

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

| | | |
|---------------------------------------|---|---|
| NANCY L. HAGER, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil Action No. 7:01CV00053 |
| v. |) | |
| |) | |
| FIRST VIRGINIA BANKS, INC., |) | <u>Memorandum Opinion</u> |
| |) | |
| and |) | |
| |) | By: Samuel G. Wilson |
| FIRST VIRGINIA BANK–SOUTHWEST, |) | Chief United States District Judge |
| |) | |
| Defendants. |) | |

Plaintiff Nancy L. Hager (“Hager”) brings this employment action for damages against Defendants First Virginia Banks, Inc. and First Virginia Bank–Southwest (collectively “Defendants”) alleging violations of the Americans with Disabilities Act (“ADA”) and intentional infliction of emotional distress arising from Defendants’ repeated failure to accommodate Hager’s disability. This court has subject matter jurisdiction pursuant to 42 U.S.C. § 12117 and 28 U.S.C. § 1331, and may exercise supplemental jurisdiction over the state law claim under 28 U.S.C. § 1367. This matter is before the court on Defendants’ motions to dismiss. Finding that Hager failed to file her complaint with the United States Equal Employment Opportunity Commission (“EEOC”) within the applicable statutory limitations period, the court will grant defendants’ motions.

I.

On December 2, 1998, while employed as a drive-through window teller at the Wytheville,

Virginia branch of defendant First Virginia Bank–Southwest, Hager underwent surgery to repair problems with her bladder. Hager returned to her former position in January 1999, and, by the time of her return, Hagers’ supervisors had been notified that she was medically restricted from lifting over 20 pounds and that she would require frequent access to the bathroom.

Hagar alleges that the Defendants failed to accomodate her disability on various occasions. The first alleged instance occurred in mid-February 1999, when Hager’s supervisor moved her from the second drive-through window to the first drive-through window. Working at the first drive through window required Hagar to push and pull a coin vault approximately 500 times per week to process heavy business change. About a week after moving to the first window, Hagar asked to move back to the second window because she had difficulty operating the coin vault. Nevertheless, in mid-March 1999, Hagar’s supervisors permanently placed her at the first window. Hagar alleges various other instances of the Defendants’ failure to accommodate her condition including the failure to allow her to go to the bathroom and writing her up for refusing to operate the coin vault. The last instance of the Defendants’ failure to accommodate her disability allegedly occurred on October 4, 1999. On that day, Hagar advised her supervisor that she had discovered a large amount of blood in her stool, but her supervisor refused to allow Hagar to go to the doctor, and informed her that she would have to go on a Saturday or a holiday.

Hagar’s surgeon, Dr. Clary, examined her on November 11, 1999 (Veteran’s Day), and discovered that her bowels had completely collapsed. On November 16, 1999, Hagar stopped working, based on her doctor’s orders, to avoid any further injury.

On May 24, 2000, Hagar filed a charge of employment discrimination with the Virginia

Council on Human Rights (“VCHR”). The VCHR regarded Hagar’s complaint as untimely (Defendant First Virginia Bank–Southwest’s Exhibit A-1, VCHR letter to Hagar of Sept. 12, 2000) and forwarded it to the EEOC, where it was filed and signed by Hagar on December 8, 2000. (Defendant First Virginia Bank–Southwest’s exhibit A-2, Charge of Discrimination.) Hagar received a right to sue letter on December 22, 2000, and commenced the present action on January 19, 2001.

II.

The ADA expressly adopts and incorporates the administrative procedures specified in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, and such compliance must occur before a federal court may entertain a suit that seeks recovery for an alleged violation of the ADA. See 42 U.S.C.A. § 12117(a); Dao v. Auchan Hypermarket, 96 F.3d 787, 789 (5th Cir. 1996) (“the ADA incorporates by reference the procedures applicable to actions under Title VII”); McSherry v. Trans World Airlines, Inc., 81 F.3d 739, 740, n.3 (8th Cir. 1996) (noting that ADA incorporates by reference the powers, remedies, and procedures set forth in Title VII, which requires employees claiming discrimination to file a charge with the appropriate administrative agency, and bars suits until the employee has received a right-to-sue letter). Section 706(e)(1) of Title VII, 42 U.S.C. § 2000e-5(e)(1) requires that, where state law proscribes the alleged employment practice and the plaintiff initially files the charge with a state deferral agency,¹ a plaintiff must file a discrimination charge with the EEOC within a 300 day limitations period. Tinsley v. First Union National Bank, 155 F.3d 435, 439 (4th Cir. 1998). The limitations period

¹The Virginia Council on Human Rights is a qualified deferral agency under Title VII. Tinsley v. First Union National Bank, 155 F.3d 435, 440 (4th Cir. 1998).

begins on the date that the alleged unlawful employment practice occurs, see Martin v. Southwestern Virginia Gas Co., 135 F.3d 307, 310 (4th Cir. 1998); Tinsley, 155 F.3d at 439, and operates like a statute of limitations as to any later judicial proceeding. See Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982).

Hagar alleges that the last instance of Defendants' failure to accommodate her disability occurred on October 4, 1999. The 300 day limitations period for filing her charge with the EEOC, therefore, expired on July 30, 2000. Thus, because the date Hagar filed a discrimination charge with the EEOC, December 8, 2000, was not within the applicable limitations period, the court concludes that her ADA claim is now barred.

III.

Since Hagar's federal claim is barred, the court declines to exercise jurisdiction over her remaining state law claim. See United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966) ("Certainly, if the federal claims are dismissed before trial . . . the state claims should be dismissed as well.") Hagar is free to file that claim in state court.

IV.

For the reasons stated, the court will grant the Defendants' motions to dismiss.

ENTER this ___ day of October, 2001.

CHIEF UNITED STATES DISTRICT JUDGE

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| FIRST VIRGINIA BANKS, INC., |) | <u>FINAL ORDER</u> |
| |) | |
| and |) | |
| |) | By: Samuel G. Wilson |
| FIRST VIRGINIA BANK-SOUTHWEST, |) | Chief United States District Judge |
| |) | |
| Defendants. |) | |

For the reasons stated in its memorandum opinion, the court concludes that Hagar's federal claim is barred by the applicable period of limitations, and declines to exercise jurisdiction over Hagar's remaining state law claim. Accordingly, it is **ORDERED** and **ADJUDGED** that Defendants' motions to dismiss the complaint are **GRANTED**, and this case is **ORDERED** stricken from the docket of the court.

ENTER this ___ day of October, 2001.

CHIEF UNITED STATES DISTRICT JUDGE