

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

KENNIETH F. THOMPSON,	:
	:
Plaintiff,	:
	:
v.	: Civil Action No.: 97-2624 (RMU)
	:
THE CAPITOL POLICE BOARD,	: Document No.: 77
	:
Defendant.	:

**MEMORANDUM OPINION**

**DENYING THE PLAINTIFF’S MOTION FOR RECONSIDERATION**

**I. INTRODUCTION**

This matter comes before the court on the plaintiff’s motion for reconsideration of this court’s October 26, 2000 Memorandum Opinion (“Memorandum Opinion”) dismissing his complaint. In the Memorandum Opinion, the court held that the statute-of-limitations provision of the Congressional Accountability Act (“CAA”) barred the plaintiff’s CAA claims. Moreover, the court held that equitable tolling would not be appropriate. In his motion for reconsideration pursuant to Federal Rule of Civil Procedure 59(e), the plaintiff fails to raise any factual errors, legal errors, or intervening changes in the law that would justify granting his motion for reconsideration. Accordingly, the court will deny the plaintiff’s motion.

**II. BACKGROUND**

Kennieth Thompson, an African-American man, is a former employee of the United States Capitol Police. *See* Third Am. Complaint (“Compl.”) at 4. At the time of Mr. Thompson’s termination, he held the rank of Sergeant. *See id.* During his

employment with the Capitol Police, Mr. Thompson suffered three on-the-job injuries. The first injury occurred in February 1979, when Mr. Thompson hurt his knee while pushing a scout car in the snow. *See* Def.'s Statement of Undisputed Material Facts in Support of its Mot. for Summ. J. ("Def.'s Statement") at 4. The second injury occurred in 1985 when a tourist driving a vehicle ran into the plaintiff's scout car, injuring Mr. Thompson's left hand and knee. *See id.* The third injury occurred during a police demonstration in April 1993 when Mr. Thompson ruptured a tendon in his right foot. *See* Compl. at 7. As a result of these injuries, the plaintiff underwent several surgeries, went on non-duty status for various periods of time, and worked in restricted-duty status for different periods of time. *See* Def.'s Statement at 4.

On May 17, 1996, the plaintiff was diagnosed with degenerative knee problems. The plaintiff's doctor concluded that with the restricted range of motion and limitations to his knee, Mr. Thompson could no longer safely continue regular police duties. The doctor diagnosed the plaintiff's knee problems as permanent. *See* Def.'s Statement at 4. In June 1996, Sergeant Wendy Clark of the Capitol Police spoke to the plaintiff about his options under United States Capitol Police General Order 2030, which provides, in pertinent part, "Members/employees who are unable to return to a Full Unrestricted Duty Status after a one year period in an Non-Duty and/or Restricted Duty status should apply for Disability Retirement, Workers Compensation, or Time Retirement or they may be separated from the department without benefits." Pl.'s Opp'n to Mot. for Summ. J. ("Pl.'s Opp'n") at 4. On June 19, Mr. Thompson submitted a memorandum addressed to Chief Gary Abrecht requesting a transfer to the Office of Workers' Compensation Programs' (OWCP) temporary rolls. *See* Def.'s Statement at 5. In a memorandum dated

September 25, 1996, Deputy Chief Fentress A. Hickman informed Mr. Thompson that he would be transferred to the OWCP rolls after exhausting his accrued annual and compensatory leave, and that he would be placed on terminal leave effective October 1, 1996. *See* Def.'s Statement at 6. Mr. Thompson understood that he would be separated from the rolls of the Capitol Police after he exhausted his terminal leave. *See id.*; *see also* Pl.'s Opp'n at 5.

On April 1, 1997, the plaintiff requested counseling from the Office of Compliance. In his request for counseling, the plaintiff alleged that he had suffered race-based discrimination. The plaintiff claimed that white officers who had disabilities that were similar to or more severe than his were accommodated and allowed to remain employed at full-duty status. The plaintiff also claimed that one of the reasons the Capitol Police fired him was a racially motivated desire to prevent his participation in the 1996 promotional process for Lieutenant. *See* Def.'s Statement at 7. The plaintiff further alleged that throughout his employment with the Capitol Police, he had encountered a pattern of race-based discrimination. *See* Compl. at 5. Mr. Thompson pointed to several specific occasions on which he claims he was discriminated against during his career.

For example, the plaintiff alleged that the defendant discriminated against him sometime in the 1970s when he applied for a position in the defendant's firearms section. *See* Pl.'s Opp'n at 10. According to the plaintiff, he did not initially receive an interview, and he only subsequently received one after speaking to a Congressman. *See id.* Mr. Thompson claimed that when he went for the interview, the interviewer stated something to the effect: "So you are Thompson. You are probably not qualified, but we'll do this interview." *See* Def.'s Statement at 1. In a second instance, the plaintiff charged that in

the mid- to late-1970s, he took an exam to become a crime-scene search officer. According to Mr. Thompson, after taking the exam, his Captain, George Salyer, told Mr. Thompson that he thought that Mr. Thompson had received one of the highest scores on the exam, if not the highest. Subsequently, though, the crime-scene unit neither contacted the plaintiff about his exam results nor considered him for the position. *See* Def.'s Statement at 2.

Third, the plaintiff asserted that at some point when he was a member of the patrol division, he was required to split his weekend days off with a white female officer who had less seniority than he did. *See id.* Fourth, the plaintiff claimed that after he had scored well on the exam to be promoted to Detective, a supervisor disciplined him without cause to prevent him from being promoted. After speaking to the Chief of the Capitol Police about this situation, the plaintiff was promoted to Detective. *See* Def.'s Statement at 2-3.

Fifth, Mr. Thompson alleged that during the time that he was a Sergeant between 1991 and 1995, he was prevented from disciplining white officers. The plaintiff claimed that whenever he disciplined a white officer, the action was not approved further up the chain of command. *See* Def.'s Statement at 3. Sixth, the plaintiff pleaded that sometime between 1993 and 1995, his Lieutenant's recommendation that he be named Sergeant of the Month was rejected, despite the fact that other sergeants who had performed substantially less work than he had been named Sergeant of the Month. *See id.*

On June 6, 1997, Mr. Thompson requested mediation from the Office of Compliance in his dispute with the Capitol Police. The Office of Compliance requires both parties in a mediation process to sign a "Mediation and Confidentiality Agreement."

For reasons that are not clear from the record, the defendant refused to sign the agreement. Consequently, the mediator informed both parties that the mediation could not go forward. *See* Pl.'s Opp'n at 20.

On October 26, 2000, this court granted the defendant's motion for summary judgment. The court held that the CAA's statute-of-limitations provision barred the plaintiff's claims under the CAA. In addition, the court concluded that it should not apply equitable tolling in this case.

On November 6, 2000, the plaintiff filed a motion for reconsideration pursuant to Rule 59(e). In his motion, the plaintiff raises three principal claims. The plaintiff first alleges error in the court's conclusion that there were no other discriminatory acts alleged by the plaintiff that fell within the limitations period. *See* Pl.'s Mot. for Recon. at 2. The plaintiff comes to this conclusion because he has always alleged that he was treated disparately compared with white officers who had disabilities equal to or more severe than his and that the defendant made accommodations for those white officers. *See id.* Second, the plaintiff believes that the principle of equitable tolling should apply because he wanted to issue subpoenas to the Office of Personnel Management. *See* Pl.'s Mot. for Recon. at 10. Finally, the plaintiff states that:

The most important factor that forms the basis for the Plaintiffs [sic] Motion for Reconsideration is that the summary judgment under these facts and circumstance [sic] would operate to create a manifest injustice. The Plaintiff has invested considerable resources and time to [sic] his case in the expectation of having this matter decided before a jury on the merits.

Pl.'s Reply at 3.

### **III. DISCUSSION**

#### **A. Legal Standard**

Mr. Thompson has filed a motion for reconsideration pursuant to Federal Rule of Civil Procedure 59(e). “A motion for reconsideration is discretionary, and should not be granted unless the movant presents either newly discovered evidence or errors of law or fact which need correction.” *National Trust v. Department of State*, 834 F. Supp. 453, 455 (D.D.C. 1993), *overruled in part on other grounds by Sheridan Kalorama Historical Ass’n v. Christopher*, 49 F.3d 750 (D.C. Cir. 1995). Moreover, a motion for reconsideration should not be granted if a party is simply attempting to renew factual or legal arguments that it asserted in the original pleadings. *Id.* “Reconsideration is not simply an opportunity to reargue facts and theories upon which a court has already ruled.” *New York v. United States*, 880 F. Supp. 37, 38 (D.D.C. 1995); *see also Association Archives and Research Ctr. v. United States Dep’t of Justice*, 828 F. Supp. 100, 102 (D.D.C. 1993). In fact, to succeed on a Rule 59(e) motion, a party must demonstrate an “intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” *Virgin Atlantic Airways, Ltd. v. National Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992).

#### **B. Analysis**

In this case, the plaintiff has failed to make the requisite showing. First, the plaintiff has not pointed the court to any intervening change of law that would warrant the court’s reconsideration of the Memorandum Opinion. Second, the plaintiff has not presented any new or previously unavailable evidence that would alter this court’s

conclusions. Lastly, the plaintiff has failed to establish a “clear error or ... manifest injustice” in the court’s Memorandum Opinion. *See id.*

This court’s determination that the facts alleged by the plaintiff do not constitute a continuing violation is a legal conclusion based on this court’s interpretation of the controlling case law. If the plaintiff disagrees with this conclusion, he is free to appeal the court’s decision to the United States Court of Appeals for the District of Columbia Circuit. The plaintiff’s re-assertion of legal arguments made in his original opposition to the defendant’s motion for summary judgment does not form a proper basis for reconsideration. Rather, this merely constitutes an inappropriate attempt to reargue the defendant’s initial motion. Similarly, the plaintiff’s disagreement with the court’s refusal to apply equitable tolling is unsupported by new evidence and is merely a reargument of a legal theory that this court has rejected.

Lastly, the plaintiff’s argument that because he “invested considerable resources and time to [sic] his case in the expectation of having this matter decided before a jury on the merits,” the court should now reconsider its Memorandum Opinion is utterly unconvincing. Litigation is expensive and time-consuming. And the suggestion by counsel for the plaintiff that the court should overlook obvious legal deficiencies merely because the plaintiff invested considerable resources and time in the hopes of having a jury hear this case is nothing short of preposterous.

#### **IV. CONCLUSION**

For all these reasons, the court denies the plaintiff's motion for reconsideration. An order directing the parties in a fashion consistent with this Memorandum Opinion is separately and contemporaneously issued this \_\_\_\_\_ day of April, 2001.

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Ricardo M. Urbina  
United States District Judge