IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	*	
Plaintiff	*	**CIVIL No. 1:11-cv-02766-JKB**
v.	*	
MORNINGSIDE HOUSE OF ELLICOTT CITY, LLC.,	*	
Defendant	*	

* * * * * * * * * * * *

MEMORANDUM
&
ORDER

The United States Equal Employment Opportunity Commission ("EEOC" or "Plaintiff") brought this suit against Morningside House of Ellicott City, LLC ("Defendant") for alleged employment discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5(f)(1) and (3) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. 1981a. Now pending before the Court is Plaintiff's Motion for Leave to File Amended Complaint (ECF No. 17). The issues have been briefed and no oral argument is required. Local Rule 105.6. For the reasons explained below, Plaintiff's motion is DENIED.

I. BACKGROUND

The Charging Party in this case is Ms. Khadijah Salim, a Muslim woman. The Defendant, Morningside House of Ellicott City, is an assisted-living facility doing business in Ellicott City, Maryland. On June 8, 2010, Ms. Salim visited Defendant's facility to inquire about

a Certified Nursing Assistant ("CNA") position that she had seen advertised on the internet. While there, she filled out an application for the position and met with Defendant's Director of Health and Wellness. According to the complaint, the Director told Ms. Salim that she was worried that her hijab (headscarf) might frighten some of the elderly patients who suffered from dementia and asked whether she would be willing to take it off. Ms. Salim allegedly replied that she had always worn a hijab during her training and work as a nurse and that it had never been a problem, even with elderly patients. The Director told Ms. Salim that someone would contact her if Defendant decided to hire her for the job. When Ms. Salim did not hear back from Defendant within a month, she filed a charge of religious discrimination with the Maryland Commission on Human Relations. On September 26, 2011, Plaintiff filed this suit, seeking injunctive relief and money damages for Defendant's alleged discrimination against Ms. Salim.

During discovery, Defendant's answers to certain of Plaintiff's interrogatories revealed that in September of 2010, it interviewed and hired ten applicants for CNA positions, but that it did not consider Ms. Salim's application because she had already filed her charge of discrimination at that time. In Defendant's own words:

> By September of 2010, when Morningside House of Ellicott City had openings for CNA positions, Ms. Salim had already filed and was actively prosecuting a Charge of Discrimination against Morningside House of Ellicott City. As a result, Defendant reasonably believed that Ms. Salim had no interest in working for the facility and did not consider her application or otherwise call her for an interview.

(Pl.'s Mot. Leave to Amend at 2, ECF No. 17-1). In view of this statement, Plaintiff now seeks leave to file an amended complaint in order to add a count of retaliation.

II. LEGAL STANDARD

Once the deadline for the amendment of pleadings provided in a court's scheduling order has passed, a plaintiff must show "good cause" before she can obtain leave to file an amended

complaint. *See* FED. R. CIV. P. 16(b); *Nourison Rug Corp. v. Parvizian*, 535 F.3d 295, 298 (4th Cir. 2008). In determining whether "good cause" exists, a court must consider the "danger of prejudice to the non-moving party, the length of delay and its potential impact on judicial proceedings, the reason for the delay, and whether the movant acted in good faith." *Tawwaab v. Virginia Linen Service, Inc.*, 729 F.Supp.2d 757,768-69 (D. Md. 2010) (internal quotation marks and citation omitted). Importantly, "good cause" generally exists where at least some of the evidence necessary to prove the plaintiff's claim did not come to light until after the amendment deadline; however, leave to amend will be denied if the plaintiff cannot account, to the court's satisfaction, for his failure to discover the evidence earlier, or if that failure was the result of carelessness. *Id.* (citing *In re Lone Star Indus., Inc. Concrete R.R. Cross Ties Litig.*, 19 F.3d 1429 (Table) (4th Cir. 1994); *Whichard v. Specialty Restaurants Corp.*, 220 F.R.D. 439, 441 (D. Md. 2004)).

If the plaintiff meets her burden of showing "good cause," then the court's inquiry shifts to the standard of Fed. R. Civ. P. 15(a)(2), which provides that leave to amend should be "freely give[n] where justice so requires." FED. R. CIV. P. 15(a)(2). A district court may still deny leave, however, if: (1) the new pleading would prejudice the opposing party; (2) the moving party has acted in bad faith; or, (3) the new pleading would be futile (*i.e.*, if it could not withstand a motion to dismiss). *Perkins v. U.S.*, 55 F.3d 910, 917 (1995); *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006). If a district court chooses to deny leave, it must give justifying reasons. *See id* (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

III. ANALYSIS

The scheduling order in this case (ECF No. 13) set the deadline for amendment of pleadings at January 17, 2012. Since that deadline has passed, Plaintiff must show that good

cause exists to modify the scheduling order before it can obtain leave to amend its complaint. The Court finds that Plaintiff has not met this burden.

To show good cause, Plaintiff must persuade the court that it has acted diligently in developing its claims and that it could not reasonably have pled a claim of retaliation prior to the amendment deadline. Although Plaintiff insists, in a conclusory fashion, that it could not have pled such a claim before it received Defendant's interrogatory answer regarding its decision not to contact Ms. Salim about an open CNA position, it offers no explanation of why this was the case. This conclusory assertion does not satisfy Plaintiff's burden. On the contrary, based on the record presented to the Court in this motion, it appears that Plaintiff almost certainly could have pled retaliation in its original complaint.

To state a claim of retaliation under Title VII, a plaintiff must plead that: "(1) she engaged in a protected activity, (2) the employer acted adversely against her, and (3) there was a causal connection between the protected activity the asserted adverse action. *See Hoyle v. Freightliner, LLC*, 650 F.3d 321, 337 (4th Cir. 2011) (citation omitted). It is beyond dispute that Ms. Salim's initial charge of discrimination constituted a protected activity that was known to Plaintiff when it filed the original complaint in this case. Furthermore, as Defendant points out, Plaintiff conducted an eight-month investigation of that charge prior to filing this suit. The Court easily finds that any diligent investigation of Ms. Salim's charge would have revealed that Defendant interviewed and hired several candidates for CNA positions shortly after the charge was filed, and that Ms. Salim was not among them. Therefore, Plaintiff either knew or should have known of the alleged adverse employment action by the time it filed the complaint in this case. Finally, the mere proximity in time between the filing of the charge and Defendant's decision to hire other candidates would likely have been enough to plead a causal connection.

See Tinsely v. First Nat'l. Union Bank, 155 F.3d 435, 443 (4th Cir. 1998) ("Normally, very little evidence of a causal connection is required to establish a *prima facie* case. In fact, we have held that merely the closeness in time between the filing of a discrimination charge and an employer's firing an employee is sufficient . . . .") (citations omitted) (overruled on other grounds).

For these reasons, the Court finds that Plaintiff likely could have pled its proposed retaliation charge in the original complaint, and that it almost certainly could have done so before the January 17 amendment deadline. Thus, because Plaintiff offers no explanation for why it did not raise this claim within the time allowed,[1] the Court must conclude that no good cause exists to modify the scheduling order. *See Whichard v. Specialty Restaurants Corp.*, 220 F.R.D. 439, 441 (D. Md. 2004) (finding no good cause to modify scheduling order where plaintiffs sought leave to amend the complaint to add a claim based on information they could easily have found prior to filing suit). It is therefore unnecessary to consider the parties' arguments with respect to bad faith, prejudice, or futility.

IV. ORDER

Accordingly, it is ORDERED that Plaintiff's Motion for Leave to File Amended Complaint (ECF No. 17) is DENIED.

Dated this 9th day of May, 2012

BY THE COURT:

/s/
James K. Bredar
United States District Judge

[1] Plaintiff's only response to this point is to argue, in a footnote, that EEOC determinations, and the investigations that support them, are not subject to judicial review. This argument is very wide of the mark. The Court's decision on this issue does not, in any sense, constitute a "review" the legal sufficiency of the EEOC's administrative actions. Rather, what the Court is "reviewing" is Plaintiff's attempt to meet its burden of showing that it could not have raised a claim of retaliation within the time allowed in the scheduling order. That a satisfactory explanation would necessarily involve an account of the EEOC's investigation of Ms. Salim's discrimination charge is of no moment.