IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

PAUL E. HILL,	**)**	
Plaintiff,	**)**	**Civil Action No. 5:08cv00061**
	)	
v.	**)**	**MEMORANDUM OPINION**
	)	**AND ORDER**
AUGUSTA COUNTY SCHOOL	**)**	
BOARD, et al.,	**)**	**By: Samuel G. Wilson**
Defendants.	**)**	**United States District Judge**

This is an age discrimination suit brought by Plaintiff Paul E. Hill under the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-34 (2000) ("ADEA") against Defendants Augusta County School Board and School Superintendent Gary McQuain. In his Amended Complaint, Hill alleges two acts of discrimination by Defendants, and he attaches a letter that he reportedly sent to the Equal Employment Opportunity Commission ("EEOC") describing the first alleged act of discrimination, as well as his formal charge of discrimination, which describes both alleged acts of discrimination. Defendants have moved to dismiss, alleging Hill's filings with the EEOC do not constitute an adequate and timely charge. Assuming that Hill can prove that the EEOC received the letter attached to his Amended Complaint, the court finds that Hill has filed an adequate and timely charge with the EEOC as to both alleged acts of discrimination and accordingly denies Defendants' Motion to Dismiss.

I.

In his Amended Complaint, Hill alleges that Defendants failed to hire him for two positions on account of his age: first, as Assistant Superintendent for Operations on December 9, 2005, and second, as principal of Wilson High School on June 9, 2006. Hill alleges that the men later hired for both positions were younger and less qualified.

Hill attached to his Amended Complaint a letter he claims he sent to the EEOC's office in Richmond, Virginia on June 1, 2006, within 300 days of the alleged December 9, 2005 incident. This letter names the "Complaining Party" as Hill and the "Respondent Employer" as McQuain as the Superintendent of the Augusta County Schools. The letter describes Hill's application, interview, and rejection for the Assistant Superintendent position, and notes that the person hired was 38 years old, while Hill was 49. According to the letter, a younger person had previously received promotions at Hill's expense in the Augusta County Public Schools, and Hill decided to bring a complaint after "hav[ing] been further discriminated against" when the same younger individual received a job he had also sought. (Am. Compl. Ex. A. 3.) In closing the letter, Hill notes that he "appreciate[s] the EEOC lending itself to an investigation into these matters." (Am. Compl. Ex. A. 3.) Also attached to Hill's Amended Complaint is his formal EEOC charge of discrimination, dated October 19, 2006, more than 300 days after the alleged December 9, 2005 incident. The charge describes the alleged acts of discrimination on December 9, 2005 and June 9, 2006, but inconsistently specifies May 26, 2006 as the last date on which discriminatory conduct occurred.

II.

Defendants argue that this court should dismiss Hill's claims because his filings with the EEOC do not constitute an adequate and timely charge of discrimination.[1]

[1]Defendants have filed their motion under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction and under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. In a Rule 12(b)(1) motion, the nonmoving party bears the burden to prove that subject matter jurisdiction is proper. See Richmond, Fredericksburg & Potomac R.R. Co. v. United States, 945 F.2d 765, 769 (4th Cir. 1991). In a Rule 12(b)(6) motion, the plaintiff must provide "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). In employment discrimination suits, plaintiffs "need not

A.

Defendants move to dismiss the claim related to the December 9, 2005 incident because Hill's formal charge of discrimination is dated October 19, 2006, more than 300 days after the alleged discrimination. Defendants dispute the authenticity of the June 1, 2006 letter, and argue that, even if authenticated, the letter does not fulfill the ADEA's charge requirement because it does not adequately allege age discrimination. The court finds these arguments unpersuasive.

Before filing suit in federal court, age discrimination plaintiffs must present their claims to the EEOC in an adequate and timely charge. As 29 U.S.C. § 626(d)(1) provides, "[n]o civil action may be commenced by an individual under this section until . . . a charge alleging unlawful discrimination has been filed with the [EEOC]." In deferral states like Virginia, the complaining party must file the charge within 300 days of the alleged unlawful practice. 29 U.S.C. § 626(d); Puryear v. County of Roanoke, 214 F.3d 514, 517 (4th Cir. 2000).

The ADEA does not define the term "charge," but as the Supreme Court has found, the EEOC's regulations provide a reasonable construction of the term. Fed. Express Corp. v.

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allege 'specific facts' beyond those necessary to state [a] claim and the grounds showing entitlement to relief." Id. (quoting Swierkiewicz v. Sorema N.A., 534 U.S. 506, 508 (2002)). The court construes factual allegations in favor of the non-moving party. Robinson v. Am. Honda Motor Co., 551 F.3d 218, 222 (4th Cir. 2009).

The line between Rule 12(b)(1) and Rule 12(b)(6) motions has become "indefinable." Laber v. Harvey, 438 F.3d 404, 434 (4th Cir. 2006) (Niemeyer, J. concurring in part and dissenting in part). The distinction does not change the outcome in this case, however. "[F]iling a *timely* charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling." Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982) (emphasis added); see also Vance v. Whirlpool Corp., 716 F.2d 1010, 1013 (4th Cir. 1983) (applying Zipes to the ADEA). Because Hill has in fact filed a charge of discrimination and because both of Hill's claims fall within the scope of that charge, it is immaterial whether the court considers the present motion under Rule 12(b)(1) or 12(b)(6).

Holowecki, 128 S. Ct. 1147, 1154 (2008). According to the regulations, a charge is "a statement filed with the [EEOC] by or on behalf of an aggrieved person which alleges that the named prospective defendant has engaged in or is about to engage in actions in violation of the [ADEA]." 29 C.F.R. § 1626.3. Though the regulations list additional information that a charge should contain,[2] the Supreme Court did not hold that this information is required. Instead, "[i]n addition to the information required by the regulations, *i.e.*, an allegation and the name of the charged party, if a filing is to be deemed a charge it must be reasonably construed as a request for the agency to take remedial action to protect the employee's rights or otherwise settle a dispute between the employer and the employee." Holowecki, 128 S. Ct at 1157-58.

Under this standard, Hill's June 1, 2006 letter fulfills the ADEA's charge requirement.

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[2]As 29 C.F.R. § 1626.8(a) states,

> (a) "In addition to the requirements of § 1626.6, each charge *should* contain the following:
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> (1) The full name, address and telephone number of the person making the charge;
> (2) The full name and address of the person against whom the charge is made;
> (3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices;
> (4) If known, the approximate number of employees of the prospective defendant employer . . . .
> (5) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State agency . . . .
>
> (b) Notwithstanding the provisions of paragraph (a) of this section, a charge is *sufficient* when the [EEOC] receives from the person making the charge either a written statement or in formation reduced to writing by the [EEOC] that conforms to the requirements of § 1626.6.

(emphases added).

The letter names McQuain as the Superintendent of the Augusta County Schools as the prospective defendant[3] and alleges discrimination in hiring. Though the letter does not specifically refer to age discrimination, it does note that Defendants had previously promoted a younger person at Hill's expense, and states that he has decided to bring his current claim after the same younger person received a position that Hill had sought. The letter's request that the EEOC investigate the matter can be reasonably construed as a request that the EEOC take remedial action. The court finds that the June 1, 2006 letter, if Hill proves that the EEOC received it,[4] fulfills the ADEA's charge requirement and accordingly denies Defendants' Motion to Dismiss as to the alleged December 9, 2005 incident.

B.

Defendants move to dismiss Hill's claim related to the June 9, 2006 incident because that incident allegedly occurred after May 26, 2006, the date specified on the face of the formal charge as the last date of discriminatory conduct. Since the June 9, 2006 incident is reasonably related to the factual allegations in the charge, the court finds that Hill may present the claim.

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[3]The court notes that generally only employers, not individual employees are liable under the ADEA. Birbeck v. Marvel Lighting Corp., 30 F.3d 507, 510-511 (4th Cir. 1994). But see Causey v. Balog, 162 F.3d 795, 801 n.1 (4th Cir. 1998) (assuming without deciding that individual defendants can be sued in their representative capacities though they cannot be sued in their personal capacities). In addition, plaintiffs alleging discrimination may sue only the parties named in their underlying EEOC charge. 29 U.S.C. § 626(e); Causey, 162 F.3d at 800. However, the court finds that, by naming McQuain as the respondent in his role as School Superintendent, Hill's letter fulfills the purposes of the naming requirement, that is " to provide notice to the charged party and to permit the EEOC to attempt voluntary conciliation of complaints." Alvarado v. Bd. Tr. Montgomery Cmty. Coll., 848 F.2d 457, 460 (4th Cir. 1988). Therefore, the court finds no violation of the naming requirement at this stage of the proceedings.

[4]The court notes that Defendants dispute the authenticity of the letter, but finds this matter is better left for development in discovery.

Requiring plaintiffs to file EEOC charges before bringing suit "serve[s] the primary purposes of notice and conciliation." Chacko v. Patuxent Inst., 429 F.3d 505, 510 (4th Cir. 2005). That is, "an administrative charge notifies the employer of the alleged discrimination . . . . giv[ing] the employer an initial opportunity to voluntarily and independently investigate and resolve the alleged discriminatory actions . . . [and] initiates agency-monitored settlement." Id. If agency-monitored settlement fails, the allegations in the charge affect the scope of subsequent litigation. Id. at 509. As the Fourth Circuit has held, "[a]n administrative charge of discrimination does not strictly limit a [discrimination] suit which may follow; rather, the scope of the civil action is confined only by the scope of the administrative investigation that can reasonably be expected to follow the charge of discrimination." Chisholm v. U.S. Postal Serv., 665 F.2d 482, 491 (4th Cir. 1981). Therefore, claims of discrimination on a different basis or of a different type than the allegations made in the underlying EEOC charge are barred in a subsequent suit. Chacko, 429 F.3d at 509. However, so long as the charge is timely and the claims are reasonably related to the allegations made in the charge, courts have not strictly limited suits to the time periods of discrimination alleged in an EEOC charge. See Newby v. Whitman, 340 F.Supp.2d 637, 645-51 (M.D.N.C. 2004).

The court finds that the alleged discriminatory act on June 9, 2006 falls within the scope of the administrative investigation that could reasonably be expected to follow Hill's charge of discrimination. Even though that act occurred after the last date of discrimination specified on the face of the formal charge, May 26, 2006, the charge adequately describes the June 9, 2006 incident among the alleged discriminatory conduct, therefore serving the purposes of notice and

conciliation.[5] Accordingly, the court denies Defendants' Motion to Dismiss as to the alleged discriminatory act on June 9, 2006.

III.

For the foregoing reasons, the court **DENIES** Defendants' Motion to Dismiss.

It is so **ORDERED**.

ENTER: This April 17, 2009.

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UNITED STATES DISTRICT JUDGE

[5]According to the charge, the incident occurred on June 13, 2006. For current purposes, the exact date is immaterial.