

In the United States Court of Federal Claims

No. 11-149C

(Filed September 30, 2011)

NOT FOR PUBLICATION

LATANNYA BELL,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER

On March 9, 2011, plaintiff filed a *pro se* complaint in this court alleging a violation of Title VII of the Civil Rights Act of 1964 (“Title VII”) by her employer, the General Services Administration. The government moved to dismiss for lack of subject matter jurisdiction, because Title VII claims are not within the jurisdiction of this Court. Plaintiff responded with a motion under 28 U.S.C. § 1631 to transfer the case to the court with subject matter jurisdiction, the United States District Court for the District of Columbia. Section 1631 states that a federal court which finds it lacks jurisdiction over an action “shall, if it is in the interest of justice, transfer such action . . . to any other court in which the action . . . could have been brought at the time it was filed.” 28 U.S.C. § 1631. The government opposed the motion to transfer on the ground that the complaint was not timely filed in accordance with the rules governing Title VII cases, 42 U.S.C. § 2000e-16(c); 29 C.F.R. § 1614.407, and thus did not qualify for transfer under 28 U.S.C. § 1631.

The statute of limitations which generally applies to cases within our jurisdiction, 28 U.S.C. § 2501, has been construed by the United States Supreme Court to be “jurisdictional” in nature, and thus not subject to waiver or equitable tolling. *See John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 135-36, 139 (2008). As plaintiff correctly notes, however, the United States Court of Appeals for the District of Columbia Circuit has held that the Title VII filing deadline is not jurisdictional and is thus subject to waiver, tolling, and enlargement. *See Mondy v. Secretary of the Army*, 845 F.2d 1051, 1055-57 (D.C. Cir. 1988). Without providing any details, plaintiff asserts that she would be entitled to an equitable enlargement of the filing period. But such details are better brought before the district court rather than this court, as we are usually not in the business of determining whether equitable tolling is appropriate.

Plaintiff's action could have been brought, at the time it was filed, in the U.S. District Court for the District of Columbia, since that court has subject matter jurisdiction over this case. The statute of limitations, as an affirmative defense, and any claim of entitlement to equitable tolling, would then be raised and litigated in the normal course of proceedings in the district court. The Court also notes that plaintiff, proceeding *pro se*, placed on her complaint a heading for the U.S. District Court for the District of Columbia, and possibly intended to be litigating at that tribunal. In these circumstances, the Court is satisfied that it is in the interest of justice that plaintiff's *pro se* Title VII complaint be transferred to a court with subject matter jurisdiction. Plaintiff's motion to transfer is therefore **GRANTED**. The Clerk shall transfer the case to the United States District Court for the District of Columbia, in accordance with this order.

IT IS SO ORDERED.

VICTOR J. WOLSKI
Judge