

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 06-5102

September Term, 2006

FILED ON: APRIL 24, 2007 [1036142]

CAROLYN G. WILDERSON,
APPELLANT

v.

HENRY M. PAULSON, JR., SECRETARY, UNITED STATES DEPARTMENT OF TREASURY,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 04cv00708)

Before: HENDERSON, RANDOLPH and GARLAND, *Circuit Judges*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. *See* Fed. R. App. P. 34(a)(2); D.C. Cir. R. 34(j). For the reasons set forth in the attached memorandum, it is

ORDERED and ADJUDGED that the judgment of the district court be affirmed.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after the resolution of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41.

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Deputy Clerk

MEMORANDUM

Appellant Carolyn Wilderson, a former employee of the Treasury Department, filed a complaint against the Secretary of the Treasury alleging violations of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12111 *et seq.*, and the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, as well as a claim for intentional infliction of emotional distress (IIED). The government moved to dismiss, or, in the alternative, for summary judgment on all counts. The district court granted the government's motion with respect to the ADA and IIED claims, which Wilderson does not appeal.

The district court also granted the government's motion with respect to the Rehabilitation Act claim. The court found that the appellant made a request for a reasonable accommodation of her disability on September 22, 2000, which request was denied. The court also found that the appellant learned that she was being transferred from her management position on September 30, 2000, a transfer that she alleged was made on account of her disability. Because the appellant did not contact an Equal Employment Opportunity (EEO) counselor until January 9, 2001, more than 45 days after the alleged discriminatory acts, and because she asserted no equitable reasons for that failure, the district court held the complaint time-barred. *See* 29 C.F.R. § 1614.105(a)(1). The district court also held that the appellant's untimely claims could not be excused under a "continuing violation" theory.

Wilderson's only argument on appeal is that a denial of a reasonable accommodation is, by its nature, a "recurring violation" and that she therefore timely contacted her EEO counselor. Under *National Railroad Passenger Corp. v. Morgan*, for a discrimination claim based on a discrete act, the limitation period for making contact with an EEO counselor -- in this case, 45 days -- begins to run from the date the act occurred. *See* 536 U.S. 101, 114 (2002). A denial of a request for a reasonable accommodation is a discrete act under *Morgan*. *See Elmenayer v. ABF Freight System, Inc.*, 318 F.3d 130, 134-35 (2d Cir. 2003); *Cherosky v. Henderson*, 330 F.3d 1243, 1246-48 (9th Cir. 2003). Because Wilderson does not point to any allegedly discriminatory act made within 45 days of her contacting her EEO counselor, and because she makes no argument other than the claim of a "recurring violation," the case was properly dismissed.