IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

SONJA L. TAYLOR-BRAY,	:	
	:	C.A. No. K15C-11-006 WLW
Plaintiff,	:	Kent County
	:	
v.	:	
	:	
DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH, AND THEIR FAMILIES,	:	
	:	
	:	
Defendant.	:	

Submitted: February 26, 2016
Decided: April 12, 2016

ORDER

Upon Defendant's Motion to Dismiss
Granted.

Sonja L. Taylor-Bray, *pro se*

Kevin R. Slattery, Esquire of the Department of Justice, Wilmington, Delaware; attorney for DSCYF.

WITHAM, R.J.

Defendant Department of Services for Children, Youth, and Their Families ("DSCYF") moves this Court to dismiss the complaint of Plaintiff Sonja Taylor-Bray ("Taylor") pursuant to Superior Court Rule of Civil Procedure 12(b)(6). The DSCYF asserts that with the exception of Taylor's claim related to her August 2014 Equal Employment Opportunity Commission ("EEOC") charge, all claims made by Taylor are time-barred or barred by collateral estoppel. The DSCYF further asserts that Taylor's claim related to her August 2014 EEOC claim should be dismissed because state agencies are immune from suit under Title I of the Americans with Disabilities Act ("ADA"), and that even if the action was not barred by the ADA, Taylor has failed to plead a *prima facie* case of ADA retaliation provisions. For the following reasons, the DSCYF's motion to dismiss is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

The factual background relating to Taylor's termination by the DSCYF has been well documented in actions before the federal courts. In *Taylor-Bray v. Department of Services for Children, Youth, and Their Families*,[1] the Third Circuit provided the following concise statement of facts:

> Taylor was employed by the DSCYF as a youth rehabilitation counselor at the Stevenson House in Milford, Delaware, a secure facility for incarcerated youth and pretrial juvenile detainees. Her job duties included assisting in the handling of serious disturbances or subduing unruly residents, which could involve physically restraining youth and responding to physical confrontations. Taylor-Bray sustained a

[1] *Taylor-Bray v. Dep't of Servs. for Children, Youth, and Their Families*, 627 Fed. Appx. 79 (3d Cir. 2015) (*Taylor-Bray II*).

workplace injury on June 9, 2008. When she returned to work following the injury, she was placed on light-duty pursuant to her physician's request, and therefore assigned to a night-shift control room post at the Stevenson House by her supervisor Donald Mcilvain and/or Superintendent John Stevenson.

On December 9, 2008, Taylor-Bray's physician placed her on permanent medium-duty restrictions. She requested an accommodation pursuant to the Americans with Disabilities Act on the basis that she could no longer restrain the residents, and she filed numerous grievances, raising issues of violations of overtime policy, bumping rights for shift work, and restrictive duties with respect to seniority. A human resources specialist informed Taylor-Bray on February 25, 2009 that she could not keep her light-duty assignment indefinitely; agency policy limited light-duty assignments to thirty days. Taylor-Bray was instructed to apply for short term disability insurance benefits. She did not do so initially and instead sought workers' compensation benefits. She subsequently applied for and received short-term disability benefits. She was instructed to transition to the long term disability benefits program, but failed to do so.

Meanwhile, as of May 5, 2009, Taylor-Bray's physician continued her on permanent, medium-duty restrictions. There were, however, no medium-duty positions available as a youth rehabilitative counselor and, in June 2009, a recommendation was made to terminate Taylor-Bray's employment due to her inability to perform the essential functions of her job. On July 20, 2009, Taylor-Bray's physician provided a return to work slip that indicated that she was able to perform all essential aspects of a job with permanent medium-duty restrictions. Because her physician did not release her to full duty, she was advised that her employment would be terminated. Taylor-Bray was terminated from her position by the Secretary of DSCYF due to her inability to perform the essential functions of her position, effective July 22, 2009.

After she was terminated, Taylor-Bray filed grievances through the collective bargaining agreement, claiming discrimination due to her

> disability. A hearing was held on September 23, 2009, and, on October 2, 2009, the hearing officer denied the grievance, finding that Taylor-Bray's termination was for just cause. She filed grievances with the Delaware Merit Employee Relations Board, which were dismissed because the issues were controlled by the collective bargaining agreement. She also unsuccessfully pursued unfair labor practices charges before the Public Employment Relations Board.
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> Taylor-Bray also filed a Charge of Discrimination with the Equal Employment Opportunity Commission, alleging gender discrimination and retaliation, in connection with her termination from employment. A notice of her right to sue was mailed to her on December 20, 2011, and this civil action, filed in forma pauperis in the United States District Court for the District of Delaware, followed. The parties engaged in discovery and Taylor-Bray was deposed, testifying about similarly situated males who received preferential treatment, and that having to physically restrain the residents disproportionately affected women employees. After the close of discovery, DSCYF moved for summary judgment, arguing that Taylor-Bray failed to identify valid male comparators, and failed to show that the proffered reason for her termination was a pretext for discrimination on the basis of gender or retaliation. Taylor-Bray also moved for summary judgment. In an order entered on March 17, 2015, the District Court awarded summary judgment to DSCYF. Judgment was entered on March 20, 2015.

On September 22, 2015, the Third Circuit upheld the district court's award of summary judgment. On December 22, 2015, Taylor filed the complaint underlying the motion before this Court. The complaint consists of five listed causes of action and one "additional complaint." On February 15, 2016, DSCYF filed this motion to dismiss.

STANDARD OF REVIEW

"Delaware is a notice pleading jurisdiction. Thus, for a complaint to survive a motion to dismiss, it need only give general notice of the claim asserted."[2] When deciding a motion to dismiss under Superior Court Rule of Civil Procedure 12(b)(6), all well-pleaded allegations in the complaint must be accepted as true.[3] The test for sufficiency is a broad one: the complaint will survive the motion to dismiss so long as "a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint."[4] However, the Court "will not accept conclusory allegations unsupported by specific facts or [] draw unreasonable inferences in favor of the non-moving party."[5] Stated differently, a complaint will not be dismissed unless it clearly lacks factual or legal merit.[6]

DISCUSSION

Taylor claims five causes of action and one additional claim in the complaint *sub judice*. The first cause of action appears to be a discrimination claim based on gender. Taylor states that the claim in this cause of action is "instituted pursuant to the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., as amended, and 42 U.S.C. § 1981, as amended by the Americans with

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[2] *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005) (internal citations omitted).

[3] *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

[4] *Id.* (citing *Klein v. Sunbeam Corp.*, 94 A.2d 385 (Del. 1952)).

[5] *Price v. E.I. DuPont de Nemours & Co.*, 26 A.3d 162, 166 (Del. 2011) (quoting *Clinton v. Enterprise Rent–A–Car Co.*, 977 A.2d 892, 895 (Del. 2009)).

[6] *Diamond State Tel. Co. v. Univ. of Del.*, 269 A.2d 52, 58 (Del. 1970).

Disabilities Act of 1990 . . . ."[7] Taylor claims "Defendant-Mcilvain used his power and influence as Plaintiffs immediate supervisor and as AFSCME International President-Local 3384, to violate her seniority in respect to male staff."[8] Taylor also asserts "that in addition to male preferential treatment, she was targeted due to 'protected activity.'"[9] These claims were previously adjudicated in *Taylor-Bray v. Department of Services for Children, Youth, and Their Families*.[10] Because these claims were previously adjudicated in the federal courts, they are barred by the doctrine of res judicata.

The second cause of action is a personal injury claim. Referring to 10 *Del. C.* § 4001,[11] Taylor alleges that the DSCYF and employees Susan Jones and Karen Smith acted with "gross and wonton negligence, bad faith, and lack of discretionary authority."[12] She asserts that Smith purposefully presented false testimony,[13] and

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[7] Am. Compl. ¶ 47.

[8] Am. Compl. ¶ 62.

[9] Am. Compl. ¶ 64.

[10] *Taylor-Bray v. Dep't of Servs. for Children, Youth, and Their Families*, 2015 WL 1228319, at *1 (D. Del. Mar. 17, 2015) (*Taylor-Bray I*). Taylor and a co-plaintiff, Jimmy Watson, filed a complaint in the District Court of the State of Delaware in November 2010 alleging discrimination pursuant to 42 U.S.C. § 1981. The complaint was dismissed upon motion with leave to file an amended complaint. After the amended complaint was filed, the district court dismissed most of the claims. The Title VII and unfair labor practice complaints survived the motion to dismiss. The district court allowed these claims to proceed, and subsequently granted summary judgment in favor of DSCYF. *Id.* at *1 n.1.

[11] 10 *Del. C.* § 4001 pertains to limitation of civil liability under the Tort Claims Act.

[12] Am. Compl. ¶ 64.

[13] Am. Compl. ¶ 66.

stated that "[t]he evidence supports that Defendants' conduct toward Plaintiff was improperly motivated, was intentional, willful and wonton wherefore Plaintiff is entitled to punitive exemplary damages in addition to compensatory damages."[14] Taylor further claims that the Defendants breached a duty of care legally owed the Plaintiff. Per the complaint, all actions related to the personal injury claim took place in 2009. Title 10, section 8119 of the Delaware code bars actions for recovery of personal injury damages after two years from the time the damages were incurred.[15] More than six years have passed since the date of the alleged injury. Taylor's personal injury claim is therefore barred by the statute of limitations on personal injury actions.

The third cause of action is not clearly stated, but references 29 *Del. C.* § 5933. Section 5933 provides for supplemental compensation to certain state employees who are receiving workers' compensation benefits.[16] The only plausible claim that could

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[14] Am. Compl. ¶ 70.

[15] 10 *Del. C.* § 8119 states "[n]o action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained; subject, however, to the provisions of § 8127 of this title."

[16] 29 *Del. C.* § 5933 states in pertinent part:

> Whenever an officer or employee of the State, including those exempt from the classified service, qualifies for workers' compensation disability benefits, such officer or employee, for a period not to exceed 3 months from the date such compensation begins, shall not be charged sick leave and shall receive from the State the difference, if any, between the total of: (1) The amount of such compensation, (2) any disability benefits received under the Federal Social Security Act, and (3) any other employer supported disability program, and the amount of wages to which the officer or employee is entitled on the date such

be made under section 5933 is that the state refused to pay supplemental compensation while Taylor was receiving workers' compensation benefits. Although the record indicates that Taylor sought workers' compensation benefits in 2009, there is no indication that she received such benefits. If she did receive workers' compensation benefits, there is nothing in the record indicating the term. However, even if Taylor had sought and received workers' compensation benefits, and the state had failed to provide supplemental compensation, the claim is barred by the statute of limitations. Title 10 section 8106 of the Delaware Code[17] subjects actions based on statute to a three year limitation. The benefit would have accrued in 2009, more than six years ago. Taylor's action based on 29 *Del. C.* § 5933 is therefore barred by the statute of limitations for actions based on a statute.

The fourth cause of action is also somewhat unclear. Taylor first claims that "Defendant's gross and wanton negligence on following policies, procedures, practices and basic law, which they were experienced and competent to do, was a direct and proximate cause of the injuries, damages and harm suffered by Plaintiff as set forth herein."[18] Because there is a claim of negligence which proximately caused injuries to Taylor, this claim sounds in personal injury. As noted above, 10 *Del. C.*

> compensation begins, provided the injury or disease for which such compensation is paid is not the direct result of such officer or employee's misconduct and occurs during a period of employment for which the employee is entitled to receive wages.

[17] 10 *Del. C.* § 8106(a) states in pertinent part: "no action based on a statute . . . shall be brought after the expiration of 3 years from the accruing of the cause of such action.

[18] Am. Compl. ¶ 94.

§ 8119 bars actions for recovery of personal injury damages after two years from the time the damages were incurred. More than six years have passed since the date of the alleged injury, and Taylor's claim would therefore be barred by the statute of limitations on personal injury actions. Taylor also states that the "Defendant engaged in discriminatory employment practices with malice or with reckless indifference to Plaintiff's federally protected rights."[19] Taylor then claims she is entitled to "damages and other remedies available under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section(s) 2000e et seq., as amended, and 42 U.S.C. Section 1981A." This appears to restate the claim made in the first cause of action. Insomuch as this is a restatement of the first cause of action, it too is barred by the doctrine of res judicata.

The fifth cause of action states that "Plaintiff's termination indicates that she engaged in a protected activity, some as a result of her work related injury."[20] Taylor then claims that DSCYF "engaged in discriminatory practices against Plaintiff, contrary to Plaintiff's federally and statutorily protected rights as guaranteed under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section(s) 2000e et seq., as amended, and 42 U.S.C. Section 1981, 42 U.S.C. Section 1983 and 29 *Del. C.* § 5930."[21] There is no clear claim made under the fifth cause of action, but to the extent it is a personal injury action, it is barred by 10 *Del. C.* § 8119, and to the extent it is a discrimination claim under 42 U.S.C. §§ 200e et seq., 1981, or 1983, it is barred

[19] Am. Compl. ¶ 97.
[20] Am. Compl. ¶ 98.
[21] Am. Compl. ¶ 99.

by the doctrine of res judicata.

Under the heading of "Additional Parties and/or Claims," Taylor claims she is being continually deprived employment based on a perceived disability. Although no copy of the Delaware Department of Labor ("DDOL") complaint was filed with this Court, Taylor states that "[t]he DDOL Investigator-Bruce Owens 'dismissed' stating that there were no outside interviewees and that there were 29 minimally qualified external applicants that were not interviewed."[22] She also noted that "Owens supports non-discriminatory intent with the precept that the Plaintiff could not 'restrain youths' which contradicts Plaintiffs fitness for duty documentation."[23] The United States Equal Employment Opportunity Commission ("EEOC") closed its file on Taylor's complaint noting that the EEOC was adopting the findings of the local or state fair employment practices agency that investigated this charge. The issue of Taylor's ability to restrain youths has been previously adjudicated. In *Taylor II* the Third Circuit stated that "DSCYF's proffered reason for terminating Taylor-Bray was supported by her own medical records in that her physician never cleared her to return to full duty,"[24] and that "[t]he summary judgment record establishes that Taylor-Bray was terminated because she was unable to perform the essential functions of her position, her physician having determined that she was

[22] Am. Compl. ¶ 100.

[23] *Id.*

[24] *Taylor-Bray II*, 627 Fed. Appx. at 83.

permanently restricted to medium-duty work."[25] Taylor makes no claim that she was cleared by her doctor to return to full duty. Her physician determined that she was *permanently* restricted to medium duty work. Because the issue of Taylor's inability to restrain youths due to her permanent placement on medium duty has been previously adjudicated, and because Taylor makes no claim that the permanent restriction has been reevaluated, the issue is precluded under the doctrine of collateral estoppel.

CONCLUSION

For the foregoing reasons, the Department of Services for Children, Youth and Their Families' motion to dismiss is **GRANTED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

[25] *Id.*