

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8253
Summary Calendar

DANIEL J. RAMOS,

Plaintiff-Appellant,

versus

DONALD B. RICE, Secretary
of the Air Force,

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Texas
(SA-92-CV-599)

(September 30, 1993)

Before POLITZ, Chief Judge, KING and WIENER, Circuit Judges.

PER CURIAM:*

Daniel Ramos appeals an adverse summary judgment in his employment discrimination complaint. The district court found that Ramos had failed to seek and exhaust administrative remedies timely. We affirm.

We review a grant of summary judgment *de novo* and affirm if,

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

after reviewing the evidence in the light most favorable to the non-movant, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

In accordance with relevant regulations, Ramos received a "notice of final interview" after a period of consultation and informal dispute resolution with an Equal Employment Opportunity (EEO) counselor. After receipt of that notice, Ramos had 15 days to file a formal, written administrative complaint with his employer under 29 C.F.R. pts. 1613.213(a), 1613.214(a)(1)(ii). Failure to adhere to the EEO timetable generally bars a civil suit.¹

It is undisputed that Ramos's attorney received the notice of final interview on October 13, 1988.² It cannot be disputed that Ramos's administrative complaint was filed more than 15 days after counsel's receipt of that notice. The complaint is dated November 8, 1988 and was filed on November 14, 1988.

Ramos suggests that under **Zipes v. Trans World Airlines, Inc.**³ the limitations period should be equitably tolled. Although we recognize equitable tolling, Ramos has not alleged any facts which

¹ **Henderson v. United States Veterans Admin.**, 790 F.2d 436 (5th Cir. 1986); **Lopez v. Louisiana Nat'l Guard**, 733 F.Supp. 1059, 1067-68 (E.D.La. 1990) (applying several related Fifth Circuit opinions holding that the 15-day time limit must be satisfied "to state a proper judicial claim under 42 U.S.C. § 2000e-16."), aff'd, 917 F.2d 561 (5th Cir. 1990).

² Receipt by his attorney binds Ramos to that date. See Irwin v. Veterans Administration, 498 U.S. 89, 112 L.Ed.2d 435, 111 S.Ct. 453 (1990).

³ 455 U.S. 385 (1982).

even arguably justify its application herein. Ramos advances behind the guidon that the government should be estopped from defending on grounds of untimeliness because the Air Force did not promptly reject his complaint. The mere acceptance of Ramos's claim for review did not waive the untimeliness defense.⁴ Ramos's administrative complaint was filed outside the 15-day limitations period. No tolling provision or waiver applies; the filing was untimely.

Resolving the untimeliness issue moots the need to consider whether Ramos's administrative complaint sufficiently alleged discrimination.

AFFIRMED.

⁴ See Rowe v. Sullivan, 967 F.2d 186, 191 (5th Cir. 1992) (the mere docketing and action in a complaint does not waive untimeliness; for such a waiver "the agency must make a specific finding that the claimant's submission was timely.").