UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

THOMAS J. JEFFREYS	:	
v.	:	CIV. NO. 3:97CV1538 (AHN)
TEAMSTERS LOCAL UNION NO. 1150	:	

RECOMMENDED RULING ON MOTION FOR SUMMARY JUDGMENT

Thomas J. Jeffreys brings this action pro se and in forma pauperis against the Teamsters Local 1150 (the "Union") arising out of his June 1993 layoff from his employment at Sikorsky Aircraft.[1] Plaintiff alleges that the Union discriminated against him in handling his layoff and failing to abide by the recall provisions of the Collective Bargaining Agreement because he is an individual with a disability. Plaintiff contends that defendant violated the Americans with Disability Act of 1990 (ADA), 42 U.S.C. §12111 et seq., the Rehabilitation Act of 1973, 29 U.S.C. §701 et seq., and his civil rights, not further specified.

Pending is defendant's Motion for Summary Judgment **[Doc. #42].** For the reasons that follow, summary judgment is **GRANTED.**

STANDARD OF LAW

[1]The Union is a labor organization engaged in collective bargaining for its members employed at Sikorsky Aircraft. Plaintiff was a member of the Union during the relevant time period of this action. [Def. 9(c)(2) ¶2].

In a motion for summary judgment, the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. Rule 56 (c), Fed. R. Civ. P.; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). A court must grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact." Miner v. Glen Falls, 999 F.2d 655, 661 (2d Cir. 1993) (citation omitted). A dispute regarding a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Aldrich v. Randolph Cent. Such. D., 963 F.2d 520, 523 (2d Cir.) (quoting Anderson, 477 U.S. at 248), cert. denied, 506 U.S. 965 (1992). After discovery, if the non-moving party "has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof," then summary judgment is appropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The court resolves "all ambiguities and draw[s] all inferences in favor of the nonmoving party in order to determine how a reasonable jury would decide." Aldrich, 963 F.2d at 523. Thus, "[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper." Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir.), cert. denied, 502 U.S. 849 (1991). See also Suburban Propane v. Proctor Gas, Inc., 953 F.2d

780, 788 (2d Cir. 1992).

In the context of a motion for summary judgment pursuant to Rule 56(c), disputed issues of fact are not material if the moving party would be entitled to judgment as a matter of law even if the disputed issues were resolved in favor of the non-moving party. Such factual disputes, however genuine, are not material, and their presence will not preclude summary judgment. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); see also Cartier v. Lussier, 955 F.2d 841, 845 (2d Cir. 1992).

These principles apply to cases of employment discrimination as they do to other cases. "[T]he salutary purposes of summary judgment--avoiding protracted, expensive and harassing trials--apply no less to discrimination cases than to commercial or other areas of litigation." Raskin v. Wyatt Co., 125 F.3d 55, 66 (2d Cir. 1997) (citing Meiri v. Dacon, 759 F.2d 989, 998 (2d Cir. 1985), cert. denied, 474 U.S. 829 (1985)).

Plaintiff filed this action pro se and, as the Second Circuit directs, when considering the sufficiency of a pro se complaint, this Court "must construe it liberally, applying less stringent standards than when a plaintiff is represented by counsel." Robles v. Coughlin, 725 F.2d 12, 15 (2d Cir. 1983) (citing Hughes v. Rowe, 449 U.S. 5, 9 (1980) (per curiam)); Branham v. Meachum, 77 F.3d 626, 628-29 (2d Cir. 1996). While the court "has an obligation to read [the pro se party's]

supporting papers liberally, and . . . interpret them to raise the strongest arguments they suggest, a pro se party's bald assertion, completely unsupported by the evidence, is not sufficient to overcome a motion for summary judgment." Lee v. Coughlin, 902 F. Supp. 424, 429 (S.D.N.Y. 1995)(internal quotation marks and citations omitted).

The Court notes that, on August 16, 2000, [Doc. #52], the Court filed a ruling and order including a notice to the plaintiff pursuant to McPherson v. Coombe, 174 F.3d 276 (2d Cir. 1999). The Court informed the plaintiff that any factual assertions in the documents accompanying the defendant's summary judgment would be accepted as true unless the plaintiff filed affidavits or other documentary evidence contradicting the assertions. The Court indicated that the plaintiff could not simply rely on his complaint or his memorandum in opposition to the motion for summary judgment. In addition, the Court noted that the plaintiff must file a Local Rule 9(c)(2) Statement setting forth the facts that remain in dispute. In response to the Court's notice, plaintiff filed a memorandum with attached exhibits.

DISCUSSION

Defendant first argues that plaintiff's complaint was not timely filed. The record contains a copy of the EEOC's determination dismissing plaintiff's complaint on March 27, 1997,

which gave plaintiff 90 days, or until June 25, 1997, to file a federal lawsuit. [Def. Ex. B]. Defendant argues that since plaintiff's complaint was file stamped on July 28, 1997, that it was untimely and suit is barred. "However, where, as here, plaintiff acts pro se and sends his complaint to the court, and the complaint is not filed until a later date due to consideration of plaintiff's application to proceed in forma pauperis, the action is deemed commenced for purposes of the statute of limitations upon receipt by the court of plaintiff's complaint, and not when it is filed." Salahuddin v. Milligan, 592 F. Supp. 660, 661 (S.D.N.Y. 1984), aff'd without op., 767 F.2d 908 (2d Cir. 1985). Here, plaintiff's federal complaint was received for filing by the District Court on June 17, 1997, along with plaintiff's Motion to Proceed In Forma Pauperis (IFP), [Doc. #1]. In this District, a complaint is not filed until the IFP Motion has been considered and granted. Plaintiff's IFP Motion was granted on July 28, 1997, and only then was the complaint authorized for filing. This Court regards June 17, 1997, as the filing date for purposes of tolling the statute of limitations.

Collateral Estoppel

The Union argues that plaintiff should be barred from

bringing this action under the doctrine of collateral estoppel.[2] Defendant asserts that plaintiff brought this same case against his employer, Sikorsky Aircraft, in Jefferies [sic] v. United Technologies Corp., Sikorsky Aircraft Division, Civ. No. 3:97CV1344 (DJS) (D. Conn. Aug. 12, 1999) [hereafter "Sikorsky"].

Our Court of Appeals states

> collateral estoppel, or issue preclusion,"means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated by the same parties in a future lawsuit. Collateral estoppel applies when (1) the issues in both proceedings are identical, (2) the issue in the prior proceeding was actually litigated and actually decided, (3) there was [a] full and fair opportunity to litigate in the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits." Unlike res judicata, collateral estoppel does not bar a litigant from subsequently pursuing issues that were not raised in the first proceeding, but "could have been."

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[2]Collateral estoppel is defined as

> An affirmative defense barring a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one.

Defensive collateral estoppel is defined as

> Estoppel asserted by a defendant to prevent a plaintiff from relitigating an issue previously decided against the plaintiff and for another defendant.

Black’s Law Dictionary 256 (7th Ed. 1999).

Flaherty v. Lang, 199 F.3d 607, 613 (2d Cir. 1999) (internal quotation marks and citations omitted).

Both this proceeding and Sikorsky raise identical issues. In Sikorsky, Jeffreys claimed that his employer violated the ADA and Rehabilitation Act by laying plaintiff off in June 1993 and not recalling him to work thereafter. [Def. Ex. D & E]. Judge Squatrito granted summary judgment for Sikorsky, finding that plaintiff failed to establish a prima facie case and that he was not disabled within the meaning of either the ADA or the Rehabilitation Act. While the Court found that plaintiff suffered from a physical impairment[3] and had been diagnosed with chronic back pain and left-sided sciatica, it also found that "plaintiff failed to present any evidence tending to show that his impairment was substantial," and that "plaintiff . . . failed to establish that his condition substantially limits the major life activity of working." [Def. Ex. D. at 6, 9-10]. Significant to the Court was the fact that plaintiff "did not provide any evidence that he is unable to work in a broad range of jobs or classifications of jobs." Id. at 10. His "1993 medical reports indicate that he worked regularly. . .[and his] submitted evaluations state that his performance and attendance were satisfactory." Id. Moreover, "plaintiff did not miss any work

[3]Plaintiff claimed in Sikorsky to be disabled from the same 1989 auto accident, and provided the same medical documentation in both cases.

after the issue of a medical placement report stipulating his work restrictions." Id. Indeed, the Court further held that "plaintiff failed to present any evidence that the defendant regarded him as having a disability," Id. at 12, and concluded that "plaintiff does not have a record of an impairment within the meaning of the ADA." Id. at 13.[4]

Upon careful review of the pleadings, this Judge concludes that the issues now before this Court on summary judgment were already litigated and decided in the Sikorsky case. In both cases, plaintiff claims he was discriminated against due to his back impairment, in violation of the ADA and Rehabilitation Act, in connection with the layoff in June 1993 and the subsequent recall. The two complaints were received by the court on June 17, 1997, the same day, and were based on the same underlying

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[4]The Court also found that plaintiff's claim failed under the Rehabilitation Act for two reasons.

> First, the plaintiff must establish that he is disabled within the meaning of the statute. Since the definition of an impairment is almost identical to that of the ADA, the plaintiff is not disabled according to the RHA. Second, the plaintiff has not demonstrated that the defendant receives financial assistance form the federal government. The plaintiff does sell helicopters to the government; however, contracts are not considered within the definition of federal financial assistance according to the RHA.

Id. at 15 (citation omitted).

occurrences.

Nothing in the record indicates that Jeffreys did not have a full and fair opportunity to litigate these claims in Sikorsky. Plaintiff's argument that he requested the guidelines from the EEOC after Judge Squatrito's decision and should be permitted to submit them here in opposition to summary judgment is unavailing, since plaintiff stated that he had these EEOC guidelines in his memorandum in opposition to summary judgment in Sikorsky. [Def. Ex. G at 21]. In his opposition papers in this case, plaintiff repeatedly refers to Judge Squatrito's ruling and states his disagreement with the findings. [Doc. #54 at 9-10, 12-13, 27-28, 50-51, 55]. Plaintiff's disagreement with Judge Squatrito's decision is not a sufficient basis to relitigate the same issues in this action. [Doc. #54 at 2].[5]

Finally, the Court concludes that the issues litigated in Sikorsky were "necessary to support a valid and final judgment on the merits." Flaherty 199 F.3d at 613. The Court's conclusion that Jeffreys is not "disabled" was necessary there, as here, in

[5]Plaintiff's pro se status is not a sufficient basis, in and of itself, to permit relitigation of the ADA/Rehabilitation Act finding by Judge Squatrito. The Court notes that plaintiff provided a sixty-five page memorandum of law in opposition to summary judgment [Doc. #54] and exhibits A through Q. The majority of this material was presented and considered in Sikorsky Plaintiff states that "being a pro se [he] could have done a better job in his filing against summary judgment, but now he understands and will state facts that will over turn findings in [Sikorsky] case." [Doc. #54 at 50]. The doctrine of collateral estoppel was designed to prevent just this kind of practice by litigants.

resolving the issues on summary judgment.

The doctrine of collateral estoppel may be invoked by one who was not a party to the original action. The only requirement is that the party against whom the doctrine is applied must have had the opportunity to litigate the merits of the issue in the prior action. See Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313, 329 (1971). The court is not required to permit "repeated litigation of the same issue as long as the supply of unrelated defendants holds out." Id.

Accordingly, plaintiff is barred from bringing these ADA and Rehabilitation Act claims by the doctrine of collateral estoppel.

42 U.S.C. §1983

Finally, plaintiff's unspecified civil rights claims pursuant to 42 U.S.C. §1983 must also fail. In order to state a claim for relief under the Civil Rights Act, plaintiff must allege that a person acting under color of state law has deprived him of a constitutionally or federally protected right. Lugar v. Edmondson Oil Co., 457 U.S. 922, 930 (1982); Washington v. James, 782 F.2d 1134, 1138 (2d Cir. 1986). The traditional definition of acting under color of state law requires that the defendant in a §1983 action exercise power "possessed by virtue of state law and made possible only because the wrongdoer is clothed with authority of state law." West v. Atkins, 487 U.S. 42, 49 (1988) (citations omitted). "A public employee acts under color of state law while acting in his official capacity or while exercising his responsibilities pursuant to state law." Id. at 50.

Plaintiff has not shown that the Union was acting under color of state law. Accordingly, summary judgment is granted to defendant on plaintiff's claim under 42 U.S.C. §1983.

CONCLUSION

Based on the foregoing, defendant's Motion for Summary Judgment **[Doc. #42]** is **GRANTED.**

Plaintiff's Motion to Compel **[Doc. #61]** and Motion for Use

of Affidavits in Summary Judgment Practice **[Doc. #65]** are **DENIED.** Additional evidence was not necessary, as the Court concluded that summary judgment was warranted as a matter of law.

Any objections to this recommended ruling must be filed with the Clerk of the Court within ten (10) days of the receipt of this order. Failure to object within ten (10) days may preclude appellate review. See 28 U.S.C. § 636(b)(1); Rules 72, 6(a) and 6(e) of the Federal Rules of Civil Procedure; Rule 2 of the Local Rules for United States Magistrates; Small v. Secretary of H.H.S., 892 F.2d 15 (2d Cir. 1989)(per curiam); F.D.I.C. v. Hillcrest Assoc., 66 F.3d 566, 569 (2d Cir. 1995).

ENTERED at Bridgeport this __ day of February 2001.

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HOLLY B. FITZSIMMONS
UNITED STATES MAGISTRATE JUDGE