

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

Wilkinson v. Collins

Wilkinson · No. 3:24-cv-01749-AP · Decided February 12, 2026

SUMMARY

The United States District Court for the District of Oregon granted the Department of Veterans Affairs’ partial motion to dismiss Paul Wilkinson’s ADEA age-discrimination claim. The court held that the complaint did not allege exhaustion of administrative remedies or sufficient facts supporting an inference of age discrimination, but granted leave to amend within thirty days.

CASE DETAILS

COURT	United States District Court for the District of Oregon
WRITING FOR THE COURT	Amy E. Potter
JURISDICTION	United States District Court for the District of Oregon
DECIDED	February 12, 2026
DOCKET	3:24-cv-01749-AP
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff's ADEA claim for failure to allege exhaustion of administrative remedies and failure to plead sufficient facts supporting age discrimination.
STANDARD OF REVIEW	On a motion to dismiss under Rule 12(b)(6), the court accepts well-pleaded material factual allegations as true and construes them in the light most favorable to the nonmoving party, but need not accept legal conclusions couched as factual allegations. The complaint must contain sufficient factual matter to state a plausible claim for relief.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- age discrimination
- federal employee discrimination
- motions to dismiss
- employment discrimination
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Plaintiff adequately alleged exhaustion of administrative remedies for his ADEA age-discrimination claim.
2. Whether Plaintiff's complaint pleaded sufficient factual matter to state a plausible age-discrimination claim under the ADEA.

HOLDINGS

1. A plaintiff bringing an ADEA claim against a federal employer must allege facts showing exhaustion of administrative remedies, and Wilkinson failed to do so because the complaint and attached EEOC materials did not establish that he pursued an age-discrimination claim.
2. The complaint failed to state a plausible ADEA age-discrimination claim because it did not allege facts showing that Plaintiff was at least forty, was qualified, suffered an adverse employment action because of age, and was treated less favorably than substantially younger similarly situated employees or that other circumstances supported an inference of age discrimination.

KEY QUOTATIONS

“To establish a prima facie case for age discrimination, a plaintiff must show that “(1) he is [at least age 40]; (2) he was qualified for his position; (3) he experienced an adverse employment action; and (4) similarly situated individuals [who were substantially younger] were treated more favorably, or other circumstances surrounding the adverse employment action give rise to an inference of discrimination.”” (Discussion)

“Conclusory legal statements without the underlying factual allegations are not sufficient.” (Discussion)

FACTUAL BACKGROUND

Paul Wilkinson formerly worked as a Night Supervisor at the Portland, Oregon, VA Medical Center. He alleged that between August 2017 and October 2019 he was denied sick leave, demoted, transferred from the night shift to the day shift, subjected to remedial discipline and reprimands, and suspended. He filed EEOC complaints alleging sex discrimination and retaliation, but the complaint and attached EEOC decisions did not state that he had exhausted an age-discrimination claim or contain facts showing that the EEOC charges included age discrimination.

PROCEDURAL HISTORY

Plaintiff filed an action against the Secretary of the U.S. Department of Veterans Affairs alleging sex and age discrimination and retaliation under Title VII and the ADEA. Defendant moved to dismiss the ADEA claim. The court granted the partial motion to dismiss and allowed Plaintiff thirty days to file an amended complaint.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. Plaintiff may file an amended complaint within thirty days and should allege facts supporting both exhaustion of the ADEA claim and the elements of age discrimination.

CASES CITED

- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 663 (2009)
- Lathus v. City of Huntington Beach, 56 F.4th 1238, 1240 (9th Cir. 2023)
- Doe v. United States, 58 F.3d 494, 497 (9th Cir. 1995)
- Whitman v. Mineta, 541 F.3d 929, 932 (9th Cir. 2008)
- Forester v. Chertoff, 500 F.3d 920, 924 (9th Cir. 2007)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON
PORTLAND DIVISION PAUL WILKINSON, Case No. 3:24-cv-01749-AP Plaintiff, OPINION &
ORDER v. DOUGLAS COLLINS, Secretary, U.S. Department of Veterans Affairs, Defendant.

____ POTTER, United States Magistrate Judge:
Plaintiff Paul Wilkinson alleges that his former employer, the Department of Veterans Affairs, engaged in employment discrimination against him.

He brings claims of sex and age discrimination, as well as retaliation, under Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 (ADEA). Compl. 2, ECF No. 1. Before the Court is Defendant's motion to dismiss Plaintiff's ADEA claim for failure to allege exhaustion of administrative remedies.¹ Def.'s Mot., ECF No. 17.

All parties have consented to jurisdiction by a U.S. Magistrate Judge. ECF No. 28. Because the Complaint does not contain facts that allow the Court to infer age discrimination, Defendant's partial motion to dismiss is GRANTED. ¹ Defendant also moved to dismiss for failure to properly serve. Def.'s Mot., ECF No. 17. Plaintiff provided proof of service in his response, and Defendant subsequently withdrew that argument.

Pl.'s Resp. Attach 1, ECF No. 20; Def.'s Reply 2 n.1, ECF No. 24. BACKGROUND According to his Complaint, Plaintiff previously worked for Defendant as a Night Supervisor at the Portland, Oregon, VA Medical Center. Compl. 2. Plaintiff alleges that while employed by Defendant, the Assistant Director of Nursing and the Associate Chief Nurse subjected him to sex and age discrimination.

Compl. 2; Compl. Attach. 1, at 2, ECF No. 1. From August 2017 to October 2019, Defendant was denied a request for sick leave, demoted, switched from the night shift to the day shift, subjected to remedial discipline, reprimanded, and suspended. Compl. 5–9.

In December 2018 and November 2019, Plaintiff filed complaints with the Equal Employment Opportunity Commission (EEOC) alleging sex discrimination and retaliation. Compl. Attach. 1, at 2. The EEOC granted summary judgment in favor of Defendant in June 2021, and again in September 2022, after the case was transferred to a different Administrative Judge. Id. at 2–3.

The EEOC affirmed their decision on appeal in November 2023 and denied Plaintiff’s request for reconsideration in July 2024. Id. at 3–5. Plaintiff then filed this civil action alleging sex and age discrimination, as well as retaliation. STANDARDS Under Rule 8(a)(2), a complaint must contain sufficient factual matter that “state[s] a claim to relief that is plausible on its face.” Fed.

R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible on its face when the factual allegations allow the court to infer the defendant's liability based on the alleged conduct. *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). A court must accept all well-pleaded, material factual allegations and construe them in the light most favorable to the non-moving party.

Lathus v. City of Huntington Beach, 56 F.4th 1238, 1240 (9th Cir. 2023). The court need not accept as true legal conclusions couched as factual allegations. *Twombly*, 550 U.S. at 555. If the complaint is dismissed, leave to amend should be granted unless “the pleading could not possibly be cured by the allegation of other facts.” *Doe v. United States*, 58 F.3d 494, 497 (9th Cir.

1995). DISCUSSION Defendant argues that, as to the age discrimination claim, Plaintiff’s complaint fails to allege exhaustion of administrative remedies. Def.’s Mot. 6–8. The Court agrees. Under the ADEA, it is unlawful to “discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age,” or “to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age.” 29 U.S.C. §§ 623(a)(1)–(2).

To establish a *prima facie* case for age discrimination, a plaintiff must show that “(1) he is [at least age 40]; (2) he was qualified for his position; (3) he experienced an adverse employment action; and (4) similarly situated individuals [who were substantially younger] were treated more favorably, or other circumstances surrounding the adverse employment action give rise to an inference of discrimination.” *Whitman v. Mineta*, 541 F.3d 929, 932 (9th Cir.

2008). Before bringing sex or age discrimination claims in District Court, plaintiffs must exhaust administrative remedies and allege as much in the complaint. Under the ADEA, this can be done in two ways. *Forester v. Chertoff*, 500 F.3d 920, 924 (9th Cir. 2007).

First, plaintiffs can file an age discrimination claim with the EEOC; then after 180 days or final agency determination, plaintiffs can file in District Court. Id. (citing 29 C.F.R. §§ 1614.105, 201(c)). Alternatively, plaintiffs can use the “bypass provision” and “file a notice of intent to file a

civil action with the EEOC within 180 days from the alleged discriminatory conduct,” and then file the age discrimination claim in District Court at least 30 days later.

Id. (citing 29 U.S.C. § 633a(d); 29 C.F.R. § 1614.201(a)). Here, unlike with his sex discrimination claims, Plaintiff fails to allege that he exhausted administrative remedies when it comes to his age discrimination claim. Nor does he provide other evidence of exhaustion of his age discrimination claim. Plaintiff neither attaches the EEO complaints, nor alleges in his Complaint in this case that the EEO complaints contained specific evidence of age discrimination.

See Compl. And the attached EEOC decision mentions sex discrimination only. See Compl.; See also Attach. 1–3. Plaintiff maintains that the original EEOC charge contained evidence of age discrimination that was omitted from the EEOC decision due to administrative error. Pl.’s Surreply 2–4, ECF No. 26.

However, because Plaintiff did not attach the original EEOC charge to the Complaint, the Court cannot determine whether Plaintiff exhausted administrative remedies for his age discrimination claim. Plaintiff’s age discrimination claim is therefore dismissed with leave to amend.

In amending, Plaintiff should ensure that he alleges the facts that support his age discrimination claim. It is not enough that Plaintiff states age discrimination as a cause of action. See Compl. 1–2. Conclusory legal statements without the underlying factual allegations are not sufficient. *Twombly*, 550 U.S. at 555. Plaintiff must show that he is at least age 40; he was qualified for his position; he experienced an adverse employment action; and similarly situated individuals who were substantially younger were treated more favorably.

Whitman, 541 F.3d at 932. At present, his Complaint does not. CONCLUSION For these reasons, Defendant’s partial motion to dismiss (ECF No. 17) is GRANTED. Plaintiff may file an amended complaint within thirty days. IT IS SO ORDERED. DATED this 1_2_t_h_ day of February, 2026. ___/s_/A__m_y_ _E_. P_o_t_t_e_r_____ AMY E. POTTER United States Magistrate Judge