UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANTHONY D. HENDERSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 05-1966 (RWR)**
	)	
ANTHONY A. WILLIAMS, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION AND ORDER

Plaintiff Anthony D. Henderson filed an amended complaint alleging that then-Mayor Anthony Williams and the Government of the District of Columbia (the "District") constructively discharged him in violation of Title VII of the Civil Rights Act of 1964 and violated the Equal Pay Act. Defendants filed a partial motion to dismiss claiming that Henderson's amended complaint does not relate back to the timely-filed original complaint and that Henderson therefore did not timely file his Title VII claim. Because Henderson's amended complaint relates back to the original complaint, defendants' motion to dismiss will be denied.

BACKGROUND

Henderson was employed by the District of Columbia Public Schools ("DCPS") until 2001, earning a salary of $53,676. (Am. Compl. ¶ 10.) Upon DCPS' request, Henderson returned to DCPS temporarily in August 2003 to assist with ongoing projects

without a formal letter specifying salary information. Henderson was subsequently assigned an annual salary of $36,421, which he alleges was "significantly less than [it] should have been." (Id. ¶ 14.) Henderson requested back pay and correction of his salary. DCPS told him that due to budget constraints, it would not be able to adjust his salary. (Id. ¶ 16.) However, during the same period, several rehired female DCPS employees were compensated based on their former salary rates. (Id. ¶ 35.)

In September 2003, Henderson unsuccessfully applied for a permanent human resources specialist position within DCPS for which a female applicant was later hired. (Id. ¶ 25-26.) Upon what he claims was his constructive discharge due to DCPS's refusal to correct his pay, Henderson filed a gender discrimination complaint with DCPS's Office of Human Resources, Office of Employee Services ("OES"). (Id. ¶ 24.) In February 2004, following the unsuccessful disposition of his OES complaint, Henderson filed a complaint against DCPS with the U.S. Equal Employment Opportunity Commission ("EEOC") asserting disparate treatment. (Id. ¶ 31.) The EEOC issued him a right-to-sue letter on July 6, 2005. (Pl.'s Mem. of P. & A. Opp'n to Defs.' Mot. to Dismiss ("Pl.'s Opp'n"), Ex. 1, Attach. 1 at 1.)

Henderson sued DCPS on October 4, 2005, within ninety days of receiving his letter from the EEOC, and timely served DCPS on November 28, 2005. Several months later, on January 24, 2006,

Henderson's counsel received a telephone call from Dana DeLorenzo, Assistant Attorney General for the District of Columbia. (Id. at 5; id., Ex. 1 ¶ 8.) DeLorenzo told Henderson's counsel that she had received a copy of the complaint against DCPS and recommended that Henderson correct his complaint to list the District as defendant rather than DCPS, a non-suable entity. (Id., Ex. 1 ¶¶ 9-10.) She further stated that if plaintiff amended his complaint, defendants would not file a motion to dismiss. (Id., Ex. 1 ¶ 10.)

Henderson amended his complaint on March 23, 2006, substituting as defendants Mayor Williams in his official capacity and the District, alleging that DCPS engaged in gender discrimination in violation of the Equal Pay Act and Title VII. Defendants moved to dismiss, claiming that (1) Henderson's suit against Mayor Williams duplicates his suit against the District,[1] and (2) his amended complaint filed in March 2006 does not relate back to his original complaint that was timely filed in October 2005, and consequently, that he did not timely file his Title VII complaint against the District within ninety days of receiving his right-to-sue letter.

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[1] Henderson does not contest defendant's claim of duplicativeness in his opposition. Because Henderson is suing Williams in his official capacity and "[w]hen sued in their official capacities, government officials are not personally liable for damages[,]" Atchinson v. Dist. of Columbia, 73 F.3d 418, 424 (D.C. Cir. 1996) (internal citation omitted), Henderson's complaint against Anthony Williams will be dismissed.

DISCUSSION

A motion to dismiss should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Under Fed. R. Civ. P. 12(b)(6), a district court "must view all the allegations and facts in the complaint in the light most favorable to the plaintiff[], and it must grant the plaintiff[] the benefit of all inferences that can be derived from those facts." Lindsey v. United States, 448 F. Supp. 2d 37, 44 (D.D.C. 2006). However, a complaint may be dismissed when "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (internal citation omitted).

Federal Rule of Civil Procedure 15(c) governs amendments to a complaint that are made after the time for filing the complaint has expired. See Miller v. Holzmann, Civ. Action No. 95-1231, 2006 WL 3826886, at *8 (D.D.C. Dec. 28, 2006) ("A plaintiff who has named, as a defendant, the wrong party may amend her complaint to name the correct party even if the statute of limitation has run if the requirements of Rule 15(c) . . . are met."). This rule permits a late-filed claim to relate back to the time of the original timely-filed pleading if three conditions are met. First, the claim asserted in the amended

pleading must arise out of "the conduct, transaction, or occurrence set forth in the original pleading." Fed R. Civ. P. 15(c)(2), (3).[2] Second, if the names of the parties change, the party brought into the action must, "within the period provided by Rule 4(m) for service of the summons and complaint"[3] receive "such notice of the institution of the action that [defendant] will not be prejudiced in maintaining a defense on the merits." Fed. R. Civ. P. 15(c)(3)(A). Third, a defendant must know or should know that "but for a mistake concerning the identity of the proper party, the action would have been brought against the party." Fed. R. Civ. P. 15(c)(3)(B).

Defendants argue that the names of the parties have changed and that they had neither notice nor knowledge of the action as required by Rule 15(c)(3). (Defs.' Mem. of P. & A. Supp. Mot. to Dismiss ("Defs.' Mot. to Dismiss") at 7.) Henderson contends that he did not change the parties, but "merely correct[ed] a simple misnomer" (Pl.'s Opp'n at 9) -- implying that no further assessment of the final two prongs of Rule 15(c)'s relation back test is necessary -- and that his amended complaint relates back because the "correct party was properly sued but incorrectly

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[2] The parties agree that this requirement has been met. (Defs.' Mot. to Dismiss at 6; Pl.'s Opp'n at 15.)

[3] Rule 4(m) requires "service of the summons and complaint . . . upon a defendant within 120 days after the filing of a complaint . . . ." Fed. R. Civ. P. 4(m).

named." Arrington v. Dist. of Columbia, 673 A.2d 674, 679 (D.C. 1996). Henderson claims that he intended to sue the District but named DCPS only because his July 6, 2005 EEOC right-to-sue letter said he had to. In the alternative, Henderson argues that defendants have not shown prejudice or lack of notice. (Pl.'s Opp'n at 9.)

I. CHANGED NAME

Arrington and the Advisory Committee Notes to the 1966 amendment to Rule 15(c) suggest that Henderson's amendment changed the name of the defendant and did not merely correct a misnomer. The plaintiff in Arrington timely sued and served the D.C. General Hospital, and later served the District. After the District moved to dismiss on the ground that D.C. General was not suable, the plaintiff amended her complaint to substitute the District as the defendant. The D.C. Court of Appeals held that the amendment was a name change that would trigger further analysis of notice and prejudice to assess whether the change should relate back in time to the original filing. Arrington, 673 A.2d at 680 (citing Schiavone v. Fortune, 477 U.S. 21, 28-30 (1986) (finding the substitution of a corporation for one of its divisions to be a change in party)). See also Rendall-Speranza v. Nassim, 107 F.3d 913, 918 (D.C. Cir. 1997) (treating the addition of the employee's company as a defendant with the employee's supervisor as a change in defendants) (citing Donald

v. Cook County Sheriff's Dep't, 95 F.3d at 548, 560 (7th Cir. 1996) (treating as a change in defendants the addition of individual employees as defendants with original government entity employer defendant, and citing 1966 Advisory Committee Notes)). Here, as in Arrington, the plaintiff originally named and served a non-suable District entity. He did not name the District or serve the Mayor and the Attorney General upon whom service must be made when the District is sued. See D.C. Super. Ct. R. Civ. P. 4(j)(1). The substitution here, like those in Arrington and Schiavone, appears to be a change in party.[4] Even under further Rule 15(c)(3) scrutiny, however, Henderson's amendment passes muster.

II. TIMELY NOTICE, KNOWLEDGE AND PREJUDICE

"Rule 15(c) requires notice of the actual institution of the action not mere notice that an action might ensue." Grigsby v. Johnson, Civ. Action No. 95-213, 1996 WL 444052, at *5 (D.D.C. May 14, 1996). Here, the District was not merely "apprised of the pending lawsuit within the [120-day service] period,"

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[4] While Arrington revealed that D.C. General was governed by a suable commission, whereas the District is the only entity suable for the DCPS employment practices alleged here, the Advisory Committee Notes seem to diminish the possible significance of that distinction. Those notes treated cases where plaintiffs invoked a cause of action created against the Secretary of Health, Education and Welfare ("HEW") but they named instead as the defendant the United States, the HEW Department, a non-existent agency, and the former rather than current Secretary, as changed name cases subject to mistaken identity analysis under Rule 15(c)(3)(B).

Grigsby, 1996 WL 444052, at *5; it received the original complaint and encouraged the plaintiff to substitute parties. Henderson's attorney and counsel for defendants spoke on January 24, 2006, well within the 120-day period after the complaint was filed on October 4, 2005. Defendants' counsel acknowledged having a copy of the complaint and remarked that DCPS was not suable but that the District would be the proper party.[5] (Pl.'s Opp'n at 5; Defs.' Reply to Pl.'s Opp'n ("Defs.' Reply") at 4-5, 9.)

Defendants' counsel's suggestion that she would not file a motion to dismiss if Henderson re-captioned his complaint demonstrates notice of the action, a willingness for the District to be brought into the suit, and knowledge that the District's addition as a defendant was likely.[6] See Hall v. CNN Am. Inc.,

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[5] Evidence of notice can be gleaned if one entity administers another. Nichols v. Greater Southeast Community Hosp., Civ. Action No. 03-2081, 2005 WL 975643, at *3 (D.D.C. Apr. 22, 2005) (finding that defendant was on notice of plaintiff's claims and "also that it understood itself to be the proper party" because defendant was the administrator of the previously dismissed party and became aware of the action at the same time as the dismissed party).

[6] Defendants argue that "notice to DCPS general counsel or undersigned counsel cannot be attributed to the District or to the Mayor or any of its/his agents for service of process." (Defs.' Mot. to Dismiss at 9; see also Defs.' Reply at 9.) However, defendants improperly conflate proper service with notice and knowledge for purposes of Rule 15(c)(3)(A) and (B). "The validity of the amendment under Rule 15(c) turns on actual notice, not on whether process has been served." Donald, 95 F.3d at 560. Rule 4(j) of the District of Columbia Superior Court Rules of Civil Procedure requires that service be made upon the District by mailing a copy of the complaint to the Mayor *and* to

Civ. Action No. 95-22, 1996 WL 653839, at *5 (D.D.C. Nov. 7, 1996) (noting that even if defendant did not know about the action sparking the lawsuit, because of the publicity within the relevant industry, defendant "should have known, and should have expected to be a party to this action"). Finally, defendants provide scant evidence of any prejudice.

II. MISTAKE

The D.C. Circuit has observed that the Advisory Committee Notes to the 1966 amendment to Rule 15(c) emphasize "the importance of 'relation back' in suits against the government in which the complaint may name, for example, a non-existent agency or a person who is no longer the relevant government official." Rendall-Speranza, 107 F.3d at 918 (quoting Donald, 95 F.3d at 560) ("The commentary to Rule 15(c) clearly indicates that the rule is intended to be a means for correcting the mistakes of plaintiffs suing official bodies in determining which party is the proper defendant."). "Agencies and departments within the District of Columbia government can not be sued as separate entities." Parker v. Dist. of Columbia, 216 F.R.D. 128, 130 (D.D.C. 2002) (citing Fields v. Dist. of Columbia Dep't of Corr., 789 F. Supp. 20, 22 (D.D.C. 1992)) (finding that plaintiff had sued an organizational subdivision of the District of Columbia which was non-suable and that plaintiff correctly amended the

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the Attorney General of the District. D.C. Super. Ct. R. Civ. P. 4(j).

complaint to list the District of Columbia as the defendant). Because DCPS is a non-suable government entity, the Advisory Committee Commentary is particularly applicable to Henderson who modified his complaint upon the advice of defendants' counsel that the suit was rightly and obviously against the District. But for a mistake concerning the proper party to sue, Henderson would have brought his claim against the District rather than DCPS. The three conditions of Rule 15(c) have been met.

CONCLUSION AND ORDER

Because defendants received notice of the original complaint before the period for service of process had run and contacted Henderson's counsel advising that they would not file a motion to dismiss if the complaint was amended, defendants had sufficiently timely notice to prevent any prejudice to their defense of this action. Additionally, because DCPS is a non-suable entity and only the District can be sued for alleged employment discrimination committed by DCPS, the District should have known that but for Henderson's mistake about which official body to name as defendant, it would have been brought into the original suit. Since Rule 15(c)(3) has been satisfied, Henderson's amended complaint relates back to the timely-filed original complaint. Accordingly, it is hereby

ORDERED that defendants' partial motion to dismiss [7] be, and hereby is, GRANTED as to Henderson's claims against Williams and DENIED as to his claims against the District.

SIGNED this 12th day of March, 2007.

/s/
RICHARD W. ROBERTS
United States District Judge