

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 9, 2024

Lyle W. Cayce
Clerk

No. 24-10425
Summary Calendar

KENNETH JOHNSON,

Plaintiff—Appellant,

versus

SEAGRAVES COMPRESS, TRINITY COMPANY,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:23-CV-209

Before JOLLY, HIGGINSON, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Kenneth Johnson, proceeding *pro se* and *in forma pauperis*, appeals the district court's dismissal of his complaint in which he alleged that he was wrongfully terminated and discriminated against on the basis of his race. The district court noted that Johnson's original complaint was deficient because he failed to file his lawsuit within ninety days of receiving his right to sue

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 24-10425

letter from the EEOC. *See Taylor v. Books A Million, Inc.*, 296 F.3d 376, 379 (5th Cir. 2002). The district court then gave Johnson an opportunity to amend his complaint. Johnson filed an amended complaint, but he failed to explain or excuse the untimeliness. The district court then dismissed Johnson's complaint. Johnson has appealed.

On appeal, Johnson does not challenge the district court's finding that his complaint is untimely; he merely restates the facts in his complaint. The facts show that his complaint is untimely: the EEOC issued Johnson a right to sue letter dated September 29, 2022, which Johnson alleged was postmarked May 9, 2023. Johnson did not state when he received the letter, so the district court assumed that he received the letter at the most seven days later than the postmark, on May 16, 2023. *See id.* at 379–80. Johnson had ninety days from that date to file his lawsuit. But he did not file this lawsuit until 114 days later, on September 7, 2023. Thus, his complaint is barred because it is untimely. Accordingly, the judgment of the district court dismissing the complaint is, in all respects,

AFFIRMED.