IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

GARRISON LASSITER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	19cv1258
	)	
THE CINCINNATI REDS, LLC,	)	
	)	
Defendant.	)	

MEMORANDUM ORDER

THOMAS D. SCHROEDER, Chief District Judge.

This is an action by Plaintiff Garrison Lassiter, proceeding *pro se*, alleging that The Cincinnati Reds, LLC ("the Reds") discriminated against him on the basis of age by not allowing him to participate in tryouts for its Major League Baseball team on three separate occasions. Before the court is the Reds's motion to dismiss the complaint for failure to state claim upon which relief can be granted. (Doc. 6.) For the reasons set forth below, the motion will be granted and the complaint will be dismissed.

Lassiter's complaint alleges that he attempted to take part in tryouts held by the Reds in 2017, 2018, and 2019, but he was "turned away" each time due to "Age Preferring"; that is, he was not allowed to participate because he was "too [o]ld."[1] (Id. at 6.) Attached to his complaint are the Tryout Camps schedules for

[1] This is Lassiter's second employment lawsuit against a Major League Baseball team. See Lassiter v. N.Y. Yankees P'ship, No. 1:18-cv-1029, 2019 WL 2210803 (M.D.N.C. May 22, 2019).

each of the years he attempted to participate, that state that participants must be "between the ages of 16 and 22." (Id. at 14–17.) He also attached a picture of the information card he provided to the Reds before one of his attempted tryouts showing his date of birth as December 22, 1989. (Id. at 47.) Thus, he was 30 years old when he filed this suit (and was 27, 28, and 29 when he attempted to tryout with the Reds). Lassiter argues that the Reds' refusal to allow him to tryout is evidence of age preference and that he is owed $1,635,000 in damages –- the equivalent of three years' minimum salary for Major League Baseball players.

The Reds move to dismiss the complaint pursuant to Rule 12(b)(6), arguing that Lassiter's claim for "Age Preferring" fails to state a claim. (Doc. 7 at 3.) In the alternative, the Reds argue that, even construed as an age discrimination claim under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. ("ADEA"), or state law, Lassiter's claim fails because Lassiter fails to fall with the protected class defined by those laws. (Id. at 5.)

After the Reds filed the instant motion to dismiss, the court issued Lassiter a Roseboro notice,[2] indicating that Lassiter had a right to file a 20-page response (Doc. 8), but Lassiter has not

[2] See Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975) (per curiam).

done so and the time to file a response has since expired. The Reds's motion is thus ripe for decision.

Under Federal Rule of Civil Procedure 12(b)(6), "a complaint must contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (citing Twombly, 550 U.S. at 556). In considering the motion, a court "must accept as true all of the factual allegations contained in the complaint," Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam), and all reasonable inferences must be drawn in the plaintiff's favor. Ibarra v. United States, 120 F.3d 472, 474 (4th Cir. 1997). Mere legal conclusions are not accepted as true, however, and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678.

Lassiter proceeds *pro se*. "A federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case." Hall-El v. United States, No. 1:11CV1037, 2013 WL 1346621, *2 (M.D.N.C. Apr. 3, 2013) (citing Erickson, 551 U.S. at 94). Pleadings "should not be scrutinized with such technical nicety that a meritorious

claim should be defeated." Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978). But while the court must construe the complaint liberally, it is not obliged to become an advocate for the unrepresented party, Weller v. Dep't of Soc. Servs., 901 F.2d 387, 391 (4th Cir. 1990), or "to construct full blown claims from sentence fragments." Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985).

Even though the motion to dismiss is unopposed and the court's local rules provide it can ordinarily be granted on that basis, see Local Rule 7.3(k), the court nevertheless must satisfy itself that the motion is merited. Gardendance, Inc. v. Woodstock Copperworks, Ltd., 230 F.R.D. 438, 448 (M.D.N.C. 2005).

Lassiter does not explicitly state a cause of action in his complaint, but because he has made clear that he believes the Reds refused to allow him to participate in tryouts because of his age, the court will construe his complaint as an age discrimination claim under the ADEA. See, e.g., Zombro v. Baltimore City Police Dep't, 868 F.2d 1364, 1369 (4th Cir. 1989) (concluding that "the ADEA provides the exclusive judicial remedy for claims of age discrimination").

Any age discrimination claim alleged by Lassiter necessarily fails. "The ADEA prohibits employers from refusing to hire . . . any person who is at least 40 years of age 'because of' the person's age." E.E.O.C. v. Baltimore Cty., 747 F.3d 267, 272 (4th Cir.

2014) (citing 29 U.S.C. §§ 623(a)(1), 631(a)). As noted above, Lassiter is currently 30 years old. Thus, he does not fall within the protections of the ADEA and cannot maintain such a claim. The same is true for an age discrimination claim under state law,[3] as a claim for wrongful discharge in violation of North Carolina public policy on the basis of age applies the standard set out in the ADEA. Smith v. Premier Prop. Mgmt., 793 F. App'x 176, 177 n.1 (4th Cir. 2019) (per curiam) (citing Rishel v. Nationwide Mut. Ins. Co., 297 F. Supp. 2d 854, 875 (M.D.N.C. 2003)); see also Robinson v. Ladd Furniture, Inc., 872 F. Supp. 248, 253 (M.D.N.C. 1994) (noting that the North Carolina Supreme Court has directed lower courts "to follow the principles established in federal discrimination cases" when deciding claims for wrongful

[3] Lassiter does not allege the law of any state, so the court analyzes the claim under the law of the forum state, North Carolina. Even applying the law in the state where Lassiter was not allowed to tryout (and therefore suffered harm), his claims would still fail. See Boudreau v. Baughman, 368 S.E.2d 849, 853–54 (N.C. 1988) (recognizing that North Carolina adheres to lex loci choice of law principles). According to the complaint, Lassiter first attempted to try out for the Reds in Ohio in 2017. (Doc. 1 at 6.) Ohio's age discrimination law only applies to hose 40 and older, see Ohio Rev. Code Ann § 4112.14(A), so Lassiter's claim would fail. Lassiter does not state where he tried out in 2018 and 2019, but the Reds' tryout schedules attached to the complaint for those years indicate that tryouts took place in Ohio and Illinois. (Doc. 1 at 14–15.) An age discrimination claim in Illinois likewise only applies to those 40 and older. See 775 Ill. Comp. Stat. 5/1-102 (declaring the public policy of the state that individuals may be free from discrimination because of age); 775 Ill. Comp. Stat. 5/1-103 (defining "age" to reference "a person who is at least 40 years old").

termination in violation of North Carolina public policy).[4] Thus, any age discrimination claim alleged by Lassiter fails and will be dismissed.

The Reds seek dismissal of Lassiter's claim with prejudice, arguing that any attempt by Lassiter to overcome the deficiencies in his complaint would be futile because he was not 40 years old when he attempted to participate in the Reds' tryouts. (Doc. 7 at 6–7.) To the extent that Lassiter's complaint can be construed as making age discrimination claims under federal and state law, the court agrees; such claims will be dismissed with prejudice.

IT IS THEREFORE ORDERED that the Reds' 12(b)(6) motion to dismiss for failure to state a claim (Doc. 6) is GRANTED, and Lassiter's complaint, construed as seeking age discrimination claims under federal and state law, is DISMISSED WITH PREJUDICE.

/s/ Thomas D. Schroeder
United States District Judge

March 20, 2020

[4] The court need not reach the Reds' alternative argument that Lassiter's complaint should be dismissed because he failed to exhaust his administrative remedies under the ADEA.