

**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No. 06-4233

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STACY ANN PATTERSON,  
Appellant

v.

PA OFFICE OF INSPECTOR GENERAL

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On Appeal From the United States District Court  
For the Middle District of Pennsylvania  
(D.C. Civ. No. 05-cv-02549)  
Magistrate Judge: Honorable Malachy E. Mannion

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Submitted Under Third Circuit LAR 34.1(a)  
April 2, 2007

BEFORE: BARRY, CHAGARES and ROTH, CIRCUIT JUDGES

(Filed June 15, 2007)

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OPINION

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PER CURIAM

Appellant Stacy Ann Patterson filed a civil complaint in United States District Court for the Middle District of Pennsylvania in which she claimed that her employer, the Pennsylvania Office of Inspector General (“OIG”), discriminated against her, by denying

her training, in violation of the Pennsylvania Human Relations Act (“PHRA”), 43 Pa. Cons. Stat. Ann. §§ 951-963. Patterson was hired on January 18, 2000 as an Information Technology Technician. Because the original filing did not state a basis for federal jurisdiction, the OIG filed a motion for a more definite statement, asking Patterson to clarify whether her claim of discrimination was brought under 42 U.S.C. § 1983, Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e-2000e-17, the PHRA, Title I of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., or some other law.

The motion was granted and Patterson was directed to file an amended complaint. She then filed an item consisting of 196 numbered paragraphs, App. 33-51, which we will refer to as the amended complaint, in which she indicated at ¶¶ 186-88 and 191 that she was discriminated against in violation of § 5 of the Pennsylvania Human Relations Act on account of her perceived disabilities of Hydrocephalus, Epilepsy, and Post-Concussion Syndrome. At ¶¶ 121-23, Patterson described a sexual relationship with her supervisor, and at ¶ 136, she stated that he had threatened to discipline her for unsatisfactory performance, but there was no mention of Title VII itself.

The OIG moved to dismiss the amended complaint on the basis of the Eleventh Amendment, a motion which Patterson opposed in writing. Her written opposition did not, however, address the OIG’s immunity argument. In an order entered on August 23, 2006, the Magistrate Judge dismissed the amended complaint under Federal Rule of Civil Procedure 12(b)(6), reasoning that a suit against the OIG for violating the state Human

Relations Act was barred by the Eleventh Amendment.<sup>1</sup> Patterson appeals.

We will affirm. We have appellate jurisdiction pursuant to 28 U.S.C. § 1291. Our standard of review is plenary. See Gould Elec., Inc. v. United States, 220 F.3d 169, 176 (3d Cir. 2000). The Eleventh Amendment precludes suits against a state in federal court by citizens of that state or other states. Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 98 (1984). A state may consent to a suit against it in federal court and thereby waive its immunity, but Pennsylvania has not done so, having specifically withheld consent, 42 Pa. Cons. Stat. Ann. § 8521(b). Therefore, Patterson’s suit against the OIG under the state Human Relations Act may only be brought in state court. See Mansfield State College v. Kovich, 407 A.2d 1387, 1388 (Pa. Commw. Ct. 1979).

Patterson has argued in her brief on appeal that Congress abrogated the states’ Eleventh Amendment immunity in passing Title VII of the Civil Rights Act, and that the Magistrate Judge should have allowed her to amend her complaint to “more fully explain the discriminatory pattern due to her gender and perceived disability.” (Appellant’s Brief, at 25.) However, a suit under Title I of the Americans with Disabilities Act would also have been barred by the Eleventh Amendment. See Bd. of Trustees of the Univ. of Ala. v. Garrett, 531 U.S. 356, 360 (2001). In addition, although it is true that Congress abrogated the states’ Eleventh Amendment immunity in passing Title VII, see Fitzpatrick v. Bitzer, 427 U.S. 445, 456 (1976), Patterson was not prevented from amending her

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<sup>1</sup> The parties consented to proceed before a Magistrate Judge, 28 U.S.C. § 636(c)(1).

complaint as of right under Federal Rule of Civil Procedure 15(a) (“A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served.”), in response to the OIG’s motion to dismiss if it was in fact her intention to pursue a Title VII claim for gender discrimination, 42 U.S.C. § 2000e-2(a)(1), based on an incident or incidents of sexual harassment.

We will affirm the order of the District Court dismissing the amended complaint.