

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

<b>GARY ROBORECKI,</b>	)	<b>CASE NO. CV-12-780686</b>
	)	
<b>Plaintiff,</b>	)	<b>JUDGE PAMELA A. BARKER</b>
	)	
<b>v.</b>	)	<b><u>OPINION AND JOURNAL ENTRY</u></b>
	)	
<b>COMM STEEL, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

This matter is before the Court on Defendant Comm Steel, Inc.'s ("Defendant's") Partial Motion To Dismiss, Defendant's Motion To Strike, Plaintiff Gary Roborecki's ("Plaintiff's") Combined Brief In Opposition To Defendant's Partial Motion To Dismiss And Brief In Opposition to Defendant's Motion To Strike, and Defendant's Reply In Support Of Motion To Strike And Partial Motion To Dismiss.

Defendant's Partial Motion To Dismiss Plaintiff's age discrimination claims under R.C. 4112.02(A) and 4112.99.

In his Complaint filed on April 17, 2012, Plaintiff alleges that "[t]his is an action for wrongful discharge arising from age discrimination, pursuant to Ohio Revised Code Sections 4112.02, 4112.14 and/or 4122.99"; and that Defendant, in "willfully and wantonly terminat[ing] Plaintiff's employment because of his age, ... violated Ohio Revised Code Sections 4112.01, 4112.02(A), 4112.14, and/or 4112.99." (Complaint, at paragraphs 1 and 16.) In relevant part, Plaintiff also alleges that he was terminated from his employment with Defendant on or about July of 2011; and that "Defendant had a pattern and practice of hiring/retaining younger, less

qualified employees and discriminating against older employees on the basis of age.” (Complaint, at paragraphs 4 and 12.)

“[W]hen ruling on a motion to dismiss pursuant to Civ.R. 12(B)(6), the trial court must presume all factual allegations contained in the complaint to be true and make all reasonable inferences in favor of the non-moving party.” *Goodyear v. Waco Holdings, Inc.*, No. 91432, 2009-Ohio-619, para. 44 (8<sup>th</sup> Dist. Feb. 12, 2009), quoting from *McIntyre v. Rice*, Cuyahoga App. No. 81339, 2003-Ohio-3940.

Pursuant to R.C. 4112.02(N), an age discrimination claim brought under R.C. 4112.02 must be filed within 180 days; and an age discrimination claim brought under R.C. 4112.99 also must be filed within 180 days. *Goodyear v. Waco Holdings, Inc.*, *supra*, at para. 45; and *Vickers v. Wren Industries, Inc.*, Montgomery App. No. 20914, 2005 Ohio 3656, citing and relying upon *Bellian v. Bicron Corp.* (1994), 69 Ohio St.3d 517, 1994 Ohio 339, 634 N.E.2d 608. See, *Meyer v. United Parcel Service, Inc.*, 122 Ohio St.3d 104, 2009 Ohio 2463, 909 N.E.2d 106, at para. 19.

According to his Complaint, Plaintiff was discharged or terminated from his employment with the Defendant on or about July, 2011. However, Plaintiff did not file his complaint alleging in relevant part age discrimination in violation of R.C. 4112.02 and/or R.C. 4112.99 until April 17, 2012, or more than 180 days after his termination. Therefore, his claims for age discrimination under R.C. 4112.02 and R.C. 4112.99 are barred by the 180-day statute of limitations. Accordingly, Defendant’s motion to dismiss these claims is granted.

As for Plaintiff’s “pattern and practice” claim alleged in paragraph 12 of his Complaint, and aside from the fact that any age discrimination claims under R.C. 4112.02 and R.C. 4112.99 are time-barred, R.C. Chapter 4112 does not provide for an individual “pattern and practice”

claim for employment discrimination. *Bacon v. Honda of America Mfg., Inc.*, 370 F.3d 565, 575 (6<sup>th</sup> Cir. 2004); *Lenzley v. D&B Corp.*, 2007 U.S. Dist. LEXIS 23146 (S.D. Ohio March 29, 2007); *Gibson v. Shelly Materials*, 2009 U.S. Dist. LEXIS 28853 (S.D. Ohio March 30, 2009). See *Albaugh v. City of Columbus*, 132 Ohio App. 3d 545, 550, 725 N.E.2d 719, 723 (10<sup>th</sup> Dist. 1999). Accordingly, Defendant's motion to dismiss any separate "pattern and practice" discrimination claim is granted. However, Plaintiff may submit any relevant evidence, including any alleged pattern or practice of discrimination, to prove disparate treatment discrimination through the traditional order of proof as relates to his age discrimination claim under R.C. 4112.14. See *Bacon, id.*; and *Morgan v. New York Life Ins. Co.*, 507 F.Supp.2d 808 (N.E. Ohio 2007).

#### **Defendant's Motion to Strike Jury Demand**

Plaintiff's only remaining basis to assert his claim for age discrimination is R.C. 4112.14. However, Plaintiff's jury demand is not available under that statute. *Hoops v. United Telephone Company of Ohio*, 50 Ohio St.3d 97, 553 N.E.2d 252 (1990). Therefore, Defendant's motion to strike the jury demand is granted.

**IT IS SO ORDERED**

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**Judge Pamela A. Barker**