IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STANLEY J. ZDZIECH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 02-90 GMS
	)	
DAIMLERCHRYSLER CORPORATION,	)	
	)	
Defendant.	)	

MEMORANDUM AND ORDER

I. INTRODUCTION

On February 4, 2002, Stanley Zdziech ("Zdziech"), filed a *pro se* complaint against DaimlerChrysler Corporation ("DaimlerChrysler") and United Auto Workers Local 1183 ("UAW Local 1183"). In the complaint, Zdziech alleges that DaimlerChrysler unlawfully discriminated against him in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101-12213 ("ADA").

Presently before the court is DaimlerChrysler's motion to dismiss Zdziech's complaint because he failed to file a timely charge with the Equal Employment Opportunity Commission. For the reasons that follow, the court will grant the defendant's motion to dismiss.

II. FACTS

According to Zdziech, DaimlerChrysler hired him in 1989. He continued to work there until he became disabled. Although Zdziech attempted to return to work on October 27, 1998, DaimlerChrysler instead placed him on disability leave. He continued to make requests to return to work until May 1, 2000.

On May 12, 2000, Zdziech filed claims of discrimination with both the Delaware Department

of Labor ("DDOL") and the Equal Employment Opportunity Commission ("EEOC"). The EEOC dismissed his charge against DaimlerChrysler on November 7, 2001 by issuing him a Right to Sue letter. On February 4, 2002, Zdziech filed the above-captioned action.

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)).

IV. DISCUSSION

The ADA provides that a plaintiff must file a charge of discrimination with the EEOC within 300 days of an alleged discriminatory act before the plaintiff can initiate a civil suit in federal court.[1] *See* 42 U.S.C. § 2000e-5(e)(1); *see also Howze v. Jones & Laughlin Steel Corp.*, 750 F.2d 1208, 1210 (3d Cir. 1984). In the present case, DaimlerChrysler argues that Zdziech filed his charge of discrimination with the EEOC over eighteen months after the alleged discriminatory adverse employment action took place on October 27, 1998. For the following reasons, the court must agree.

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[1]Although a plaintiff must normally bring suit within 180 days of a discriminatory act, where the plaintiff files his or her complaint with a state or local agency authorized to adjudicate the claim, the plaintiff is given an extension of 300 days from the date of the discriminatory act to file a formal charge of discrimination with the EEOC. *See e.g. White v. Gallagher Bassett Servs.*, 2003 U.S. Dist. LEXIS 2051, *6 (E.D. Pa. Feb. 4, 2003).

Zdziech relies on three arguments in support of his contention that his EEOC complaint did, in fact, satisfy the statutory prerequisites to bringing a valid claim. The court will discuss each claim in turn. Zdziech first argues that the court should give consideration to the fact that he was acting *pro se* until he was recently able to retain counsel. While the court recognizes that a *pro se* litigant should not be held to strict standards of pleading, the pleading standard is not at issue in the present case. Rather, the only issue is whether Zdziech filed his charge with the EEOC within 300 days of the alleged discriminatory act. As a determination of this issue does not concern technical pleading standards, the court concludes that Zdziech's former *pro se* status does not lessen his obligation to file a timely EEOC charge.[2] *See e.g. Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 152 (1984) (noting that, "[p]rocedural requirements established by Congress for gaining access to the Federal Courts are not be disregarded by courts out of a vague sympathy for particular litigants.").

Second, Zdziech argues that his subsequent requests to return to work, and DaimlerChrysler's refusal of those requests, constituted discrete acts of employment discrimination. Under this theory, each discrete act is, in and of itself, an act of employment discrimination and thus restarts the statutory 300-day clock. In the present case, the basis of Zdziech's complaint stems from DaimlerChrysler's October 27, 1998 act. All of Zdziech's subsequent requests to return to work also stem from that discrete act of placing him on disability leave. It is clear then that Zdziech's complaint centers on the alleged discriminatory practice of October 27, 1998. Indeed, were

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[2]The court is mindful that, in certain limited circumstances, the timing provision is subject to equitable modifications, such as when the employer affirmatively acts to impede suit. *See Hart v. J.T. Baker Chemical Co.*, 598 F.2d 829, 832 (3d Cir. 1979). In the present case, however, the fact that Zdziech was acting *pro se* alone is insufficient to invoke such an extraordinary remedy. Nor is the court aware of any other facts or circumstances requiring the application of equitable modifications in the present case.

Zdziech's assertions regarding the effect of his letters to be drawn out to their logical conclusions, then every individual who alleges unlawful discrimination could restart the statutory time period in which to file an EEOC complaint merely by writing a letter to his or her former employer. Such a reading of the statutory requirements would clearly vitiate the intent behind them. *See e.g. Hart*, 598 F.2d at 833 (noting that the "primary consideration underlying statutes of limitations is that of fairness to the defendant" because the defendant should not be called upon to defend a suit where the evidence has been lost, memories have faded, and witnesses have disappeared.).

Finally, Zdziech's contention that the alleged discriminatory act of October 27, 1998, and the subsequent requests to return to work, were a continuing violation is also without merit. In support of this contention, Zdziech points to the Supreme Court's recent decision in *Amtrak v. Morgan*, 536 U.S. 101 (2002). In that case, the Court reaffirmed the validity of the "continuing violation" theory in hostile work environment cases. *See id*. at 115. The case presently at bar, however, does not concern a hostile work environment claim. As such, Zdziech's reliance on this case is misplaced.

More importantly, however, the application of a continuing violation theory does not save the timeliness of Zdziech's filing. This theory is, by its very nature, peculiar to claims that are patterned and durational. *See id*. "Where the continuing violation doctrine applies, the illegal practice complained of has materialized or become cognizable as such only over time." *Estrada v. Trager*, 2002 U.S. Dist. LEXIS 17342, *17 (E.D. Pa. Sept. 10, 2002). In contrast, Zdziech's rights under the ADA fully ripened on October 27, 1998 when DaimlerChrysler placed him on disability leave. *See e.g. Rush v. Scott Specialty Gases, Inc.*, 113 F.3d 476, 482 (3d Cir. 1997) (holding that, in the context of a failure to promote case, the plaintiff could not wait to see what would happen

next; the harm had already been inflicted and was actionable at that time.). Since DaimlerChrysler's act was a "discrete discriminatory act" rather than a series of violations which had to take place over time to become actionable, the continuing violation doctrine is of no avail to Zdziech's present claim. Thus, the court concludes that Zdziech's claim is time-barred.

V. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. DaimlerChrysler's Motion to Dismiss (D.I. 13) is GRANTED.

Dated: June 6, 2003

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE