IN THE UNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEAN DUNGAN	:	CIVIL ACTION
	:	NO. 99-CV-2376
v.	:	
	:	
RODNEY E. SLATER, Secretary,	:	
United States Dept. of	:	
Transportation, and	:	
JANE GARVEY, Administrator,	:	
United States Federal	:	
Aviation Administration	:	

MEMORANDUM

Broderick, J. **February 2000**

Plaintiff Dean Dungan brings this purported class action against Rodney Slater, Secretary of the United States Department of Transportation ("DOT") and Jane Garvey, Administrator of the United States Federal Aviation Administration ("FAA"), challenging the mandatory retirement of certain air traffic controllers at age 56. Defendants have filed a motion dismiss the complaint, or alternatively, for summary judgment. Plaintiff has opposed. For the reasons stated below, the Court will grant the motion and enter judgment in favor of Defendants and against Plaintiff.

BACKGROUND

The facts, in the light most favorable to the Plaintiff, are as follows. Plaintiff Dungan began his career as an Air Traffic Controller ("ATC")in 1974 and has continuously served in that capacity for 25 years. Plaintiff is a member of the Civil

Service Retirement System, ("CSRS"), a pension plan that provides benefits to many retired civil service employees who began their careers between 1972 and 1987. Unless the Secretary of the DOT exempts an ATC from automatic separation, Congress requires that such individuals be forced to retire from so-called "covered" positions on the last day of the month in which the ATC becomes 56 years of age. 5 U.S.C. § 8335.

Plaintiff will reach age 56 in March of 2000. On June 15, 1998, Plaintiff wrote a memorandum to his air traffic division manager, requesting a waiver of the age 56 retirement rule. See Complaint, Exhibit A. (Docket No. 1). By memorandum dated August 25, 1998, Plaintiff Dungan's request was denied by regional manager Franklin D. Hatfield. See Complaint, Exhibit B. Specifically, the memorandum restated the FAA's 1995 policy that "for the foreseeable future we do not believe circumstances warrant elevating requests for waivers to the Administration." See Complaint, Exhibits B and C.

In 1981, thousands of Professional Air Traffic Controllers ("PATCO Controllers") conducted a strike against the federal government. President Reagan fired them and barred them from working in any position within the FAA. On August 12, 1993, President Clinton repealed the bar against employing former striking PATCO controllers within the FAA. See Presidential Memorandum (August 12, 1993). Currently, PATCO controllers who

were barred from employment with FAA solely as a result of their participation in the 1981 strike can be considered for employment and hired by the FAA.

Plaintiff did not strike in 1981. Plaintiff contends that the FAA and DOT are forcing him to retire at age 56 while permitting air traffic controllers who were barred from FAA employment during the Reagan Administration and later rehired during the Clinton Administration to continue employment past age 56 until they reach 20 years of service, all in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 631 et. seq. Moreover, Plaintiff contends that the FAA and DOT's refusal to grant him a waiver of the mandatory retirement statute is a violation of the Due Process and Equal Protection clauses of the United States Constitution.

STATUTORY BACKGROUND

The act which mandates that Plaintiff retire at age 56 was passed in 1972. Congress enacted Public Law 92-297 (codified at 5 U.S.C. § 8335) as part of a broad program to benefit ATCs. According to the Senate Committee Report, the purpose of the law is:

> to improve the conditions of employment for individuals employed as air traffic controllers in the Department of Transportation by offering preferential retirement benefits, job training and improved appeal procedures for controllers removed from control work, and the establishment of maximum recruitment and retention ages for controllers.

S. Rep. No. 92-774(1972), reprinted in 1972 U.S.C.C.A.N. 2287.

As justification for the law, the Report noted that:

> For several years, both the executive and legislative branches have recognized that employees of the Federal Government who are engaged in the separation and control of aircraft at airport towers and in regional radar control centers occupy positions requiring precise skills upon which aviation safety depend and taxing heavily the physical and mental strength of the individuals involved. . . . Although there are several groups of employees in the Government whose employment is hazardous . . . air traffic controllers are unique in that their work involves both physical and mental strain for the controller, and the safety of the public traveling by air.

Id. The law separated ATCs from the "normal retirement requirements" of the civil service system and offered a "preferential system." Id. at 2289. While recognizing "that selecting air traffic controllers for preferential retirement treatment constitutes a significant change of policy for the civil service retirement system," the Senate Report concluded that "the unique employment of these employees justifies such a system." Id.

The statute was codified at 5 U.S.C. § 8335. It includes a mandatory separation provision, which states:

> An air traffic controller shall be separated from the service on the last day of the month in which he becomes 56 years of age. The Secretary, under such regulations as he may prescribe, may exempt a controller having exceptional skills and experience as a controller from the automatic separation provisions of this subsection until that controller becomes 61 years of age. The Secretary shall notify the controller in writing of the date of separation at least 60 days before that date. Action to separate the controller is not effective, without the consent of the controller, until the last day of the month in which

the 60-day notice expires.

5 U.S.C. § 8335(a).

In 1987, Congress radically amended the pension benefits available to federal employees generally, and ATCs specifically, by enacting the Federal Employees' Retirement System ("FERS"). Thus, ATCs hired after 1987, including many rehired PATCO controllers, are covered under FERS. An ATC's retirement and pension plans differ significantly depending on whether the ATC is covered by CSRS or FERS. Under FERS, an ATC must retire at age 56 or upon completion of 20 years of service in a covered position, whichever comes later. See 5 U.S.C. § 8425.

LEGAL STANDARD

Defendants have filed a motion "to Dismiss the Complaint, or alternatively, for Summary Judgment."[1] Because the Court will consider "matters outside the pleading," the motion shall be treated as one for summary judgment. See Fed.R.Civ.P. 12(b).

A court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). In response to a motion for summary judgment, the non-

[1] Alternatively, the Defendants move for dismissal or transfer for lack of venue. Given the disposition of the claims on summary judgment, that portion of the motion is moot.

moving party must "set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e); see Celotex v. Catrett, 477 U.S. 317, 322-24 (1986). In doing so, the non-moving party must "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

When deciding a motion for summary judgment, a court must draw all justifiable inferences in favor of the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). A genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id. at 248. If the evidence of the non-moving party is "merely colorable," or is "not significantly probative," and the moving party is entitled to judgment as a matter of law, summary judgment may be granted. Id. at 249-50.

ANALYSIS

Counts I and II

In Count I of his Complaint, Plaintiff contends that Defendant Rodney Slater, in his capacity as Secretary of the DOT, violated the provisions of the Age Discrimination in Employment Act ("ADEA") in requiring Plaintiff Dungan, an Air Traffic Control Specialist Supervisor, to retire at age 56, while allowing other Air Traffic Specialists similarly situated to continue to work beyond age 56. Plaintiff further contends that

Air Traffic Tower Managers, Staff employees, Quality control employees and Flight Service Specialists do not have to retire at age 56.

In his response to Defendant's motion for summary judgment, Plaintiff contends that Defendant Rodney Slater violated the ADEA by forcing him to retire at age 56 while permitting rehired PATCOs to work past age 56, and have an opportunity to achieve 20 years of service.

In Count II, Plaintiff Dungan contends that Defendant Jane Garvey, in her capacity as administrator of the FAA, violated the ADEA by refusing to forward Plaintiff's waiver request to the Secretary of Transportation. As the analysis below demonstrates, Plaintiff has not raised a genuine issue of material fact, and Defendants are entitled to judgment as a matter of law because such actions are not violations of the ADEA.

The language of the ADEA, as enacted in 1967, made it clear that the ADEA did not apply to the federal government. 29 U.S.C. § 630(b). However, in 1978, Congress passed Amendments to the ADEA, which made the statute applicable to the federal government. See 29 U.S.C. § 633a(a). With respect to federal agencies, the ADEA now provides that "all personnel actions affecting employees . . . who are at least 40 years of age . . . in executive agencies as defined in section 105 of Title 5 . . . shall be made free from any discrimination based on age." 29

U.S.C. § 633a(a).

Although the ADEA now applies to federal agencies, the 1978 Amendments did not change several mandatory retirement provisions which existed in 1978, and continue to exist today. As the United States Supreme Court has explained, the "1978 Amendments eliminated substantially all federal age limits on employment, but they left untouched several mandatory retirement provisions of the federal civil service statue applicable to specific federal occupations, including firefighters, air traffic controllers, and law enforcement officers." Johnson v. Mayor and City Council of Baltimore, et al., 472 U.S. 353, 357 (1985). While discussing the mandatory retirement provision for federal firefighters, the Supreme Court stated that "Congress, of course, may exempt federal employees from application of the ADEA, and otherwise treat federal employees, whose employment relations it may directly supervise, differently from those of other employers . . . indeed it has done so elsewhere in the ADEA." Id. at 366 n.10 (internal citations omitted). Thus, the Supreme Court has acknowledged that the ADEA does not apply to specific federal occupations with mandatory retirement provisions.

This Court concludes that the mandatory separation statute codified at 5 U.S.C. § 8335(a) is an exception to the ADEA. See e.g., Strawberry v. Albright, 111 F.3d 943, 947 (D.C. Cir 1997)(per curiam) (holding mandatory retirement of Foreign

Service employees is exception to ADEA's general prohibition of age discrimination); Bowman v. United States Dept. of Justice, 510 F.Supp 1183, 1186 (E.D.Va 1981), aff'd 679 F.2d 876 (4th Cir. 1982), cert. denied 459 U.S. 1072 (1982)(holding section 8335(b) is an exception to ADEA). Plaintiff is an ATC who is specifically excluded from the coverage of the ADEA. Therefore, there is no genuine issue of material fact for trial, and, the ADEA having been held inapplicable, Defendant is entitled to judgment as a matter of law. The Court will enter judgment in favor of Defendants Slater and Garvey and against Plaintiff Dungan on Counts I and II.

Count III

Plaintiff Dungan contends that Rodney Slater, in his capacity as Secretary of DOT, violated Plaintiff's due process and equal protection rights. Plaintiff contends that the DOT policy of refusing to forward waiver requests to the Secretary violates his due process "right of federal employment." In addition, Plaintiff contends that similarly situated employees, including those who were fired for having gone on strike in 1981 and were subsequently rehired, are not forced to retire at age 56.

While Plaintiff has alleged violations of both the Fifth and Fourteenth Amendments, it is clear that the Fourteenth Amendment

applies to state, not federal agents. See U.S. Const. amend. XIV § 1. The United States Supreme Court has held "that the Due Process Clause of the Fifth Amendment forbids the Federal Government to deny equal protection of the laws." Vance v. Bradley, 440 U.S. 93, 94 n.1 (1979). Therefore, Plaintiff's claims will be analyzed under the Fifth Amendment.

Due Process

The Due Process Clause of the Fifth Amendment provides, in relevant part, "No person . . . shall be . . . deprived of life, liberty, or property, without due process of law . . . ." To pursue a due process violation, a plaintiff must first demonstrate that there has been a deprivation of a life, liberty or property interest. See Mathews v. Elderidge, 424 U.S. 319, 332 (1976). After plaintiff makes this showing, the court must address the question of "how much process is due." Cleveland Board of Education v. Loudermill, 470 U.S. 532, 541 (1985).

Plaintiff contends that he has a property interest in continued public employment. "Property interests are not created by the Constitution, 'they are created and their dimensions are defined by existing rules or understandings that stem from an independent source....'" Loudermill, 470 U.S. at 538, quoting Board of Regents v. Roth, 408 U.S. 564, 577 (1972). For example, the United States Supreme Court has held that a public college

professor dismissed from a position held under tenure provisions, Slochower v. Board of Education, 350 U.S. 551 (1956), and public college professors and staff members dismissed during the term of their contracts, Wieman v. Updegraff, 344 U.S. 183 (1952), have interests in continued employment that are safeguarded by due process. The Third Circuit has held that a tenured public school teacher, Bradley v. Pittsburgh Board of Ed., 913 F.2d 1064 (1990), and a state employee who could not be terminated "except for just cause," Perri v. Aytch, 724 F.2d 362 (1983), had property interests sufficient to trigger due process. To have a property interest in his continued public employment, Plaintiff must demonstrate "a legitimate claim of entitlement to it." Roth, 564 U.S. at 577.

In this case, Plaintiff cannot demonstrate "a legitimate claim of entitlement" to employment past age 56. Unlike the cases cited above, Plaintiff's mandatory separation at age 56 has been an explicit term of his employment as an ATC. The mandatory retirement statute had been enacted over a year before Plaintiff began working for the FAA, and "[a]ll citizens are presumptively charged with knowledge of the law," Atkins v. Parker, 472 U.S. 115, 130 (1985). By his own admission, Plaintiff learned of the mandatory retirement provision in 1975, yet chose to remain with the FAA for at least 24 years. Plaintiff's assertion of a property interest in public employment thus fails to demonstrate

the requisite "deprivation" of a property interest to invoke the Due Process Clause. See Garrow v. Gramm, 856 F.2d 203 (D.C. Cir. 1988).

Nevertheless, Plaintiff contends that he is "entitled" to a waiver of the mandatory retirement provision, and "entitled" to have the Secretary consider his waiver request. However, the mandatory separation statute at issue states: "The Secretary, under such regulations as he may prescribe, may exempt a controller having exceptional skills and experience as a controller from the automatic separation provision of the subsection until that controller becomes 61 years of age." 5 U.S.C. § 8335(a). (emphasis added). Use of the term "may" in the statute indicates that the decision to grant a waiver is discretionary. See Dorris v. Absher, 179 F.3d 420, 429 (6th Cir. 1999); Cedillo v. United States, 124 F.3d 1266, 1268 (Fed. Cir. 1997). The plain language of the statute demonstrates that the Secretary is not required to exempt anyone from the statute.[2]

Moreover, the statute explicitly authorizes the Secretary to develop a procedure to determine when and how to exempt a controller from mandatory retirement. See 5 U.S.C. § 8335(a).

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[2] Even if the Secretary were to except an ATC from mandatory retirement, such exception "may be withdrawn at any time . . . . The [air traffic] controller does not acquire the right to work an additional full 5 years simply because the Secretary has granted an extension of service time to him." S. Rep. No. 92-774(1972), reprinted in 1972 U.S.C.C.A.N. 2287, 2291.

According to David Sprague, Program Director for Air Traffic Management, waivers from the mandatory separation provision must first be submitted to the facility manager for consideration. See Docket No. 8, Ex. 1. If the facility manager endorses the request, it is forwarded to the regional resource management branch. Id. If the waiver is endorsed at this level, it is forwarded to the regional manager, then forwarded up to the program director. Id. Only if the waiver has been endorsed at each level will it receive consideration from the Program Director. Id. However, the FAA has determined that present circumstances do not merit making any exemptions to the mandatory separation provision, and, since 1995, the FAA's stated policy is that "for the foreseeable future we do not believe circumstances warrant elevating requests for waivers to the Administration." Id.

Plaintiff admits that "it is without question that Congress intended that the Secretary be granted complete authority with regard to exempting certain ATCs from the automatic separation provisions of this subsection. Further, Plaintiff does not dispute the fact that the Secretary is empowered to delegate this authority to the Administrator of the FAA." See Docket No. 9 at 17-18. Plaintiff contends that his due process rights were violated in that he never received specific information as to the

FAA's waiver procedure.[3] (See Docket No. 9 at 19.)

This Court has already determined that Plaintiff did not have a legitimate claim of entitlement to employment past age 56 and thus the Due Process Clause does not apply. See Loudermill, 470 U.S. at 541. Assuming, arguendo, that the Due Process Clause does apply, and the Court must address the question of "how much process is due," this Court finds that even if the Secretary of DOT failed to provide specific information about the waiver process to Plaintiff, this oversight, and the subsequent denial of a waiver does not offend Due Process.

The Supreme Court has generally balanced three distinct factors to determine what process is constitutionally due: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedure used, and the probable value, if any, of additional or substitute safeguards; and (3) the Government's interest. Gilbert v. Homar, 520 U.S. 924, 931-32 (1997)(quoting Mathews v. Eldridge, 424 U.S. at 335).

With respect to the first factor, private interest, this

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[3] Of course, Plaintiff's conduct undermines this contention. Neither party disputes that Plaintiff applied, nearly two years before his 56th birthday, for a waiver. See Docket No. 1 Exhibit A. His request for a waiver was denied. See Docket No. 2 Exhibit B. However, when deciding a motion for summary judgment, this Court does not make credibility determinations or weigh evidence, see Anderson, 477 U.S. at 254, and the Court will therefore assume that Plaintiff was kept "literally in the dark with regard to this procedure." See Docket No. 9 at 19.

Court has already explained that Plaintiff is not entitled to a waiver of mandatory separation under Section 8335. At most, Plaintiff is entitled to submit a waiver request. Notwithstanding his asserted lack of familiarity with the wavier procedures, Plaintiff appropriately submitted a request for a waiver to his manager. See Docket No. 1 Ex. A. Moreover, Plaintiff's request for a waiver was not denied because he failed to comply with the procedure for requesting a waiver; it was denied because the FAA has determined that it does not need any ATCs eligible for mandatory retirement to extend their employment. See Docket No. 2 Ex. B. Thus the private interest is insubstantial.

The second factor is the risk of erroneous deprivation and probable value of additional safeguards. Congress has authorized, but not compelled, the Secretary to grant exceptions to the mandatory retirement of covered ATCs. The mandatory retirement statute specifically outlines the procedure which must be followed before an ATC is retired:

> An air traffic controller shall be separated from the service on the last day of the month in which he becomes 56 years of age. . . . The Secretary shall notify the controller in writing of the date of separation at least 60 days before that date. Action to separate the controller is not effective, without the consent of the controller, until the last day of the month in which the 60-day notice expires.

5 U.S.C. § 8335(a). Plaintiff has not alleged, nor is there any evidence, that the Secretary has failed to comply with these

procedural requirements.

Moreover, the DOT did not reject Plaintiff's waiver request in a way that damaged his standing or associations in his community. "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and opportunity to be heard are essential." Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971). The denial from Air Traffic Manager Franklin Hatfield states: "While your credentials are indeed impressive, agency policy is that circumstances do not warrant elevating request for waivers to the Administrator." Docket No. 1, Ex. B. Nor is Plaintiff barred from employment within the FAA. The Hatfield Memorandum states: "Placement into a non-covered position may be a viable alternative." Id. Therefore, the Court finds that there is very little risk of erroneous deprivation, and there is no probable value of substitute procedural safeguards.

Finally, the third factor, the Government's interest, is quite substantial. The Secretary and the Administrator have an important interest in enforcing the mandatory separation statute as passed by Congress. As discussed earlier, the mandatory separation statute was passed by Congress as part of a preferential retirement program for ATCs. Congress authorized, but did not compel, the Secretary of DOT to grant limited exceptions to the mandatory retirement provision. The FAA has

determined, in coordination with both the National Air Traffic Controllers Association and the National Association of Air Traffic Specialists, that for the foreseeable future, circumstances do not warrant elevating requests for waivers to the administrator.

In sum, the Court finds that even if the Due Process Clause applies to Plaintiff's mandatory retirement, the failure to provide detailed instructions about the waiver process, and the subsequent denial of a waiver did not offend Due Process. Because there is no genuine issue of material fact for trial, and Defendants are entitled to judgment as a matter of law, the Court will enter judgment in favor of Defendant Slater and against Plaintiff on the Due Process claim in Count III.[4]

Equal Protection

The constitutionality of a mandatory retirement statute under the Equal Protection Clause is determined under the rational basis standard. Because such a classification neither

[4] Plaintiff appears to have abandoned his theory that he was not advised of the mandatory retirement provisions for ATCs until a year after he was hired, which, in effect, retroactively subject him to retirement at age 56 without proper notification. See Complaint. As detailed above, it is clear that Plaintiff knew or should have known of the existence of the mandatory separation requirement of section 8335 when he was hired. The statute had been enacted over a year before Plaintiff began working for the FAA, and "[a]ll citizens are presumptively charged with knowledge of the law," Atkins v. Parker, 472 U.S. 115, 130 (1985). By his own admission, Plaintiff learned of the mandatory retirement provision in 1975, yet chose to remain with the FAA for at least 24 years.

burdens the exercise of a fundamental right, nor invokes a "suspect class," mandatory retirement does not violate equal protection if it is rationally related to a legitimate government purpose. Mass. Bd. Of Retirement v. Murgia, 427 U.S. 307 (1976) (per curiam); Vance v. Bradley, 440 U.S. 93 (1979).

As stated earlier, the purpose of the mandatory retirement statute is

> to improve the conditions of employment for individuals employed as air traffic controllers in the Department of Transportation by offering preferential retirement benefits, job training and improved appeal procedures for controllers removed from control work, and the establishment of maximum recruitment and retention ages for controllers.

S. Rep. No. 92-774(1972), reprinted in 1972 U.S.C.C.A.N. 2287. As justification for the law, Congress noted the "precise skills" necessary to be an ATC and the heavily taxing "physical and mental strength" required. Congress explained that an ATC's skills decline with age, potentially affecting public safety. See Senate Report, supra at 2287-2290. Under the highly deferential rational basis standard, this Court finds that Congress has a legitimate interest in ensuring the professional competence and mental and physical reliability of "unique" ATCs to protect "the safety of the public traveling by air." See id.

While Plaintiff is clearly upset with the policy decision to allow formerly striking PATCOs to be rehired by DOT, the fact that these PATCOs may be covered under a different retirement plan does not offend equal protection. The distinction between

CSRS and FERS is a rational one, reflecting a reconciliation of various legitimate Congressional goals. As the Supreme Court has recognized, mandatory retirement requirements are "packages of benefits, requirements, and restrictions serving many different purposes. When Congress decided to include groups of employees within one system or the other, it made its judgments in light of those amalgamations of factors." Vance, 440 U.S. at 109. Accepting Plaintiff's contentions that similarly situated air traffic controllers will be permitted to work past age 56, this is a result of their classification under FERS. Even if the classification under CSRS or FERS is underinclusive or overinclusive, "perfection is by no means required." Id. at 108. As the Supreme Court has explained,

> The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted. Thus, we will not overturn such a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational.

Vance, 440 U.S. at 97.

Moreover, as stated before, Plaintiff's basis for claiming discrimination is that FERS permits rehired PATCOs to work past age 56 and accumulate 20 years of service while he must retire at age 56 under CSRS. The mandatory separation statute under FERS

states that an ATC "shall be separated from service on the last day of the month in which that air traffic controller becomes 56 years of age or completes 20 years of service if then over that age." 5 U.S.C. § 8425(a). It is of interest to note that even if Plaintiff were covered by FERS, he would be nevertheless forced to retire at age 56, since it is undisputed that Plaintiff has accumulated over 24 years of service as an ATC.

In light of the extraordinary deferential standard, and the legitimacy of Congress's methods and objectives, this Court finds there is no genuine issue of material fact for trial and Defendant Slater is entitled to judgment as a matter of law. Therefore, the Court will enter judgment in favor of Defendant Slater and against Plaintiff on the Equal Protection claim in Count III.

Count IV

Plaintiff contends that FAA administrator Garvey violated Plaintiff's Due Process rights by refusing to forward his waiver request to the Secretary of DOT.

As the analysis in Count III states, the Court has already determined that Plaintiff has failed to articulate a property interest in federal employment and thus the Due Process clause does not apply to Plaintiff's mandatory retirement. This Court further concluded that even if the Due Process Clause applies to

Plaintiff's mandatory retirement, the failure to provide detailed instructions about the waiver process, and the subsequent denial of a waiver did not offend Due Process. Because there is no genuine issue of material fact for trial, and Defendants are entitled to judgment as a matter of law, the Court will enter judgment in favor of Defendant Garvey and against Plaintiff on Count IV.

CONCLUSION

The Court has determined that Plaintiff has failed to demonstrate an genuine issue of material fact for trial, and that Defendants are entitled to judgment as a matter of law. The Court will enter judgment in favor of Defendants and against Plaintiff on all counts.

An appropriate Order follows.

IN THE UNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEAN DUNGAN	:	CIVIL ACTION
	:	NO. 99-CV-2376
v.	:	
	:	
RODNEY E. SLATER, Secretary,	:	
United States Dept. of	:	
Transportation, and	:	
JANE GARVEY, Administrator,	:	
United States Federal	:	
Aviation Administration	:	

ORDER

AND NOW, this 24th day of February, 2000; Defendants having filed a motion for summary judgment; Plaintiff having opposed; for the reasons stated in the memorandum filed on this date;

IT IS ORDERED:

1. Defendants' motion for summary judgment (docket no. 8) is **GRANTED** as to all counts.

2. Judgment is entered in **FAVOR** of Defendants and **AGAINST** Plaintiff on all counts of the complaint.

3. The Clerk shall mark this case **CLOSED.**

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RAYMOND J. BRODERICK, J.