's Response to Defendant's Answer & New Matter, filed March 28, 2013, to utilize the Human Relations Commission remedy, a complainant must include the claim in his complaint before that body. *See* 43 P.S. § 962(c)(court may address "unlawful discriminatory practice charged in the complaint"). As Plaintiff did not raise the claims based on an undisclosed disability, an alleged wrongful conviction, his unemployed status, and his prior arrest before the PHRC, he has not exhausted his statutory remedies with respect to those claims. Therefore, Defendant is entitled to judgment on those claims.

With respect to the claim of age discrimination, Defendant contends first that Plaintiff has failed to state a cause of action as he does not allege that Defendant knew or should have known of his protected class status, and that in fact nothing in the online applications would have given Defendant the ability to ascertain Plaintiff's age. A review of the applications shows that Defendant is correct. *See* Exhibits "C", "D", and "E" of Defendant's Answer and New Matter, filed March 20, 2013. Plaintiff argues that Defendant could have found the information on the internet, but has offered no evidence that Defendant actually did so. In any event, Defendant has offered a legitimate, non-discriminatory reason for its actions and Plaintiff has failed to allege that such reason is pretextual.

Proving discrimination involves a three-step process. First, the complainant must make out a prima facie case of discrimination. Jacques v. Akzo International Salt, Inc., 619 A.2d 748 (Pa. Super. 1993). Once the complainant has established a prima facie case of discrimination, the burden of proof shifts to

allow the defendant an opportunity to rebut the inference of the prima facie case. Id. If the defendant articulates a nondiscriminatory reason for the employment decision, then the burden of proof shifts back to the complainant, who must then prove that the articulated reason is pretextual. Id. In the instant case, even assuming Plaintiff has made out a prima facie case of age discrimination, he has nevertheless failed to answer Defendant's allegation that it had a nondiscriminatory reason for its actions, specifically that the applications were rejected based on Defendant's belief that Plaintiff had made a mockery of the application process.

A review of the online applications supports Defendant's assertion that Plaintiff made a mockery of the application process. For example, in his October 29, 2010, application, Plaintiff claimed his last job paid him a starting and ending salary of \$999,999,999,999,999.00 per year, and gave as references "At N. Interview" and "Who Yoo No", without additional contact information. *See* Exhibit "C" of Defendant's Answer and New Matter, filed March 20, 2013. In the "employment history" section of his February 11, 2011, application, he listed his prior supervisor as "Stumpy" and gave his phone number as "546-GONE". *See* Exhibit "D" of Defendant's Answer and New Matter, filed March 20, 2013. He described his job as "[b]reathing pulverized sand dust without a respirator despite repeated complaints. OSHA shut them down." His reference, "Atan Interview" was given contact information of EOE@lie.com. "Hoo Yoo No", another reference, was given contact information of Integritylegislated@stupidnbankrupt.com. All of this information was also listed in Plaintiff's November 10, 2011, application. *See* Exhibit "E" of Defendant's Answer and New Matter, filed March 20, 2013.

Plaintiff does not respond to Defendant's assertion. He merely states: "[s]ummary judgment in my favor is clearly warranted by law meritoriously because each and every applicant deserves to be evaluated on criteria that is meritorious based on individual ability rather than by **STEREOTYPICAL, BIGOTED PERSONAL PREJUDICES**". See Plaintiff's Response to Defendant's Answer & New Matter, filed March 28, 2013, (emphasis in original). Plaintiff has alleged no facts to support a finding that Defendant acted on the basis of prejudice, however, and to the contrary, the pleadings and attached exhibits clearly show that Defendant had a nondiscriminatory reason for the employment decision. Defendant is thus entitled to judgment on this claim as well. See *Jacques, supra*, at 752 ("Since Jacques has failed to offer any evidence which would support an age discrimination claim, we find that summary judgment was appropriate.").

ORDER

AND NOW, this 11th day of December 2013, for the foregoing reasons, Defendant's Motion for Judgment on the Pleadings is hereby GRANTED. Judgment is hereby entered in favor of Defendant and against Plaintiff.

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley Anderson