

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ALABAMA, NORTHEASTERN DIVISION

Foy D. Kirkland v. Thomas J. Vilsack, Secretary, Department of
Agriculture, et al.

Case No. 5:24-cv-538-CLM (N.D. Ala. Mar. 24, 2026) · No. 5:24-cv-538-CLM · Decided March 25, 2026

SUMMARY

The United States District Court for the Northern District of Alabama grants Defendants’ motions to dismiss Foy Kirkland’s Third Amended Complaint. The court holds that the age-discrimination claim based on Kirkland’s first EEOC proceeding was untimely and that the retaliation claim exceeded the scope of his second EEOC charge. The opinion also identifies alternative pleading deficiencies, including shotgun pleading.

CASE DETAILS

COURT	United States District Court for the Northern District of Alabama, Northeastern Division
WRITING FOR THE COURT	Corey L. Maze
JURISDICTION	United States District Court for the Northern District of Alabama, Northeastern Division
DECIDED	March 25, 2026
DOCKET	5:24-cv-538-CLM
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12 to dismiss a Third Amended Complaint asserting ADEA age-discrimination and retaliation claims and a state-law defamation claim.
STANDARD OF REVIEW	On a Rule 12 motion, the court accepted well-pleaded factual allegations as true and viewed them in the light most favorable to the plaintiff. The complaint had to contain sufficient factual matter to state a plausible claim for relief. Exhaustion and administrative-abatement issues could be considered on a motion to dismiss, including by examining the factual record outside the pleadings.
PRECEDENTIAL VALUE	unpublished district court memorandum opinion

TOPICS

age discrimination

retaliation

exhaustion of remedies

motions to dismiss

defamation

PRACTICE AREAS

employment law

civil rights

administrative law

civil procedure

torts

QUESTIONS PRESENTED

1. Whether Kirkland's ADEA age-discrimination claim was barred because he failed to appeal or file suit within the applicable administrative deadlines.
2. Whether equitable tolling excused Kirkland's failure to file his age-discrimination claim within 90 days of the final agency action.
3. Whether Kirkland's ADEA retaliation claim was within the permissible scope of the second EEOC charge or instead attempted to revive untimely claims from the first charge.
4. Whether the retaliation allegations were alternatively subject to dismissal as an impermissible shotgun pleading.
5. Whether the alleged retaliation plausibly established constructive discharge.
6. Whether the court should exercise supplemental jurisdiction over the state-law defamation claim after dismissing the federal claims.

HOLDINGS

1. An ADEA claimant must file suit within the applicable 90-day period following receipt of the final agency action or right-to-sue notice; Kirkland's failure to file by February 26, 2024 rendered his age-discrimination claims based on EEOC-I untimely.
2. Equitable tolling was unavailable because attorney error and negligence, even serious negligence or recklessness, did not constitute the extraordinary circumstance required to excuse the untimely filing.
3. A judicial employment-discrimination complaint is limited to claims within the scope of the EEOC investigation reasonably expected to grow out of the administrative charge; Kirkland could not use EEOC-II and this lawsuit to revive the distinct, time-barred allegations from EEOC-I.
4. The alleged ignored emails, request for medical paperwork, and delay in receiving a new computer did not plausibly establish constructive discharge because they were not pervasive conduct making working conditions objectively intolerable.
5. After dismissing all claims within original federal-question jurisdiction, the court declined supplemental jurisdiction over the state-law defamation claim and dismissed it without prejudice.

KEY QUOTATIONS

“A plaintiff’s judicial complaint is limited by the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination.”

“Attorney error is not the “extraordinary” type of circumstance required for equitable tolling, so the court will not apply that remedy here.”

“A few ignored emails, a request for medical paperwork to return from leave, or a delay in receiving a new computer do not amount to “pervasive” conduct that is objectively “so intolerable that a reasonable person would feel compelled to resign.””

FACTUAL BACKGROUND

Kirkland, a 72-year-old former NRCS District Conservationist, supervised an NRCS field office in Morgan County, Alabama, and worked closely with the Morgan Soil and Water Conservation District. He reported suspected financial irregularities involving federally funded conservation-program grants and alleged that MSWCD officials thereafter reduced his responsibilities, generated complaints resulting in disciplinary scrutiny, sought his removal, and made allegedly defamatory statements. Kirkland ultimately resigned after filing administrative complaints alleging age discrimination and retaliation.

PROCEDURAL HISTORY

Kirkland filed an initial EEOC complaint alleging age discrimination and harassment. The EEOC granted the Government summary judgment, and the USDA issued a final agency order on November 28, 2023, advising Kirkland that he could appeal to the EEOC within 30 days or file a federal action within 90 days. Kirkland did neither; instead, he filed a second EEOC charge and a miscellaneous motion seeking an extension of the EEOC appeal deadline. He later filed this action, amended several times, and ultimately asserted ADEA age-discrimination and retaliation claims plus defamation claims against MSWCD defendants. The court granted the motions to dismiss, declined supplemental jurisdiction over defamation, dismissed the case without prejudice, and closed it.

DISPOSITION

dismissed

CASES CITED

- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Duple v. FedEx Ground Package Sys., Inc., 572 F. App'x 889, 892 (11th Cir.)
- Bryant v. Rich, 530 F.3d 1368, 1374-76 (11th Cir.)
- Sheffield v. United Parcel Serv., Inc., 403 F. App'x 452, 454 (11th Cir.)
- Robinson v. Regions Fin. Corp., 242 F. Supp. 2d 1070, 1076-77 (M.D. Ala.)
- Kerr v. McDonald's Corp., 427 F.3d 947, 951-52 (11th Cir.)
- Edward v. Shalala, 64 F.3d 601, 605-06 (11th Cir.)
- Hogan v. Sec'y, U.S. Dep't of Veterans Affs., 121 F.4th 172, 178 (11th Cir. 2024)
- Villarreal v. R.J. Reynolds Tobacco Co., 839 F.3d 958, 971 (11th Cir.)
- Thomas v. Att'y Gen., Fla., 795 F.3d 1286, 1291 (11th Cir.)
- Anderson v. Embarq/Sprint, 379 F. App'x 924, 926 (11th Cir.)
- Jimenez v. U.S. Att'y Gen., 146 F.4th 972, 992-94 (11th Cir. 2025)

- *Gomez-Perez v. Potter*, 553 U.S. 474, 479 (2008)
- *Weeks v. Harden Mfg. Corp.*, 291 F.3d 1307, 1311 (11th Cir.)
- *Poole v. Country Club*, 129 F.3d 551, 553 & n.2 (11th Cir.)
- *Hipp v. Liberty Nat'l Life Ins. Co.*, 252 F.3d 1208, 1231 (11th Cir.)
- *Raney v. Allstate Ins. Co.*, 370 F.3d 1086, 1088-89 (11th Cir.)
- *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726-27 (1966)

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