

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Patton v. DeJoy

Patton · No. 2:23-cv-0048-DJC-JDP (PS) · Decided March 7, 2025

SUMMARY

The United States District Court for the Eastern District of California screened a pro se plaintiff’s first amended employment-discrimination complaint against the Postmaster General. The court concluded that the complaint failed to state a claim and that the plaintiff’s Title VII claims may be barred by failure to timely contact an EEO counselor and possibly by untimely filing in federal court. The court dismissed the first amended complaint with leave to amend and allowed thirty days to file a second amended complaint or voluntarily dismiss the action.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jeremy D. Peterson
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 7, 2025
DOCKET	2:23-cv-0048-DJC-JDP (PS)
DISPOSITION	other
PROCEDURAL POSTURE	Pro se federal employee brought a Title VII employment-discrimination action against the Postmaster General. On screening of the first amended complaint, the court found that the pleading failed to state a claim, dismissed it with leave to amend, and granted plaintiff thirty days to file a second amended complaint or voluntarily dismiss the action.
STANDARD OF REVIEW	Under 28 U.S.C. § 1915(e), the court screens an in forma pauperis complaint and dismisses claims that are frivolous, malicious, fail to state a claim, or seek monetary relief from an immune defendant. A complaint must provide enough factual matter to state a plausible claim for relief under Federal Rule of Civil Procedure 8(a)(2), although pro se pleadings are construed liberally.
PRECEDENTIAL VALUE	Unpublished, nonprecedential district-court screening order; persuasive value only.

PARTIES

Meiko S. Patton v. Louis DeJoy

TOPICS

pleadings

civil procedure

title vii

exhaustion of remedies

federal employment law

PRACTICE AREAS

employment discrimination

federal employment law

civil procedure

administrative law

civil rights

QUESTIONS PRESENTED

1. Whether the first amended complaint stated a plausible federal employment-discrimination claim.
2. Whether plaintiff's failure to contact an EEO counselor within forty-five days of the alleged discriminatory events barred her Title VII claims.
3. Whether plaintiff should receive leave to amend to allege facts supporting waiver, estoppel, equitable tolling, or otherwise cure the pleading deficiencies.
4. Whether the action may also be untimely because plaintiff filed it more than ninety days after the EEOC's final decision.

HOLDINGS

1. A complaint screened under 28 U.S.C. § 1915(e) must contain sufficient factual allegations to state a plausible claim for relief; legal conclusions and allegations showing only a possibility of misconduct are insufficient.
2. A federal employee asserting Title VII discrimination must pursue administrative relief and generally initiate contact with an EEO counselor within forty-five days of the allegedly discriminatory matter; failure to comply may bar the discrimination claim, although the requirement is not jurisdictional and may be subject to waiver, estoppel, or equitable tolling.
3. An amended complaint supersedes the prior complaint and must be complete in itself without incorporating the prior pleading by reference.

KEY QUOTATIONS

“The plausibility standard does not require detailed allegations, but legal conclusions do not suffice.” (1)

“If plaintiff does not file an amended complaint, I will recommend that this action be dismissed.” (3)

FACTUAL BACKGROUND

Plaintiff alleged that she was bullied and harassed by supervisors at the United States Postal Service during the COVID-19 pandemic. The allegations centered on an August 17, 2020, telephone call in which district manager John Diperi became angry after plaintiff declined to arrange congressional tours, followed by a warning letter from her manager, John Hyatt. Plaintiff also alleged that manager Claudia Munoz berated her after she consulted Hyatt about responding to a customer email, and that the incident was included in the warning letter.

PROCEDURAL HISTORY

Plaintiff initially filed this action on January 10, 2023, and later filed a first amended complaint. The court screened the amended pleading under 28 U.S.C. § 1915(e), concluded that the alleged discriminatory events occurred more than forty-five days before plaintiff initiated EEO proceedings, and identified a possible additional untimeliness problem in filing the federal action. Because waiver, estoppel, or equitable tolling might excuse the EEO-contact deadline, the court granted one final opportunity to amend and stated that failure to amend would result in a recommendation of dismissal.

DISPOSITION

other

CASES CITED

- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Kobold v. Good Samaritan Reg'l Med. Ctr., 832 F.3d 1024, 1038 (9th Cir. 2016)
- Nagrampa v. MailCoups, Inc., 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc)
- Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam)
- Hayes v. Idaho Corr. Ctr., 849 F.3d 1204, 1208 (9th Cir. 2017)
- Bruns v. Nat'l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997)
- Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)
- Brown v. Gen. Servs. Admin., 425 U.S. 820, 829-32 (1976)
- Lyons v. England, 307 F.3d 1092, 1105 (9th Cir. 2002)
- Lacey v. Maricopa Cnty., 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc)
- Gheith v. Harvey, 234 F. App'x 604, 604 (9th Cir. June 14, 2007)

OPINION

(PS) Patton v. DeJoy

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 MEIKO S. PATTON, Case No. 2:23-cv-0048-DJC-JDP (PS) 12 Plaintiff, 13 v. ORDER

14 LOUIS DeJOY,

15 Defendant. 16

17 18 Plaintiff, proceeding pro se, brings this action against Postmaster General Louis DeJoy for
19 employment discrimination. Plaintiff's first amended complaint, however, has failed to state a
20 claim. I will grant plaintiff a final opportunity to amend her complaint before recommending
that 21 it be dismissed without leave to amend. 22 Screening and Pleading Requirements 23 A

federal court must screen the complaint of any claimant seeking permission to proceed 24 in forma pauperis. See 28 U.S.C. § 1915(e). The court must identify any cognizable claims and 25 dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon 26 which relief may be granted, or seeks monetary relief from a defendant who is immune from such 27 relief. Id. 28 1 A complaint must contain a short and plain statement that plaintiff is entitled to relief, 2 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its 3 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not 4 require detailed allegations, but legal conclusions do not suffice. See *Ashcroft v. Iqbal*, 556 U.S. 5 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere 6 possibility of misconduct,” the complaint states no claim. Id. at 679. The complaint need not 7 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 8 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that 9 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 10 n.2 (9th Cir. 2006) (en banc) (citations omitted). 11 The court must construe a pro se litigant’s complaint liberally. See *Haines v. Kerner*, 404 12 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it 13 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which 14 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017). 15 However, “‘a liberal interpretation of a civil rights complaint may not supply essential elements 16 of the claim that were not initially pled.’” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 17 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)). 18 Analysis 19 Plaintiff alleges in her first amended complaint that she was bullied and harassed by her 20 manager at the U.S. Postal Service during the COVID-19 pandemic. ECF No. 5 at 3. She claims 21 that her manager threatened her with removal from her job, even though she followed the 22 manager’s exact instructions. Id. 23 Attached to the complaint is plaintiff’s EEO Investigative Affidavit, dated January 26, 24 2021. She claims that her affidavit details the abuse and harassment that she faced from her 25 manager. Id. at 7. The affidavit centers on a phone call she received from a John Diperi, a 26 district manager for a U.S. Postal Office in Arizona, and an email she received from Claudia 27 Munoz, a manager of small business development for the U.S. Postal Service. Id. at 10, 17. 28 With respect to the first issue, plaintiff attests that Diperi called her office on August 17, 1 2020, to arrange congressional tours, but, because her manager, a John Hyatt, had previously 2 instructed her not to schedule such tours, she declined to assist him. Id. at 10. Plaintiff states that, 3 after she declined Diperi’s request, “he became irate, raised his voice and hung up the phone in 4 [her] face.” Id. at 11-12. Afterwards, plaintiff immediately sent an email accounting the 5 conversation to her manager, Hyatt. Id. at 13. Plaintiff did not get a response from Hyatt, id. at 6 14, but she later received a warning letter from Hyatt on September 22, 2020, stating that she had 7 failed to discharge her duties during the Diperi incident, id. at 15. 8 Plaintiff claims that she also faced discrimination from Munoz on August 19, 2020. Id. at 9 17. On that date, plaintiff received an

email from a customer to which she was unsure how to respond, and so she asked her supervisor, Hyatt, how best to proceed. *Id.* Her email eventually reached Munoz, who berated and scolded her for looping in Hyatt on her question. Hyatt also listed this incident in the letter of warning that he issued plaintiff. *Id.* at 23.

In 1972, Congress amended Title VII of the Civil Rights Act of 1964 to extend its coverage to federal employees. As amended, § 717 of the Civil Rights Act, codified at 42 U.S.C. § 2000e-16, “provides that all personnel actions affecting federal employees and applicants for federal employment shall be made free from any discrimination based on race, color, religion, sex, or national origin,” and “establishes an administrative and judicial enforcement system.” *Brown v. Gen. Servs. Admin.*, 425 U.S. 820, 829-30 (1976) (internal quotation marks omitted). As *Brown* explained, Title VII “permits an aggrieved [federal] employee to file a civil action in a federal district court,” but first, as a “precondition[]” to filing, “the complainant must seek relief in the agency that has allegedly discriminated against him.” *Id.* at 832; see also 42 U.S.C. § 2000e-16(c). In order to complete the exhaustion process, a claimant must “consult a Counselor prior to filing a[n EEO] complaint in order to try to informally resolve the matter.” *Id.* (quoting 29 C.F.R. § 1614.105(a)). The claimant “must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory.” *Id.* (quoting 29 C.F.R. § 1614.105(a)(1)). While this pre-filing exhaustion requirement is not a “jurisdictional prerequisite for suit in federal court,” failure to comply with it is nonetheless “‘fatal to a federal employee’s discrimination claim’ in 1 federal Court.” *Id.* (citing *Lyons v. England*, 307 F.3d 1092, 1105 (9th Cir. 2002)). Plaintiff did seek administrative relief by filing a formal EEO complaint with the U.S. Postal Service. But she did not file her EEO complaint within forty-five days of each alleged discriminatory event. Accordingly, plaintiff’s claims may be barred.¹ She claims that the discriminatory events transpired on August 17, 2020, and August 19, 2020. Yet her EEO complaint was not filed until January 26, 2021. Because plaintiff may be able to argue that waiver, estoppel, or equitable tolling excuses her compliance with § 1614.105, the court will grant her another opportunity to amend. If plaintiff decides to file an amended complaint, the amended complaint will supersede the current complaint. See *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc). This means that the amended complaint will need to be complete on its face without reference to the prior pleading. See E.D. Cal. Local Rule 220. Once an amended complaint is filed, the current complaint no longer serves any function. Therefore, in an amended complaint, as in an original complaint, plaintiff will need to assert each claim and allege each defendant’s involvement in sufficient detail. The amended complaint should be titled “Second Amended Complaint” and refer to the appropriate case number. If plaintiff does not file an amended complaint, I will recommend that this action be dismissed. Accordingly, it is ORDERED that: 1. Plaintiff’s first amended complaint, ECF No. 5, is DISMISSED with leave to amend. 2. Within thirty days from service of this order, plaintiff shall file either (1) an amended complaint or (2) notice of

voluntary dismissal of this action without prejudice. 22 23 1 Plaintiff may also face another procedural bar: It appears she did not timely file this 24 action. A claimant who has filed a timely EEO complaint alleging employment discrimination by a federal agency is authorized to file a civil action in a district court: (1) “[w]ithin 90 days of 25 receipt of the final action on . . . [the] complaint if no appeal has been filed,” or (2) “[w]ithin 90 days of receipt of the [EEOC’s] final decision on an appeal.” 29 C.F.R. § 1614.407. Failure to 26 file the civil action within one of the prescribed periods will render the action untimely. *Gheith v. 27 Harvey*, 234 F. App’x 604, 604 (9th Cir. June 14, 2007). Plaintiff attached to her initial complaint a copy of the EEOC’s final decision, dated April 6, 2022. ECF No. 1 at 23. But 28 plaintiff did not initiate this action until January 10, 2023. 1 3. Failure to timely file either an amended complaint or notice of voluntary dismissal may 2 | result in the imposition of sanctions, including a recommendation that this action be dismissed 3 | with prejudice pursuant to Federal Rule of Civil Procedure 41(b). 4 4. The Clerk of Court shall send plaintiff a complaint form with this order. 5 6 IT IS SO ORDERED. Dated: _ March 6, 2025 q——

8 JEREMY D. PETERSON

9 UNITED STATES MAGISTRATE JUDGE

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