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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

ALLEYENNE B. DAVIS,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 81-1161-A
)	
SECRETARY, U.S. DEPARTMENT)	
OF HEALTH & HUMAN SERVICES,)	
<u>et al.</u> ,)	
)	
Defendants.)	

ORDER

This matter comes before the court on the defendants' motion under Rule 12(b)(6) to dismiss the complaint. See Fed. R. Civ. P. 12(b)(6). The defendants move, in the alternative, for summary judgment under Rule 56. See id. 56(b). For the reasons stated below, the court DENIES these motions in part and GRANTS them in part.

The defendants move for dismissal on four grounds. First, they assert that the court lacks subject-matter jurisdiction over the claims against the defendant agency, because the plaintiff has failed to exhaust her administrative remedies. Second, they contend that the complaint fails to state a claim against defendant Murphy, because Murphy cannot be sued as an individual under Title VII or the Age Discrimination in Employment Act (ADEA). See 29 U.S.C. § 633a (1976); 42 U.S.C. § 2000e-16 (1976). Third, the defendants argue that the plaintiff cannot maintain an action for negligence, breach of contract, or extortion against the agency, because Title VII and the ADEA provide the exclusive remedies for federal employment discrimination. Finally, they assert that the court should strike the claims against the defendant agency for compensatory damages, punitive damages, and interest, because these items are not recoverable under either Title VII or the ADEA.

The court rejects the defendants' contention that the

court does not have subject-matter jurisdiction over the claims against the agency. Section 7702(e)(1)(B) gives the court jurisdiction over claims filed with the Merit System Protection Board "on the 120th day following the filing of an appeal with the Board." 5 U.S.C. § 7702(e)(1)(B) (Supp. III 1979). The court holds that this 120-day period begins running when the plaintiff first files an appeal with the Board. The time period does not begin running again simply because the plaintiff elects to move to the second stage of the Board's appeals process. See S. Rep. No. 1272, 95th Cong., 2d Sess. 141 (1978). Thus, the court DENIES the defendants' motions with respect to the Title VII and ADEA claims against the agency.

The court accepts the defendants' second argument to the extent of dismissing all Title VII claims against Murphy. Title VII permits suits by federal employees only against the head of the employing agency. See 42 U.S.C. § 2000e-16(c) (1976). The ADEA, however, does not appear to limit the persons a federal employee may sue. See, e.g., Purtil v. Harris, 658 F.2d 134 (3d Cir. 1981). In addition, the court cannot dismiss the state-law tort claims against Murphy at this time, because the court may have jurisdiction over these claims under either the diversity statute or the pendent party doctrine. See 28 U.S.C. § 1332 (1976); Aldinger v. Howard, 427 U.S. 1 (1976).

The court agrees with the defendants' third contention. Title VII and the ADEA provide the exclusive remedies for federal employment discrimination. See Brown v. GSA, 425 U.S. 820, 835 (1976); Purtill v. Harris, 658 F.2d 134, 137 (3d Cir. 1981); Paterson v. Weinberger, 644 F.2d 521, 525 (5th Cir. 1981). The court, therefore, dismisses any claims against the agency based on negligence, breach of contract, or extortion.

The court also accepts the defendants' fourth argument. The plaintiff cannot recover compensatory or punitive damages

for pain and suffering under Title VII or the ADEA. See DeGrace v. Rumsfeld, 614 F.2d 796, 808 (1st Cir. 1980); Walker v. Pettit Construction Co., 605 F.2d 128, 129-30 (4th Cir. 1979); Slatin v. Stanford Research Institute, 590 F.2d 1292, 1296 (4th Cir. 1979). Thus, the court will strike the plaintiff's claims against the agency for compensatory and punitive damages. The usual remedy sought in such cases is reinstatement plus an award of back pay. See 29 U.S.C. § 626(b) (1976); 42 U.S.C. § 2000e-5(g) (1976).

Finally, the court holds that the plaintiff is not entitled to trial by jury. See Lehman v. Nakshian, 101 S. Ct. 2698, 2703-05 (1981).

United States District Judge

Date: _____