

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MARCUS SEYMOUR,)	
)	
Plaintiff,)	
)	
v.)	No. <u>04-2261 D/P</u>
)	
UNITED STATES POSTAL SERVICE)	
and JOHN E. POTTER, Postmaster)	
General,)	
)	
Defendants.)	

ORDER DENYING MOTION FOR LEAVE TO AMEND SCHEDULING ORDER AND FOR
LEAVE TO AMEND COMPLAINT

Before the court is plaintiff Marcus Seymour's Motion to Amend Scheduling Order and for Leave to Amend Complaint, filed on September 5, 2006 (D.E. 42). Defendants United States Postal Service and John E. Potter ("USPS") filed a response in opposition on September 12, 2006. Plaintiff filed a reply brief on October 9, 2006. For the reasons below, plaintiff's motion is DENIED.

I. BACKGROUND

Seymour filed a complaint against USPS on April 13, 2004, alleging violations of Title VII, 42 U.S.C. § 2000e et seq., the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq., and the Privacy Act, 5 U.S.C. § 552 et seq., that occurred in August and September of 2003. On August 6, 2004, the parties appeared before the court for a scheduling conference pursuant to Fed. R. Civ. P.

16(b). At that conference, the court set the deadline for the parties to amend pleadings by October 1, 2004, complete discovery by April 1, 2005, and file dispositive motions by May 6, 2005. The jury trial was set for August 22, 2005. USPS timely served its Rule 26(a)(1) initial disclosures on September 3, 2004; however, Seymour did not serve his initial disclosures until May 1, 2006.

With leave of court, Seymour filed an amended complaint on March 14, 2005, alleging additional acts of discrimination that occurred between June and October 2004. The parties then filed a joint motion to amend the scheduling order and continue the trial date, which the court granted on April 5, 2005. The court amended the scheduling order to extend the deadline for amending pleadings to June 1, 2005, completing discovery to November 1, 2005, and filing dispositive motions to January 13, 2006. The trial was reset to April 16, 2006.

On October 27, 2005, USPS filed an unopposed motion to modify the scheduling order. In that motion, USPS stated that on June 10, 2005, USPS served Seymour with interrogatories and document requests. However, despite numerous attempts by counsel for USPS to obtain responses to these discovery requests, as of October 27, USPS had still not received any discovery responses from Seymour. The court granted USPS's motion on that same day.

On December 15, 2005, Seymour filed a motion to amend the scheduling order and continue the trial date, which the court

granted on December 22, 2005. The court extended the discovery deadline to May 30, 2006, the deadline for filing dispositive motions to July 15, 2006, and the trial to October 16, 2006. On June 20, 2006, the parties filed a joint motion to extend the dispositive motions deadline from July 15 to July 31, 2006. The request was based on Seymour's eight deposition notices which were not served until after the discovery deadline (May 30, 2006), and because USPS agreed to allow Seymour to take these depositions after the discovery cut-off date, USPS needed additional time to file dispositive motions. This motion was granted on June 27, 2006. On July 31, USPS timely filed its motion for summary judgment.

On September 5, 2006, Seymour filed the present motion seeking to amend his complaint again to incorporate alleged acts of discrimination that occurred after this lawsuit was filed. The proposed amendments also include an additional cause of action under 42 U.S.C. § 1981. Seymour also asks the court to amend the scheduling order to allow him to obtain discovery regarding these new claims.

II. ANALYSIS

Federal Rule of Civil Procedure 15 governs the use of amended pleadings and provides that leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). Rule 16 authorizes the court to enter a scheduling order which limits the

time a party has to join parties, amend pleadings, file motions, and complete discovery. Rule 16 provides that a scheduling order "shall not be modified except upon a showing of good cause. . . ." Fed. R. Civ. P. 16(b). Addressing the interplay between these rules, the Sixth Circuit has held that "once a scheduling order's deadline passes, a party must first show good cause under Rule 16(b) for the failure to seek leave to amend prior to the expiration of the deadline before a court will consider whether the amendment is proper under Rule 15(a)." Hill v. Banks, 85 Fed. Appx. 432, 433 (6th Cir. 2003) (citing Leary v. Daeschner, 349 F.3d 888 (6th Cir. 2003)). Good cause exists when a deadline "cannot reasonably be met despite the diligence of the party seeking the extension." Fed. R. Civ. P. 16 advisory committee notes (1983). In deciding whether the moving party has shown sufficient good cause to modify the scheduling order, the court considers two factors: the movant's diligence in attempting to meet the scheduling order's deadlines and the potential prejudice to the opposing party if the scheduling order is amended. Leary, 349 F.3d at 906 (citations omitted).

Here, the court concludes that Seymour has not shown good cause to excuse his failure to seek leave to amend before the deadline to do so expired. Even with the multiple extensions of time granted by the court and continuances of the trial date, Seymour was not diligent in meeting the scheduling order's

deadlines. He did not file the present motion until fifteen months after the extended deadline for amending pleadings and three months after the extended discovery deadline. Moreover, Seymour's motion was filed after USPS filed its summary judgment motion. "[A]llowing amendment after the close of discovery creates significant prejudice." Duggins v. Steak n' Shake, Inc., 195 F.3d 828, 834 (6th Cir. 1999). This is because "it would prejudice the defendants to be compelled to reopen discovery." Id. Other courts have similarly found that "a plaintiff's leave to amend, when filed after discovery has been closed and after a defendant's motion for summary judgment has been filed, is considered unduly delayed and prejudicial." Sanders v. Venture Stores, Inc., 56 F.3d 771, 774 (6th Cir. 1995); see also Duggins, 195 F.3d at 834 (citing Hayes v. New England Millwork Distributors, Inc., 602 F.2d 15 (1st Cir. 1979)); Campbell v. Emory Clinic, 166 F.3d 1157 (11th Cir. 1999); MacDraw, Inc. v. CIT Group Equip. Financing, Inc., 157 F.2d 956 (2d Cir. 1998); Ferguson v. Roberts, 11 F.3d 696 (7th Cir. 1993); Averbach v. Rival Mfg. Co., 879 F.2d 1196 (3d Cir. 1989).

Although the most recent EEOC charge alleged in the proposed amended complaint was submitted close to the motions deadline, the alleged underlying acts of discrimination all occurred well before the end of the discovery period, and Seymour has provided no legitimate explanation as to why he could not have timely filed this motion. There has been undue delay by Seymour, and allowing

leave to amend at this time would be unduly prejudicial to USPS.

III. CONCLUSION

For the reasons above, the Motion for Leave to Amend is DENIED. The parties will be notified of the new trial date by separate order from the court.

IT IS SO ORDERED.

s/ Tu M. Pham

TU M. PHAM

United States Magistrate Judge

January 30, 2007

Date