

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	CIV-03-1363-R
)	
CITGO PETROLEUM)	
CORPORATION,)	
)	
Defendant.)	

ORDER

Before the Court is the motion of Plaintiff Equal Employment Opportunity Commission (“EEOC”) for partial summary judgment on Defendant Citgo Petroleum Corporation’s (“Citgo”) first affirmative “defense” that Plaintiff’s claims are barred by laches, the statute of limitations, waiver and estoppel.

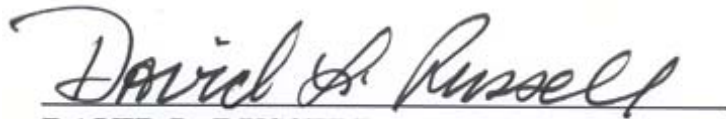
There is no dispute but that there is no federal or state statute of limitations applicable to Plaintiff’s EEOC’s claim that Defendant violated the Americans With Disabilities Act, 42 U.S.C. § 12101 *et seq.*, specifically 42 U.S.C. § 12112. Defendant Citgo has submitted no evidence that Plaintiff waived or is estopped to assert its claim in response to Plaintiff’s motion asserting the absence of evidence to support those defenses. Thus, Plaintiff is entitled to summary judgment on Defendant’s affirmative defenses of the bar of the statute of limitations, waiver and estoppel. Plaintiff asserts that Defendant cannot show lack of diligence or unreasonable or inexcusable delay by the EEOC and substantial or material

prejudice to Defendant resulting from the EEOC's delay, the elements necessary for laches to apply.

The evidence before the Court shows that the EEOC found a failure of conciliation on February 19, 2002, yet it appears to the Court that such a finding could have been made as early as on or about December 13, 2001 when Defendant notified Plaintiff EEOC that it declined EEOC's request to resolve the case through conciliation. Plaintiff did not file this action until September 29, 2003, more than 19 months after the EEOC found a conciliation failure and more than 21 months after it could have so found. The EEOC has offered no explanation for this delay other than the fact that the "charge file and all documents, witness statements and other evidence were reviewed by EEOC Legal Unit," a memorandum was prepared, the Office of General Counsel reviewed the information and the agency voted on whether to initiate litigation. The EEOC has offered no explanation as to why this process took so long. In other words, the EEOC has not established the "reasonableness for the delay." *EEOC v. Autozone*, 258 F.Supp.2d 822, 826-27 (D. Tenn. 2003) (emphasis added). Such a delay could be found to be unreasonable. *See id.*; *EEOC v. Dresser Industries, Inc.*, 668 F.2d 1199, 1202 (11th Cir. 1982); *EEOC v. Alioto Fish Co.*, 623 F.2d 86, 88 (9th Cir. 1980); *EEOC v. Admiral Maintenance Service, L.P.*, 1998 WL 102748 at *9 (N.D. Ill. Feb. 26, 1998) (No. 97 C 2034). Additionally, based upon the evidence submitted by Defendant Citgo, a genuine issue of material fact exists as to whether Defendant has been materially or substantially prejudiced as a result of the EEOC's delay in filing this action.

In accordance with the foregoing, Plaintiff's motion for summary judgment on Defendant's affirmative defenses of the bar of the statute of limitations, waiver and estoppel is GRANTED and its motion on Defendant's affirmative defense of laches is DENIED.

IT IS SO ORDERED this 29th day of November, 2004.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE