

2004 WL 1217943
United States District Court,
N.D. Texas, Dallas Division.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, Plaintiff,

v.

JACK OF ALL TRADES PERSONNEL SERVICES,
INC., Defendant.

No. Civ. 3:04-CV-0338-H. | June 1, 2004.

Attorneys and Law Firms

Ronetta J. Francis, Equal Employment Opportunity Commission Dallas District Office, Dallas, TX, for Plaintiff.

John B. Brown, Gardere Wynne Sewell, Dallas, TX, John T. Hawkins, Naman Howell Smith & Lee, Waco, TX, for Defendant.

Opinion

MEMORANDUM OPINION AND ORDER

SANDERS, Senior J.

*1 Before the Court are Defendant's Motion to Dismiss for Improper Venue, filed April 13, 2004, and the response and the reply thereto. Defendant alternatively moves for a change of venue pursuant to 28 U.S.C. § 1404(a). For the following reasons, Defendant's motion to dismiss is DENIED, and Defendant's motion for change of venue is GRANTED.

I. Background

Defendant Jack of All Trades Personnel Services, Inc. ("JOAT") provides businesses with temporary employees. On February 17, 2004, Plaintiff Equal Employment Opportunity Commission ("EEOC") brought suit in this Court on behalf of Marci Cudmore and other similarly situated individuals, alleging that JOAT required Ms. Cudmore and the other individuals to take a physical examination prior to an offer of employment and relied on

the results of the physical examination to deny them employment. (P.'s Compl. at 3.) The instant motion ensued.

II. Legal Standards

A. Special Venue Provisions

Congress has established special venue provisions for cases arising under Title VII and the Americans with Disabilities Act ("ADA"). *See In Re: Horseshoe Entertainment*, 337 F.3d 429, 432 (5th Cir.2003). Specifically, Title VII/ADA cases

may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office.

42 U.S.C. § 2000e-5(f)(3). Although a plaintiff's choice of forum is a factor to consider in determining venue, "the plaintiff's choice of forum must be one which is permitted under the relevant venue statute." *In Re: Horseshoe Entertainment*, 337 F.3d at 434-35. Finally, any transfer of a Title VII/ADA case due to improper venue must still meet the requirements set forth in 28 U.S.C. § 1404 or § 1406. *See id.* at 433. *See also* 42 U.S.C. § 2000e-5(f)(3) (referring expressly to § 1404 and § 1406).

B. Change of Venue

Section 1404(a) provides that "[f]or the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). Because the plaintiff has the privilege of determining venue, the burden is on the defendant "to

demonstrate why the forum should be changed.” *Time, Inc. v. Manning*, 366 F.2d 690, 698 (5th Cir.1966). In determining whether a transfer of venue is appropriate under § 1404(a), a district court should consider:

the convenience of the parties and witnesses, the availability of process to compel the presence of unwilling witnesses, the cost of obtaining the presence of witnesses, the relative ease of access to sources of proof, calendar congestion, where the events in issue took place, and the interests of justice in general.

*2 *Burlington Northern & Sante Fe Ry. Co. v. Herzog Services, Inc.*, 990 F.Supp. 503, 504 (N.D.Tex.1998). Transfer of venue pursuant to § 1404(a) is within the discretion of the district court and will not be disturbed on appeal absent an abuse of discretion. *See Peteet v. Dow Chemical Co.*, 868 F.2d 1428, 1436 (5th Cir.1989).

III. Analysis

As noted above, JOAT moves to dismiss the instant suit for improper venue or, alternatively, for change of venue pursuant to § 1404(a). As an initial matter, the Court concludes that venue is not improper in the Northern District of Texas because a Title VII/ADA case “may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed.” 42 U.S.C. § 2000e–5(f)(3). Thus, because the EEOC alleges that JOAT committed unlawful employment practices in Texas, JOAT’s motion to dismiss for improper venue must be DENIED.

Nonetheless, the Court concludes that this case should be transferred to the United States District Court for the Western District of Texas, Waco Division, pursuant to § 1404(a). Because the alleged “unlawful employment practice” occurred in Waco, Texas, the Western District of Texas, Waco Division, is a district and division where this case “might have been brought” for purposes of § 1404(a). 28 U.S.C. § 1404(a). In determining the convenience of the parties and witnesses, as well as the interest of justice, the Court notes that JOAT is based in Waco, Texas, and has never maintained an office in any other location. (D.’s Ex. A.) JOAT’s president and owner,

Helen Underwood, resides in Waco, as does JOAT’s account manager, Joyce Smith. (*Id.*) Most of JOAT’s business customers are located in McLennan County, Texas, the county in which Waco is located, and all of JOAT’s business records are maintained in Waco. (*Id.*) Finally, the alleged victim—Marci Cudmore—resides in Hillsboro, Texas, which is located in the Western District of Texas, Waco Division. (D.’s Ex. 1, 2.)

The EEOC contends that a change of venue would not be appropriate because such a change would amount to shifting the inconvenience of the litigation from JOAT to the EEOC. (P.’s Resp. at 7.) Specifically, the EEOC contends that it would be inconvenient to litigate this case in the Western District of Texas because its district office, investigator, and files are all located in Dallas. (*Id.*) However, the EEOC has intentionally organized itself to pursue its interests in McLennan County, including Waco, through its Dallas District Office. *See* 42 U.S.C. § 2000e–4(f) (“The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.”); EEOC, Dallas District Office, Jurisdictional Area, *available at* <http://www.eeoc.gov/dallas/area.html> (n.d.). *See also EEOC v. Icon Ben. Adm’rs, Inc.*, No. EP–02–CA–527–DB, 2003 WL 748268, at *3 (W.D.Tex. Feb.10, 2003) (“[The EEOC] would not be imposed upon by having to litigate in [the Northern District of Texas, Lubbock Division,] in which it is intentionally organized to appear through its office in El Paso.”). Thus, the EEOC’s contention is without merit.

*3 Accordingly, JOAT’s alternative motion for change of venue is GRANTED.

IV. Conclusion

For the foregoing reasons, JOAT’s motion to dismiss is DENIED, and JOAT’s alternative motion for change of venue is GRANTED. Accordingly, for the convenience of the parties and witnesses, and in the interest of justice, this case is hereby TRANSFERRED to the United States District Court for the Western District of Texas, Waco Division, pursuant to 28 U.S.C. § 1404(a).

SO ORDERED.

