

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JAMES M. McLAUGHLIN,

Plaintiff

v.

UNITED STATES DEPARTMENT OF
NAVY, PORTSMOUTH NAVAL
SHIPYARD

Defendant

Civil No. 97-371-P-C

GENE CARTER, District Judge

MEMORANDUM OF DECISION AND ORDER

Plaintiff James M. McLaughlin brings this suit against his former employer, the United States Department of the Navy ("U.S. Dept. of the Navy") at Portsmouth Naval Shipyard ("PNS"), alleging, *inter alia*, that his involuntary separation during a reduction in force at PNS violated the Age Discrimination in Employment Act (the "ADEA"), 29 U.S.C. § 621 *et seq.* Now before the Court is Defendant's Motion and Incorporated Memorandum to Dismiss or for Summary Judgment ("Defendant's Motion") (Docket No. 13). Defendant argues that Plaintiff's Complaint "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). For the reasons stated below, the Court will grant Defendant's Motion.

I. BACKGROUND

Plaintiff was employed at PNS as a pipefitter until he was involuntarily separated in May 1992. On June 27, 1994, Plaintiff filed a complaint in United States District Court for the District of New Hampshire presenting a series of claims against his former employer, including

claims under the ADEA ("Plaintiff's 1994 action").¹ The defendants moved to dismiss the complaint in Plaintiff's 1994 action on the grounds of improper venue and failure to state a claim upon which relief could be granted. The court did not act on the defendants' motion to dismiss for failure to state a claim but, rather, transferred venue to the United States District Court for the District of Maine. On February 21, 1995, this Court issued its Order Affirming the Recommended Decision of the Magistrate Judge and dismissed the complaint in Plaintiff's 1994 action for Plaintiff's failure to exhaust his administrative remedies, as required by the Rehabilitation Act, and failure to notify the EEOC of his intent to bring a suit within 180 days of the allegedly discriminatory act, as required by the ADEA. *See* Defendant's Motion, Ex. B and Ex. C. Judgment was entered against Plaintiff on February 22, 1995. *See* Defendant's Motion, Ex. C.

Plaintiff filed the instant Complaint on November 20, 1997, in which he again alleges violations of the ADEA stemming from his involuntary separation in 1992. Further, he asserts violations of section 112 of the Civil Rights Act of 1991, 42 U.S.C. § 2000e-5(e); and 5 U.S.C. §§ 2301-2302. In addition, Plaintiff alleges claims of contempt of court and obstruction of justice.

¹ Ultimately, the New Hampshire district court dismissed all of Plaintiff's claims except his ADEA claim and a claim under the Rehabilitation Act of 1973, 29 U.S.C. § 791 *et seq.*

II. STANDARD

Rule 12(b)(6) authorizes dismissal for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Dismissal pursuant to this rule is appropriate "if it clearly appears, according to the facts alleged, that the plaintiff cannot recover on any viable theory." *Correa-Martinez v. Arrillaga-Belendez*, 903 F.2d 49, 52 (1st Cir. 1990) (citations omitted). The Court accepts Plaintiff's well-pleaded factual averments and indulges all reasonable inferences in his favor. *Id.*

III. DISCUSSION

A. Res Judicata

Defendant urges the Court to dismiss Plaintiff's Complaint for failure to state a claim upon which relief can be granted in part on the ground that most of Plaintiff's claims are barred by the doctrine of res judicata. Defendant argues that the Court's entry of judgment against Plaintiff on February 22, 1995, precludes the majority of the claims in the instant action. Plaintiff, a pro se litigant, does not directly respond to Defendant's arguments but, rather, addresses the merits of his claims. *See* Plaintiff's Response (Docket No. 14).

Because the judgment in Plaintiff's 1994 action was rendered by a federal district court, the preclusive effect of that judgment upon the instant action is controlled by federal principles of res judicata. *Porn v. National Grange Mut. Ins. Co.*, 93 F.3d 31, 33-34 (1st Cir. 1996). "Under the federal law of res judicata, a final judgment on the merits of an action precludes the parties from relitigating claims that were raised or could have been raised in that action." *Id.* at 34 (citation omitted). The Court of Appeals for the First Circuit has set forth the following test:

For a claim to be precluded, the following elements must be

established: (1) a final judgment on the merits in an earlier action, (2) sufficient identity between the causes of action asserted in the earlier and later suits, and (3) sufficient identity between the parties in the two suits.

Id. (citations omitted). All three of the elements necessary for the application of the doctrine of res judicata are present in this case.

First, this Court entered final judgment on the merits in Plaintiff's 1994 action on February 22, 1995.² Second, there is sufficient identity between the causes of action asserted in Plaintiff's 1994 action and the instant action. As the Court of Appeals has explained,

[I]f the claims asserted . . . [are] sufficiently related, that is, if they [are] founded upon the same transaction, [arise] out of the same nucleus of operative facts, and [seek] redress for essentially the same basic wrong, the two suits advance[] the same cause of action notwithstanding any differences in remedies sought or theories of recovery pleaded.

Kale v. Combined Ins. Co. of America, 924 F.2d 1161, 1166 (1st Cir. 1991). Plaintiff's 1994 action stemmed from his involuntary separation from PNS in 1992, and the claims in the instant case arise from the same exact transaction: Plaintiff's involuntary separation. Plaintiff states that the "main complaint" in the instant action is his claim of a violation of the ADEA, a theory of recovery identical to one of the two claims presented in Plaintiff's 1994 action. *See* Complaint (Docket No. 1) at 1, ¶ 1. Plaintiff's additional claims under section 112 of the Civil Rights Act of 1991 and 5 U.S.C. §§ 2301-2302 are likewise barred by the doctrine of res judicata.³ "[A]

² This judgment on the merits was affirmed by the Court of Appeals for the First Circuit. *See McLaughlin v. United States Secretary of the Navy*, No. 95-1380, 1995 WL 674499 (1st Cir. Nov. 14, 1995).

³ In these additional claims, Plaintiff appears to be alleging that his involuntary separation in 1992 violated PNS's seniority system. *See* Complaint at 4, ¶¶ 5-6.

particular legal theory not pressed in the original suit will nonetheless be precluded in the subsequent one if it prescinds from the same set of operative facts." *Kale*, 924 F.2d at 1166. Again, these claims stem from the same set of operative facts as those in Plaintiff's 1994 action: his involuntary separation from PNS and its surrounding circumstances. The causes of action presented in the two suits are sufficiently identical to implicate the doctrine of res judicata.

Finally, there is sufficient identity to the parties in the earlier and subsequent actions. In Plaintiff's 1994 action, the named defendants were the Secretary of the U.S. Dept. of the Navy and PNS. In the instant case, Plaintiff has named the U.S. Dept. of the Navy at PNS as Defendant. The Court sees no meaningful distinction between suing the Secretary of the U.S. Dept. of the Navy and the U.S. Dept. of the Navy as a whole in this case, especially because Plaintiff originally named the U.S. Dept. of the Navy in his 1994 action and subsequently amended his complaint to name the Secretary of the U.S. Dept. of the Navy as a defendant in that action. *See* Defendant's Motion, Ex. B at 2 n.1. Thus, the three requisite elements of res judicata are present, and Plaintiff is barred from asserting these claims, which could have been and, in the instance of the ADEA claim were, asserted in Plaintiff's 1994 action.

B. Contempt

Plaintiff asserts claims of contempt of court and obstruction of justice based upon his reading of the August 5, 1994, Order of the United States District Court for the District of New Hampshire. Plaintiff understands the New Hampshire district court's Order to indicate that the defendants had in fact violated the ADEA. *See* Complaint at 2, ¶ 3. However, the Order is properly understood to affirm the magistrate judge's recommendation that the complaint in Plaintiff's 1994 action be construed to allege violations of the ADEA and the Rehabilitation Act.

See Defendant's Motion, Ex. B at 2. Because Plaintiff's allegations of contempt of court and obstruction of justice in the instant case are based upon his misunderstanding of the New Hampshire district court's August 5, 1994, Order in Plaintiff's 1994 action, the Court will dismiss these claims for failure to state a claim upon which relief can be granted.

IV. CONCLUSION

Accordingly, it is **ORDERED** that Defendant's Motion to Dismiss be, and it is hereby, **GRANTED**.

GENE CARTER

District Judge

Dated at Portland, Maine this 4th day of May, 1998.