

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ANTHONY L. DAVIS,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL NO. H-04-4472
	§	
THE UNIVERSITY OF TEXAS	§	
M.D. ANDERSON CANCER CENTER,	§	
Defendant.	§	

MEMORANDUM AND RECOMMENDATION

The University of Texas M.D. Anderson Cancer Center (M.D. Anderson) has filed a motion for summary judgment (Dkt.16) in this employment discrimination case. Anthony L. Davis has not filed a response. M.D. Anderson's motion should be granted.

Background Facts

The following facts are undisputed. Davis, an African-American male, worked for M.D. Anderson from April 2000 until his termination on October 7, 2002. At the time of his termination, Davis was a Distribution Services Representative responsible for handling equipment and supplies. On September 27, 2002, Davis had an argument with a co-worker, Lemuel Austin. Davis testified that Austin threatened him with a box cutter and threatened to kill him. Davis picked up a chair and then a bench. Neither party attempted to retreat from the altercation. Another co-worker, Derrick Marshall, intervened and broke up the fight. The police interrogated witnesses and prepared a report. Neither Marshall nor a second witness saw Austin with a box cutter.

M.D. Anderson's investigation determined that Davis and Austin violated M.D. Anderson's Violence on Campus Policy and Disciplinary Action Policy. Both men were terminated on October 7, 2002. Davis filed this lawsuit on November 23, 2004 alleging that he was terminated because of his race.

Summary Judgment Standards

Summary judgment is appropriate if no genuine issues of material fact exist, and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). The party moving for summary judgment has the initial burden to prove there are no genuine issues of material fact for trial. *Provident Life & Accident Ins. Co. v. Goel*, 274 F.3d 984, 991 (5th Cir. 2001). Dispute about a material fact is "genuine" if the evidence could lead a reasonable jury to find for the nonmoving party. *In re Segerstrom*, 247 F.3d 218, 223 (5th Cir. 2001). "An issue is material if its resolution could affect the outcome of the action." *Terrebonne Parish Sch. Bd. v. Columbia Gulf Transmission Co.*, 290 F.3d 303, 310 (5th Cir. 2002).

If the movant meets this burden, "the nonmovant must go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial." *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 282 (5th Cir. 2001) (quoting *Tubacex, Inc. v. M/V Risan*, 45 F.3d 951, 954 (5th Cir. 1995)); *Caboni v. Gen. Motors Corp.*, 278 F.3d 448, 451 (5th Cir. 2002). If the evidence presented to rebut the summary judgment is not significantly probative, summary judgment should be granted. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986). In determining whether a genuine issue of material fact exists, the court

views the evidence and draws inferences in the light most favorable to the nonmoving party. *Id.* at 255; *Hotard v. State Farm Fire & Cas. Co.*, 286 F.3d 814, 817 (5th Cir. 2002).

Title VII and 42 U.S.C. § 1981 Standards

Plaintiff asserts causes of action for racial discrimination pursuant to Title VII and § 1981. Employers are prohibited under federal law from discriminating “against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1). Section 1981 ensures that all persons have the same right to make and enforce contracts, including the making, performance, modification, and termination of employment contracts. 42 U.S.C. § 1981. The summary judgment analysis is the same for claims of race discrimination under Title VII and § 1981. *Pratt v. City of Houston*, 247 F.3d 601, 606 n.1 (5th Cir. 2001); *Patel v. Midland Mem’l Hosp. & Med. Ctr.*, 298 F.3d 333, 342 (5th Cir. 2002).

Analysis

M.D. Anderson is a component of The University of Texas System and as such is a state entity. Pursuant to the Eleventh Amendment, this court does not have jurisdiction over § 1981 claims against state entities. *Texas ex rel. Bd. of Regents of Univ. of Texas System v. Walker*, 142 F.3d 813, 820 and n.10 (5th Cir. 1998) (holding that The University of Texas Health Science Center and its Board of Regents are entitled to Eleventh Amendment immunity); *Wqllace v. Texas Tech Univ.*, 80 F.3d 1042, 1047 n.3 (5th Cir. 1996); *Singletary*

v. Missouri Dep't of Corrections, 423 F.3d 886, 890 (8th Cir. 2005); *Johnson v. University of Cincinnati*, 215 F.3d 561, 571 (6th Cir. 2000); *Baldwin v. University of Texas Med. Branch at Galveston*, 945 F. Supp. 1022, 1030 (S.D. Tex. 1996). Davis's § 1981 claim should be dismissed for lack of subject matter jurisdiction.

In Texas, a plaintiff must file a charge of discrimination with the EEOC within 300 days after the unlawful employment practice occurred in order to preserve a Title VII claim absent equitable grounds for an exception to this deadline. 42 U.S.C. § 2000e-5(b), (e); *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393-94 (1982). Davis was terminated on October 7, 2002. He filed his EEOC claim on August 17, 2004.¹ There is no evidence or allegation that the 300-day period should be extended for equitable reasons. Davis did not timely file his EEOC charge and his Title VII claim should be dismissed as time-barred.

Conclusion

Because this court lacks jurisdiction over Davis's § 1981 claim and Davis's Title VII claim is time-barred, this court recommends that this case be dismissed with prejudice in its entirety.

¹ Charge of Discrimination, Exhibit 1 to M.D. Anderson's motion.

The parties have ten days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* FED. R. CIV. PRO. 72.

Signed at Houston, Texas on April 3, 2006.



Stephen Wm Smith
United States Magistrate Judge