

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

November 28, 2007

GURPREET KAUR SODHI,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 06B00001
)	
MARICOPA COUNTY SPECIAL HEALTH)	
CARE DISTRICT,)	
Respondent.)	
_____)	

ORDER GRANTING IN PART AND DENYING IN PART MIHS's MOTION FOR
PARTIAL SUMMARY DECISION AND CLARIFYING SCOPE OF COMPLAINT

I. PROCEDURAL HISTORY

Dr. Gurpreet Kaur Sodhi filed a complaint in which she alleged that the Maricopa Integrated Health System (MIHS or Maricopa), through its Department of Psychiatry, refused and failed to rehire her for the third-year component of its psychiatric residency training program in retaliation for her having filed a previous charge of discrimination, and that in so doing MIHS violated the nondiscrimination provisions of the Immigration and Nationality Act, 8 U.S.C. § 1324b (2005). The complaint was accompanied by a variety of letters and attachments totaling in excess of 100 pages.

MIHS filed an answer denying the material allegations of the complaint and raising various affirmative defenses. The parties subsequently made a joint request to stay the matter for an extended period in order to pursue a private mediation process. That request was granted. Although the mediation process resulted in a settlement agreement, the Board of Directors for MIHS refused to approve the settlement and the case was accordingly returned to my active calendar, and prehearing procedures were undertaken. Discovery has been completed, witness and exhibit lists have been filed, and the parties also previously submitted a Joint List of Undisputed Facts, Disputed Facts and a List of Relevant Issues of Law.

Presently pending is MIHS's motion for partial summary decision, to which Sodhi filed a timely response. The motion was accompanied by a Statement of Facts in support of the motion and thirty-two exhibits. Sodhi's response to the motion was accompanied by a Verified

Controverting Statement of Facts in Opposition to Respondent's Motion for Partial Summary Decision and twenty exhibits. MIHS filed a Reply to, and a Motion to Strike Portions of, Sodhi's Controverting Statement of Facts, and Sodhi filed a response to the Motion to Strike.

The Motion for Summary Decision and the Motion to Strike are both ripe for decision.

II. BACKGROUND INFORMATION

The parties' earlier list of undisputed facts states as follows: Dr. Sodhi was licensed as a physician in India, where she practiced general family medicine for seven years. Dr. Sodhi came to the United States in 1997. Dr. Sodhi was required to complete residency training before she could become a licensed physician in the United States. Dr. Sodhi applied for and was admitted into the MIHS Psychiatry Residency Training Program in 2002. Dr. Sodhi's admission was withdrawn for reasons currently in dispute between the parties. Dr. Sodhi filed a complaint with the Department of Justice about the withdrawal of the offer for a residency position with MIHS. After negotiation, the parties resolved the dispute, Dr. Sodhi withdrew her complaint, and MIHS agreed to admit Dr. Sodhi into the Program.

The Program at MIHS is a psychiatry residency training program requiring residents to complete four years of residency to graduate from the Program. The Program is broken down into four distinct resident years, identified as PGY-1, PGY-2, PGY-3, and PGY-4. The academic year in the Program generally runs from July 1 to June 30, although residents are sometimes taken "off-cycle" for various reasons. The residents sign one-year contracts for each resident year. At the end of the particular year, MIHS may renew a resident for the next year by presenting a new contract to the resident and having the resident sign the new contract. Pursuant to Program guidelines in place during the 2003/2004 academic year, residents were required to take and pass a standardized test known as the USMLE 3 no later than March 1 of their PGY-2 year to proceed into the PGY-3 academic year. The USMLE 3 is administered by a third-party accrediting organization and, according to the organization's rules, residents may only take the USMLE 3 three times per academic year.

Dr. Sodhi took and failed the USMLE 3 three times during her PGY-2 year. The Program administrators informed Dr. Sodhi that she would not be renewed for a PGY-3 year because she did not timely pass the USMLE 3. Dr. Sodhi completed her PGY-2 academic year in the Program on June 30, 2004, and was not renewed for a subsequent year. After the non-renewal, Dr. Sodhi continued to study for and take the USMLE 3. Dr. Sodhi passed the USMLE 3 in February, 2005. Dr. Sodhi spoke with the Program Director, Dr. William James, in February, 2005, and told him that she wanted to reenter the Program. Dr. James informed Dr. Sodhi that he would inform the Residency Committee for the Program of her request and would get back to her. On March 17, 2005, the Program Residency Committee met and discussed Dr. Sodhi's request to reenter the Program. The Residency Committee voted on whether to readmit Dr.

Sodhi to the Program, and the vote tally was against readmitting her to the Program. On March 17, 2005, Dr. James told Dr. Sodhi that the Residency Committee declined her request for readmission for two reasons: (a) that there currently were no open, available, PGY-3 positions in the Program for the 2005/2006 academic year; and (b) that her performance history did not support returning her to the Program.

Dr. Sodhi filed a complaint with the Department of Justice on or about April 21, 2005, alleging that MIHS retaliated against her in violation of the Immigration and Nationality Act, 8 U.S.C. Section 1324(b).¹

III. THE MOTION AND THE RESPONSE

Maricopa's motion does not seek summary decision as to what it characterizes as Sodhi's "one core claim," that is, Sodhi's assertion in her complaint that she was denied re-entry into Maricopa's psychiatric residency training program in 2005 in retaliation for filing the 2002 charge (Charge No. 197-8-114) about the withdrawal of her initial admission to the program. Maricopa thus appears to acknowledge that there are genuine issues of material fact requiring a hearing as to Sodhi's "core" claim about re-entry into the program.

Rather, the instant motion is addressed to what MIHS characterizes as Sodhi's "peripheral claims," which it says should be resolved summarily. The specific claims to which the motion makes reference are four: 1) Sodhi's allegations that she received discriminatory or retaliatory biannual evaluations of her performance during the period when she was enrolled in the residency program, up to and including June, 2004; 2) allegations of discriminatory or retaliatory denial of medical or other leave in March, 2004; 3) allegations of discriminatory or retaliatory refusal in 2007 to admit Sodhi into MIHS's programs in internal medicine and family practice; and 4) Sodhi's request for compensation for her pain and suffering.

MIHS contends that Sodhi's claims of false and retaliatory evaluations are unfounded and that there are no genuine issues of material fact respecting these claims. It argues that the claim about the alleged denial of leave is also unfounded and that the other residents with whom Sodhi seeks to compare herself were not similarly situated to her. It accordingly seeks summary decision on the merits in its favor on these claims. Further, Maricopa argues that the claims respecting admission to other programs are also unfounded, and that the claim for compensation for pain and suffering is beyond the reach of this forum. Finally, Maricopa argues in addition

¹ Sodhi actually filled out an Equal Employment Opportunity Commission (EEOC) Intake Questionnaire on April 21, 2005. She filed a charge with the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) on April 22, 2005, and eventually filed a complaint with this office on November 2, 2005.

that all the “peripheral” claims were untimely made, and that administrative remedies have not been exhausted because the first two claims were not included in the OSC charge underlying this action (Charge No. 117-8-163) and no timely charge has been filed with respect to any of the allegations which form the basis for this motion.

Sodhi’s response argues that summary decision should be denied with respect to her evaluation and leave claims because the claims are timely and because there are genuine issues of material fact in dispute with respect to those claims. She contends that her final 2004 biannual evaluation in particular had a direct impact on the decision not to readmit her into the program, and that the denial of leave had an impact on that decision as well. Sodhi said she agreed that her allegations that MIHS also denied her entry into its internal medicine and family practice programs in 2007 is not a “standalone claim,” and she also agreed that compensation for pain and suffering is not available in this forum.

Sodhi says, however, that her “core” claim of retaliation has two allegations rather than one; the first is about Maricopa’s denying her reentry into the psychiatric residency program on March 17, 2005 in retaliation for having filed the 2002 charge, and the second is about threats that were made to her April or May, 2005 about the consequences to her were she to file a second charge. She urges as well that her claims about discriminatory misuse of her previous evaluations and discriminatory denial of leave are timely made, that they were part of OSC’s investigation, and that there are genuine issues of material fact related to these claims. Sodhi also responded on the merits to Maricopa’s challenges to these claims.

Sodhi also argues that even if the claims as to her evaluations and denial of leave were not timely filed with OSC, these claims should still go forward nonetheless, because at the time those events occurred she was not put on notice of the impact these acts would later have. She argues that the adverse impact of those acts was not known to her until March 17, 2005 when she was denied readmission into the psychiatric residency training program, and that her claims about her evaluations and the denial of leave are like and related to her claim of retaliation.

IV. EVIDENCE CONSIDERED

A. Maricopa’s Exhibits

For ease of reference the letter “R” (for respondent) is used to precede the identification of each of Maricopa’s thirty-two exhibits which include R1) excerpts from the Videotaped Deposition of Gurpreet Kaur Sodhi, M.D.; R2) pages 9-11 and pages 27-28 from the deposition of Lisa Stievater Jones, M.D.; R3) excerpts from the deposition of William James, M.D.; R4) Affidavit of William James, M.D.; R5) an unofficial copy of Sodhi’s Score Report from the USMLE Step 3 exam she took on July 8, 2003; R6) an unofficial copy of Sodhi’s Score Report from the USMLE Step 3 exam she took on November 3, 2003; R7) an unofficial copy of Sodhi’s Score

Report from the USMLE Step 3 exam she took on January 29, 2004; R8) a note signed by Sodhi addressed to “Dr. James + the staff. Psychiatry Residency Program” with Bates Number R00284; R9) a letter dated February 21, 2005 signed by Sodhi and addressed to Carol Olson, M.D. and William James, M.D.; R10) a Maricopa Medical Center, Psychiatric Residency Training Program, Resident Performance Evaluation signed by Sodhi on August 7, 2002; R11) a Bi-Annual Review from MIHS Psychiatric Residency Training Program signed by Sodhi on December 17, 2002; R12) an evaluation of Sodhi’s class participation and performance in an “Interviewing” course completed by David Coons, M.D. which Sodhi signed off on on January 25, 2003; R13) a two-page Internal Medicine Resident Evaluation dated March 27, 2003; R14) a Maricopa Medical Center, Psychiatric Residency Training Program, Resident Performance Evaluation signed by Sodhi on April 29, 2003; R15) a Maricopa Medical Center, Psychiatric Residency Training Program, Resident Performance Evaluation signed by Sodhi May 30, 2003; R16) a Bi-Annual Review from MIHS Psychiatric Residency Training Program signed by Sodhi on June 12, 2003; R17) an evaluation of Sodhi’s class participation and performance in an “Interviewing” course completed by David Coons, M.D. which she signed off on on July 1, 2003; R18) a Maricopa Medical Center, Psychiatric Residency Training Program, Resident Performance Evaluation signed by Sodhi on August 20, 2003; R19) a Maricopa Medical Center, Psychiatric Residency Training Program, Resident Performance Evaluation signed by Sodhi on September 8, 2003; R20) a Bi-Annual Review from MIHS Psychiatric Residency Training Program signed by Sodhi but not dated and signed and dated by Lisa Jones on December 18, 2003; R21) a Maricopa Medical Center, Psychiatric Residency Training Program, Resident Mid-Rotation Performance Evaluation signed by Sodhi on February 17, 2004; R22) a Maricopa Medical Center, Psychiatric Residency Training Program, Resident Performance Evaluation signed by Sodhi May 26, 2004; R23) Maricopa Medical Center, Psychiatric Residency Training Program, Resident Performance Evaluation signed by Sodhi on May 2, 2004; R24) a Bi-Annual Review from MIHS Psychiatric Residency Training Program signed by Sodhi on June 16, 2004; R25) a two-page document entitled “Development of Personal Program of Self Study & Professional Growth PGY 1” signed by Sodhi on April 30, 2003 and Lisa Jones on June 12, 2003; R26) the charge Sodhi filed with OSC on April 22, 2005 together with attachments; R27) a letter from Sodhi addressed to Byron F. Wong, Esq. dated July 14, 2005; R28) a letter from Sodhi addressed to Byron Wong, Esq. at OSC dated August 2, 2005; R29) a letter to OSC from Sodhi regarding DOJ #197-8-163, Additional information for my case; R30) page 69 and pages 88-89 from the deposition of Carol Kline Olson; R31) letter dated August 22, 2005 from OSC to Sodhi informing her its investigation has ended and that she may file a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO); R32) a letter dated October 24, 2005 from Sodhi to this office discussing OSC’s dismissal of her claims, Bates Numbers GS 000414-000422.

B. Sodhi’s Exhibits

Sodhi’s exhibits are also identified numerically, but with each number preceded by the letter “C” (for complainant). They include: C1) filed under seal; C2) the Affidavit of Gurpreet Kaur Sodhi,

M.D. dated July 23, 2007; C3) filed under seal; C4) three separate documents each containing the heading “Applicant Qualifications” and describing what it takes to be considered for a residency position, presumably with Maricopa; C5) filed under seal; C6) filed under seal; C7) filed under seal; C8) filed under seal; C9) filed under seal; C10) filed under seal; C11) nine recommendation letters written on behalf of Sodhi between February 23, 2004 and March 24, 2005; C12) a Maricopa Medical Center, Psychiatric Residency Training Program, Resident Performance Evaluation signed by Sodhi on May 26, 2004; C13) copy of Settlement Agreement and General Release between Sodhi and Maricopa signed by Sodhi on May 24, 2002; C14) a Maricopa Medical Center, Psychiatric Residency Training Program, Resident Performance Evaluation signed by Sodhi on June 15, 2004; C15) a copy of Sodhi’s transcript from Govt. Medical College, Amritsar dated June 9, 2001; C16) an evaluation by C. Olson, M.D. of Sodhi’s participation and performance in a “Toolbox” course which Sodhi signed on January 29, 2003; C17) a letter dated April 4, 2005 from Sodhi to Maricela Moffitt and a two-page document downloaded from probono.net entitled “Asylees no longer need EADs to work;” C18) filed under seal; C19) a copy of Maricopa’s “Institutional Requirements” and a copy of its “Policy & Procedure;” C20) a MIHS Evaluation of Exiting Resident/Clinical Fellow showing Sodhi’s date of termination as June 30, 2004 which Sodhi signed on June 16, 2004.

In addition to the materials submitted by the parties in connection with the motion, I have also reviewed other evidence of record, including pleadings and motions, discovery materials, and other materials attached to previous filings.

V. DISCUSSION

The OCAHO form complaint Sodhi filed in this matter identifies the discriminatory act she was complaining about as: “I was intentionally not rehired on 3/17/05 in retaliation for filing my discrimination complaint date 4/02 that I subsequently won against MIHS Department of Psychiatry.” In response to a question on the form as to any other reasons she was not hired, Sodhi made three assertions: A) Retaliation against me for filing the 4/02 DOJ complaint, B) Cultural bias against me because I am a soft-spoken Indian female,² and C) Deliberate actions of Program Director who made false comments about me in front of Residency Selection Committee in retaliation against me for A.

OCAHO’s rule³ provides that any party may move for summary decision on all or any part of a complaint. 28 C.F.R. § 68.38(a). As an initial matter, it does not appear that the claims to which

² It does not appear that these allegations, which sound in national origin, are cognizable in this proceeding. It is undisputed that MIHS has more than fourteen employees and that claims of national origin discrimination would appropriately be directed to the EEOC.

³ See Rules of Practice and Procedure, 28 C.F.R. Pt. 68 (2005).

the instant motion is addressed are actually made as part of Sodhi's complaint, although both her evaluations and the denial of leave are alluded to in the 111 pages of materials appended to it. MIHS asserts that Sodhi made these "peripheral" claims "throughout this matter," and "demonstrated a tendency to draw into the fray a host of other events predating the alleged discriminatory act." Although Sodhi has not sought leave to amend to add any new claims, she nevertheless responded to the motion as though she too thought at least some of the "peripheral" claims identified by Maricopa had actually been made in the complaint. The issues raised by the motion will accordingly be discussed insofar as is necessary to clarify the appropriate scope of the complaint.

A. Claims Related to Sodhi's Evaluations and Request for Leave

Allegations about discriminatory evaluations or the denial of leave do not appear on the face of Sodhi's complaint, although they are alluded to in the various attachments to it. Attachments to her OSC charge also allude to the denial of leave, but do not complain of discriminatory evaluations. While it is appropriate to consider attachments to the complaint in determining its sufficiency, *see United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003), this does not mean that every statement made in an attachment to a complaint is thereby converted into a separate "claim."

Some courts have treated allegations raised after the filing of a complaint as a potential attempt to amend the complaint. *See, e.g., Martinez v. Potter*, 347 F.3d 1208, 1211 (10th Cir. 2003). Other courts reject this approach. *See, e.g., Shanahan v. City of Chicago*, 82 F.3d 776, 781 (7th Cir. 1996). The approach which should be taken in this forum need not be addressed here because any attempt on Sodhi's part to amend or supplement her complaint to add allegations respecting her biannual performance evaluations or the denial of leave would be futile. No decision on the merits of these claims is either necessary or appropriate because it is undisputed that all of the biannual evaluations Sodhi seeks to challenge as discriminatory or retaliatory took place prior to June 30, 2004, and that the alleged denial of leave occurred in March of 2004.

The statute governing this proceeding provides that no complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the filing of the charge with the Office of Special Counsel. 8 U.S.C. § 1324b(d)(3). Filing a timely OSC charge is thus a condition precedent to the filing of a private action with OCAHO. *Aguirre v. KDI Am. Prods., Inc.*, 6 OCAHO no. 882, 632, 644 (1996) (citation omitted);⁴ *Bozoghlanian v.*

⁴ Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within

Raytheon Co. Electromagnetic Sys. Div., 4 OCAHO no. 660, 602, 609 (1994) (citation omitted). Because Sodhi filed the OSC charge underlying this matter on April 22, 2005, it appears that events occurring prior to October 24, 2004 cannot be included within the scope of her complaint.

Sodhi says that she did not file charges with OSC about her evaluations or the denial of leave at the time these events occurred because she did not know then that the evaluations would subsequently be used to deny her re-entry into the psychiatric residency program, or that the denial of leave would also contribute to that result as well. She says she did not know until March 17, 2005 what impact these acts would have on her prospects for readmission. Her arguments about the timeliness of those two allegations appear, however, to be foreclosed by *Ledbetter v. Goodyear Tire & Rubber Co.*, 127 S.Ct. 2162 (2007) and *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002). Whether the concept of a continuing violation even remains viable for claims other than harassment after *Ledbetter* and *Morgan* is not entirely clear. What is clear after these cases however, is that a specific discrete act or occurrence takes place at a particular point in time, and that each alleged discriminatory or retaliatory act thus “occurred” on the day that it “happened.” *Morgan*, 536 U.S. at 110. If there is a series of acts, this simply means that there is a fresh violation when each discrete act is committed. *Id.* at 113. Each of Sodhi’s performance evaluations constitutes a discrete act. The last of these acts occurred in June, 2004. Denial of leave is a discrete act as well; this act occurred in March, 2004. Allegations regarding both the evaluations and the denial of leave are accordingly time-barred.

Indeed, even before *Ledbetter* and *Morgan*, claims premised upon present effects resulting from a past time-barred employment decision appear to have been foreclosed by *Delaware State College v. Ricks*, 449 U.S. 250, 258 (1980) and *United Airlines v. Evans*, 431 U.S. 553, 556 n.8 (1977), both of which make clear that the present effects of a past event, even though these effects may not be felt until well after the employment decision, do not operate to revive a time-barred claim. In *Ricks*, for example, the plaintiff Columbus Ricks was notified by the college of his tenure denial and given a one-year terminal contract. The court determined that the denial of tenure, although it did not cause Ricks’ discharge until a year later, was the relevant act that started the running of the limitations period. The proper focus, according to the court, “is upon the time of the *discriminatory acts*, not upon the time at which the *consequences* of the acts became the most painful.” *Id.* at 258 (quoting *Abramson v. Univ. of Haw.*, 594 F.2d 202, 209 (1979)); see *Chardon v. Fernandez*, 454 U.S. 6 (1981).

the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIM-OCAHO” or on the website at (<http://www.usdoj.gov/eoir/OcahoMain/ocahosibpage.htm#Published>).

Similarly, Carolyn Evans, a flight attendant, was rehired by the airline after having been forced to resign because of a discriminatory policy which excluded married women from that job. When the policy changed Evans was rehired, but she was given no credit for her past seniority. Her lawsuit sought credit for that seniority. Although acknowledging that Evans' loss of her seniority gave present effect to a past act of discrimination, the court nevertheless observed that "[a] discriminatory act which is not made the basis for a timely charge is the legal equivalent of a discriminatory act which occurred before the statute was passed." 431 U.S. at 558.

While failure to exhaust administrative remedies is not always fatal to a particular claim, the basic principle that the scope of a complaint may sometimes encompass like and related claims not expressly set out in the original charge, *see, e.g., Paige v. California*, 102 F.3d 1035, 1041-42 (9th Cir. 1996) (permitting class-wide allegation to go forward although not made in the underlying charge), does not extend so far as to retroactively render timely a related claim which was not itself made the subject of a timely charge. Sodhi cites to no authority which would support the result she seeks and I am aware of none.

The leading case discussing the effect of a charge on the permissible scope of a lawsuit is *Sanchez v. Standard Brands, Inc.*, 431 F.2d 455 (5th Cir. 1970), which holds that the scope of a complaint is limited by the scope of the investigation which can reasonably be expected to grow out of the charge. *See Guzman v. Yakima Fruit & Cold Storage*, 9 OCAHO no. 1066, 9 (2001). Nothing in *Sanchez* or in its progeny purports to suggest that a claim can reasonably "grow out of" an agency investigation when the claim is already time-barred before the agency investigation even begins. Indeed, the "like and related" principle has instead most frequently been applied to post-charge claims related to new acts occurring during or after the pendency of the charge. *See, e.g., Coveau v. Am. Airlines, Inc.*, 218 F.3d 1078, 1082 (9th Cir. 2000).⁵

Filing a timely charge with OSC is not, however, a jurisdictional prerequisite, but rather, a requirement like a statute of limitations that may under appropriate circumstances be subject to equitable relief such as waiver, estoppel or equitable tolling. *Walker v. United Air Lines, Inc.*, 4 OCAHO no. 686, 791, 817 (1994); *see Nelmda v. Shelly Eurocars, Inc.*, 112 F.3d 380, 385 (9th Cir. 1997). While failure to comply with the 180-day deadline is thus not per se dispositive, *Bozoghlanian v. Magnavox Advanced Prods. & Sys. Co.*, 4 OCAHO no. 653, 543, 546 (1994), Sodhi has provided no legally sufficient explanation here for her delay in filing charges respecting her evaluations and denial of leave in 2004 because the present effects of a past act

⁵ Whether even unexhausted post-charge acts involving discrete employment actions may be considered after *Morgan* has become the subject of a conflict in the circuits. *Compare Potter*, 347 F.3d at 1210-11, with *Wedow v. City of Kansas City, Mo.*, 442 F.3d 661, 673-74 (8th Cir. 2006). *See generally* Benjamin J. Morris, *A Door Left Open? National Railroad Passenger Corporation v. Morgan and Its Effect of Post-Filing Discrete Acts in Employment Discrimination Suits*, 43 Cal. W. L. Rev. 497, 514-524 (2007).

are as a matter of law not sufficient to revive a past time-barred event. As explained in *Morgan*, discrete discriminatory or retaliatory acts, even when they are related to acts alleged in a timely filed charge, are not actionable if they are time-barred, and each discrete discriminatory or retaliatory act starts a new clock. 536 U.S. at 113. A related principle is that an employer's refusal to undo a previous discriminatory decision is not a fresh act of discrimination either. *Cf. Berlanga v. Butterball Co.*, 4 OCAHO no. 669, 705, 710 (1994) (stating that discharge claim is not revived for purposes of avoiding 180-day limit by reapplication for job; an effort to be rehired is not sufficient to revive an expired cause of action). Sodhi's arguments respecting the timeliness of her claims about her evaluations and the denial of leave are thus contrary to governing case law.

The motion for summary decision will accordingly be granted in part, limited to the issue of the timeliness of Sodhi's allegations respecting discriminatory evaluations and the denial of leave in 2004.

B. Sodhi's "Allegation" Respecting Admission to the Internal Medicine and Family Practice Programs

On August 2, 2007 MIHS filed a Request for Order Requiring Complainant to Disclose Evidence of New Allegation or, in the Alternative, to Strike the New Allegation. The request stated that Sodhi had raised a new allegation "for the first time after the close of discovery" by claiming that MIHS refused to permit her entry into its other residency programs, and that this allegation is false. MIHS said that because it was unaware of the allegation before the close of discovery, it had no opportunity to conduct discovery about it, and accordingly that Sodhi should be compelled to produce her "evidence" relating to this allegation, or alternatively the allegation should be stricken. On August 9, 2007, before Sodhi had an opportunity to respond to the Request and before the Request was ripe for adjudication, MIHS withdrew it.

This so-called "claim" is now resurrected in the instant motion. Sodhi's response to the motion acknowledges that her claim respecting admission into residency programs at MIHS other than the psychiatric residency program is not a "standalone claim." Indeed, not only is it not a "standalone" claim, it does not appear to be a claim at all. No such claim respecting programs other than the psychiatric residency program is raised in Sodhi's complaint, and no such allegation is referenced in any of the attachments to the complaint. Sodhi has never sought leave to amend or supplement her complaint to add such a claim. She says she just listed this as a fact in her case. It appears to be undisputed that Sodhi has not applied for admission into the Internal Medicine Program or the Family Practice Program. MIHS says it has no training program in Family Practice. MIHS's Reply in Support of its Motion for Partial Summary Decision recites that this "claim" is based on MIHS's decision to decline Sodhi's offer to settle this case in return for admission into one of these programs. Sodhi indicates that she intends to apply for other programs at MIHS in the future.

But it is the pleadings, not stray assertions in a statement of facts or in other filings, which determine the appropriate scope of a complaint. Unless Sodhi applies to a program and is rejected, there is no basis for such a claim. The motion for summary decision will accordingly be denied as to this alleged claim. No decision will be made on this “issue” because no decision, summary or otherwise, is appropriate regarding issues which are not included as “any part of the complaint.”

C. Claims for Pain and Suffering

Examination of Sodhi’s complaint reflects that she filled out Part VI of OCAHO’s form complaint captioned “Relief Requested.” Sodhi checked boxes indicating that she wanted relief in the form of 1) back pay, 2) rehire, and 3) removal of false performance reviews from her file. She hand-wrote in addition that she wanted other remedies as well in the form of restriction on who would directly supervise her, a renewal of her contract for two years without prejudice, and materials, tutoring, or tuition to help her complete her rotations. No request was made for damages for pain and suffering. The remedies available in this proceeding are set out in 8 U.S.C. § 1324b(g)(2)(B); pain and suffering are not among them.

Evidently MIHS seeks summary decision as to this issue because Sodhi made an assertion in her statement of facts that she experienced pain and suffering, or because the charge Sodhi filed with EEOC contained such a claim, or because she listed whether she suffered “emotional distress damages” as an issue of law in her statement of relevant issues of law contained in the parties’ Joint List of Undisputed Facts, Disputed Facts and a List of Relevant Issues of Law.

The motion for summary decision will be denied as to this issue as well. Again, no decision, summary or otherwise, can or should be entered respecting claims that are not part of the complaint. It is not the function of the summary decision process to address every disputed fact in duelling statements of facts or every controverted statement made in stray assertions in other filings.

D. The Effect of Settlement of the 2002 Charge

Although the issue was not raised in the instant motion itself, both parties argue in their memoranda as well as in their conflicting statements of facts their respective views of the events, facts, and circumstances leading up to the filing of the 2002 charge. Sodhi asserts and argues that MIHS’s actions in rescinding her initial admission constituted a violation of §1324b, while MIHS argues that Sodhi engaged in misrepresentations about her immigration status in her application to the program. The parties are advised that these questions are foreclosed because they have been resolved by the agreement which settled Charge No. 197-8-114, and are thus not a proper subject for consideration in this proceeding.

The principal function of a settlement is to extinguish the controversy between the parties as to

the merits of the underlying dispute. Each of the parties in this matter gave and received consideration as a condition of entering the agreement which settled Charge No. 197-8-114. Notwithstanding Sodhi's assertion that she "won" that case, the facts are that Sodhi withdrew her first charge without a determination on the merits pursuant to a settlement agreement, and that in the agreement she expressly and forever released and discharged MIHS from claims of any kind related to the events underlying Charge No. 197-8-114. MIHS in return admitted Sodhi into its Psychiatric Residency Training Program and waived any alleged problems with the form of her application. Both parties received the benefit of their respective bargains. Neither has suggested that there is any ambiguity in the agreement and they cannot now unring the bell. *Cf. Pardi v. Kaiser Permanente Hosp. Inc.*, 389 F.3d 840, 848 (9th Cir. 2004) (affirming district court finding that claims relating to acts prior to execution of settlement agreement were barred).

Disputes relating to the merits of the 2002 charge will not be renewed, revived, reopened, reinstated, or reconsidered in this proceeding. Extrinsic or parol evidence seeking to undermine the settlement agreement or attempts to resurrect any of the issues disposed of in that agreement will not be entertained. The sole significance of the 2002 charge in this proceeding is the question of whether MIHS retaliated against Sodhi in 2005 for having filed it.

VI. CONCLUSION

The motion for partial summary decision will be granted in part and denied in part for the reasons more fully specified herein. The parties filed materials marked as "Confidential" which have not been made a part of the record. These materials were unnecessary to the decision and will be returned to their respective senders.

Nothing in this decision prevents the consideration of evidence of events outside the limitations period provided that the evidence 1) is actually relevant to violations within the period, and 2) does not relate to matter previously resolved by and merged into a settlement agreement.

VII. FINDINGS OF FACT

1. Dr. Sodhi was licensed as a physician in India, where she practiced general family medicine for seven years.
2. Dr. Sodhi came to the United States in 1997.
3. Dr. Sodhi was required to complete residency training before she could become a licensed physician in the United States.
4. Dr. Sodhi applied for and was admitted into the MIHS Psychiatry Residency Training

Program in 2002.

5. Dr. Sodhi's admission was withdrawn for reasons currently in dispute between the parties.
6. Dr. Sodhi filed a complaint with the Department of Justice about the withdrawal of the offer for a residency position with MIHS.
7. After negotiation, the parties resolved the dispute, Dr. Sodhi withdrew her complaint, and MIHS agreed to admit Dr. Sodhi into the Program.
8. The Program at MIHS is a psychiatric residency training program requiring residents to complete four years of residency to graduate from the Program.
9. The Program is broken down into four distinct resident years, identified as PGY-1, PGY-2, PGY-3, and PGY-4.
10. The academic year in the Program generally runs from July 1 to June 30, although residents are sometimes taken "off-cycle" for various reasons.
11. The residents sign on-year contracts for each resident year.
12. At the end of the particular year, MIHS may renew a resident for the next year by presenting a new contract to the resident and having the resident sign the new contract.
13. Pursuant to Program guidelines in place during the 2003/2004 academic year, residents were required to take and pass a standardized test known as the USMLE 3 no later than March 1 of their PGY-2 year to proceed into the PGY-3 academic year.
14. The USMLE 3 is administered by a third-party accrediting organization and, according to the organization's rules, residents may only take the USMLE 3 three times per academic year.
15. Dr. Sodhi took and failed the USMLE 3 three times during her PGY-2 year.
16. The Program administrators informed Dr. Sodhi that she would not be renewed for a PGY-3 year because she did not timely pass the USMLE 3.
17. Dr. Sodhi completed her PGY-2 academic year in the Program on June 30, 2004, and was not renewed for a subsequent year.
18. After the non-renewal, Dr. Sodhi continued to study for and take the USMLE 3.
19. Dr. Sodhi passed the USMLE 3 in February, 2005.

20. Dr. Sodhi spoke with the Program Director, Dr. William James, in February, 2005, and told him that she wanted to reenter the Program.
21. Dr. James informed Dr. Sodhi that he would inform the Residency Committee for the Program of her request and would get back to her.
22. On March 17, 2005, the Program Residency Committee met and discussed Dr. Sodhi's request to reenter the Program.
23. The Residency Committee voted on whether to readmit Dr. Sodhi to the Program, and the vote tally was against readmitting her to the Program.
24. On March 17, 2005, Dr. James told Dr. Sodhi that the Residency Committee declined her request for readmission for two reasons: (a) that there currently were no open, available, PGY-3 positions in the Program for the 2005/2006 academic year; and (b) that her performance history did not support returning her to the Program.
25. Dr. Sodhi filed a Complaint with the Department of Justice on or about April 21, 2005, alleging that MIHS retaliated against her in violation of the Immigration and Nationality Act, 8 U.S.C. § 1324(b).

VIII. CONCLUSIONS OF LAW

1. Gurpreet Kaur Sodhi is a protected individual within the meaning of 8 U.S.C. § 1324b(a)(3).
2. Maricopa County Special Health Care District is an entity within the meaning of 8 U.S.C. § 1324b(a)(1).
3. All conditions precedent to the institution of this proceeding have been satisfied.
4. No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the filing of the charge with the Office of Special Counsel. 8 U.S.C. § 1324b(d)(3).
5. Events occurring prior to October 24, 2004 may not be included in the scope of Sodhi's complaint.
6. Summary decision is inappropriate as to claims which have not been made.
7. A settlement agreement bars consideration of pre-agreement claims.

To the extent any statement of fact is deemed to be a conclusion of law, or any conclusion of law is deemed to be a statement of fact, the same is so denominated as if set forth herein at length.

ORDER

Maricopa's motion for summary decision is granted with respect to the question of the timeliness of Sodhi's alleged claims respecting discriminatory performance evaluations and the denial of leave. The motion is otherwise denied. The motion to strike portions of Sodhi's Controverting Statement of Facts is denied as moot. Confidential materials will be returned to their respective senders. A telephonic prehearing conference will be convened shortly in order to develop a prehearing order and schedule a hearing date.

SO ORDERED.

Dated and entered this 28th day of November, 2007.

Ellen K. Thomas
Administrative Law Judge