IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MARVIN L. PORTER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 02-1457 GMS
	)	
TOM SMYTH, PHIL WEBBER, DAVE, STAIB, RHONDA CURRY, and PEPSI COLA BOTTLING GROUP	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

I. INTRODUCTION

On July 24, 2002, Marvin L. Porter ("Porter") filed a *pro se* complaint against the defendants, Tom Smyth ("Smyth"), Phil Webber ("Webber"), Dave Staib ("Staib"), Rhonda Curry ("Curry"), and the Pepsi Bottling Group, Inc. ("PBG") (collectively "the defendants"), alleging that the defendants discriminated against him in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e-2, *et seq*.

On October 15, 2002, Porter amended his complaint to include a claim pursuant to 42 U.S.C. § 1981, as well as state law tort claims including economic duress, emotional distress, defamation, breach of contract, breach of implied covenant of good faith and fair dealing, fraud in the inducement, and retaliatory discharge.

Presently before the court is the defendants' motion to dismiss the plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).[1] For the following reasons, the court will

[1] The defendants' motion to dismiss is based on Porter's original complaint because the motion was filed before Porter served his amended complaint on the defendants.

grant the defendants' motion.

II. FACTS

On May 18, 1992, Porter began working for PBG as a Quality Control Technician. On August 1, 2000, Porter filed a racial discrimination charge against PBG with the Delaware Department of Labor ("DDOL"). The charge was dismissed with a finding of no probable cause on April 30, 2001.

On May 14, 2001, PBG suspended Porter for one week because he made an alleged error in judgment. On June 11, 2001, Porter was suspended indefinitely pending further review of a situation in which Porter allegedly refused to obey orders from his managers Smyth and Staib. After reviewing the situation, PBG decided to return Porter to work and allegedly attempted, unsuccessfully, to contact him several times. PBG sent Porter a final letter on August 21, 2001, stating that if Porter did not return to work by August 27, 2001, it would view his failure to return as a voluntary resignation. Porter never returned to work.

On March 20, 2002, Porter filed charges with the EEOC alleging that PBG retaliated against him as a result of his DDOL charge. Specifically, Porter alleged that PBG retaliated by: (1) cancelling his medical benefits on December 31, 2000; (2) suspending him for one week in May 2001; and (3) suspending him in June 2001. On July 17, 2002 the EEOC dismissed the charge and issued a right to sue letter.

Porter filed a complaint with the court on July 24, 2002. In his complaint, he alleges violations of Title VII concerning: (1) termination of his employment; (2) failure to promote; (3) failure to pay him the same as a white co-worker; and (4) harassment by retaliation. On October 15, 2002, Porter amended his complaint to include a violation of 42 U.S.C. § 1981 and various state law

tort claims.

III. STANDARD OF REVIEW

In ruling on a motion to dismiss, the factual allegations of the complaint must be accepted as true. *See Graves v. Lowery*, 117 F.3d 723, 726 (3d Cir. 1997); *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996). Moreover, a court must view all reasonable inferences that may be drawn from the complaint in the light most favorable to the non-moving party. *See Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969); *Schrob v. Catterson*, 948 F.2d 1402, 1405 (3d Cir. 1991). A court should dismiss a complaint "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *See Graves*, 117 F.3d at 726; *Nami*, 82 F.3d at 65 (both citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

Finally, since the plaintiff is a *pro se* litigant, the court has a special obligation to construe his complaint liberally. *Zilch v. Lucht*, 981 F.2d 694, 694 (3d Cir. 1992) (citing *Haines v. Kerner*, 404 U.S. 519, 520 (1972)).

IV. DISCUSSION

Under Title VII, a plaintiff must file a charge of employment discrimination with the EEOC within one-hundred-and-eighty days of the alleged discrimination. *See* 42 U.S.C. § 2000e-5(e)(1). This is true unless the charge is first filed with a state or local agency, in which case the time for filing is extended to three-hundred days. *See id.* In the present case, Porter alleges that the last discriminatory act occurred on June 11, 2001, and that he filed charges with the EEOC on March 20, 2002. Since Porter did not file charges with the DDOL in connection with the alleged June 11,

2001 incident, he is not entitled to the filing extension.[2] The court will therefore apply the one-hundred- and-eighty-day filing period. On the present facts, it is clear that the March 20, 2002 charges were filed more than one-hundred-and-eighty days after the last alleged discriminatory act occurred. Thus, the court will grant the defendants' motion to dismiss Porter's Title VII claims.[3]

V. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. The defendants' motion to dismiss (D.I. 12) is GRANTED.

Dated: January 21, 2003

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE

[2] In the past, Porter has filed charges with the DDOL, however, those charges were filed in August 2000 and related to a different occurrence of alleged employment discrimination. Thus, they are not considered as charges filed with a state agency in the present case.

[3] The court expresses no opinion at this time on the validity of Porter's 42 U.S.C. § 1981 and state law claims.