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

PHILLIP H. SAVAGE, )  
 )  
 Plaintiff, )  
 )  
 v. ) CIVIL ACTION NO. 82-0218-A  
 )  
 VERNE ORR, Secretary of the )  
 United States Air Force, )  
 )  
 Defendant. )

MEMORANDUM OPINION

Plaintiff Phillip H. Savage has filed a Title VII action against the Secretary of the United States Air Force. See 42 U.S.C. §§ 2000e to 2000e-17 (1976). Savage's complaint alleges that the Air Force discriminated against him on the basis of race in failing to hire him. The Air Force moves to dismiss the complaint for lack of subject-matter jurisdiction. See Fed. R. Civ. P. 12(b)(1). In particular, the defendant contends that the 30-day limitation on filing federal employment discrimination suits bars Savage's action. See 42 U.S.C. § 2000e-16(c) (1976). For the reasons stated below, the court denies this motion.

On June 26, 1978, Savage filed a formal complaint with the Air Force's Equal Employment Opportunity Office. This complaint charged that the Air Force had refused to hire the plaintiff for a certain position, because he was black. On October 23, 1981, Savage received an adverse determination letter from the Air Force. The letter informed Savage of his right to file a Title VII suit in federal court within 30 days of receipt of the letter. See id. The 30-day period for filing expired on Sunday, November 22, 1981. The plaintiff filed his action on the following Monday.

Rule 6(a) normally allows a party to file a pleading due on a Sunday on the following Monday. See Fed. R. Civ. P. 6(a). This rule applies to federal statutes of limitation. See Lawson v. Conyers Chrysler, Plymouth, & Dodge Trucks, Inc.,

600 F.2d 465, 466 (5th Cir. 1979); J. Aron & Co. v. S/S Olga Jacob, 527 F.2d 416, 417 (5th Cir. 1976); Johnson v. Flemming, 264 F.2d 322, 323 (10th Cir. 1959); Wilkes v. United States, 192 F.2d 128, 129 (5th Cir. 1951); McMillon v. Budget Plan of Virginia, 510 F. Supp. 17, 19 (E.D. Va. 1980); Haire v. Calloway, 385 F. Supp. 309, 310 (E.D. Mo. 1974), rev'd on other grounds, 526 F.2d 246 (8th Cir. 1975). The Air Force, however, claims that Rule 6(a) does not apply in this case, because the 30-day limitation is a jurisdictional requirement rather than a statute of limitations. See Prophet v. Armco Steel, Inc., 575 F.2d 579, 580 (5th Cir. 1978); Milam v. United States Postal Service, 533 F. Supp. 28 (N.D. Ga. 1981); Smith v. Bailar, 22 Fair Empl. Prac. Cas. (BNA) 1378 (N.D. Ga. 1980). Thus, the key question is the nature of the applicable time limitation.

In Zipes v. Trans World Airlines, Inc., 102 S. Ct. 1127 (1982), the Supreme Court held that the 180-day limitation on filing charges with the Equal Employment Opportunity Commission (EEOC) is a statute of limitations, rather than a jurisdictional prerequisite. See id. at 1132. The Air Force attempts to distinguish Zipes from the present case on two grounds. First, the Air Force argues that Zipes does not apply to employment discrimination suits against the federal government. In making this argument, the Air Force relies on Brown v. GSA, 425 U.S. 820 (1976), and Eastland v. TVA, 553 F.2d 364 (5th Cir.), cert. denied, 434 U.S. 985 (1977). Brown, however, is not persuasive authority, because its holding with respect to the 30-day limitation is ambiguous. See 425 U.S. at 824. Brown contains no firm statement that compliance with the limitation is a jurisdictional prerequisite. In addition, Eastland does not support the Air Force's argument. The Fifth Circuit there refused to draw a distinction between government sector and private sector cases:

We have found no federal sector cases dealing with whether the thirty day time limit is jurisdictional. Neither do we glean from the statute any indication that this time limit should assume a character

different from that of the private sector ninety-day statutory limit set forth in 42 U.S.C. § 2000e-5(f)(1).

553 F.2d at 368. The court, therefore, holds that Zipes applies to discrimination cases against the government, as well as to private sector cases.

Second, the Air Force contends that Zipes applies only to time limits on filing charges with the EEOC. The Air Force asserts that this type of limit is fundamentally different from the time limitation on filing suit involved in the present case. The Zipes opinion, however, refers to the case of Mohasco Corp. v. Silver, 447 U.S. 807 (1980), in discussing time limits. See 102 S. Ct. at 1135. Mohasco dealt with a Title VII limitation on filing suit in federal court. See 447 U.S. at 811 n.9. The Supreme Court's approval of Mohasco in Zipes indicates that the Court did not intend to draw a distinction between time limits on filing suit in federal court and time limits on filing charges with the EEOC. Thus, the court holds that the 30-day limitation involved in the present case is a statute of limitation rather than a jurisdictional prerequisite. As a consequence, Rule 6(a) extends the plaintiff's filing deadline to Monday, November 23, 1981.

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UNITED STATES DISTRICT JUDGE

Date: \_\_\_\_\_