IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

NANCY BALAZADEH,

Plaintiff,

v. NO. 2:97CV234-S-B

RUST COLLEGE,

Defendant.

OPINION

In this case, plaintiff charges defendant with employment discrimination under the Americans with Disabilities Act and Title VII. Presently before the court is defendant's motion to dismiss under Fed. R. Civ. P. 4(m) for failure to timely serve process.

Plaintiff filed this action on November 18, 1997, the final day for filing this suit. Service was not effected, however, until May 12, 1998, seven days after the Clerk's notice of incomplete process was issued and nearly two months beyond the 120-day time limit in Rule 4(m). Defendant maintains that plaintiff cannot show good cause for her failure to timely serve process and that the court should not exercise its discretion in favor of extending the service period. In response, plaintiff's counsel, Honorable Ronald W. Lewis, cites a breakdown in office procedure as the principle cause for the failure. Specifically, he notes: The complaint was drafted by co-counsel, Honorable Lisa S. Rohman, in her Tupelo office and hand delivered to the court for filing on November 18. Because of the deadline, Ms. Rohman did not prepare a waiver of service form at that time and requested Mr. Lewis to handle the waiver request. Mr. Lewis then immediately left for an

extended visit with his daughter. Upon his return, he "overlooked the need to instruct my staff to forward a request for waiver to the defendant." Mr. Lewis' key employee, Mary Deaton, then gave her two-week notice, and he was unable to replace her until the middle of January, 1998. With the departure of Ms. Deaton, Lewis' "office routines broke down." Furthermore, because the work file was in Ms. Rohman's office, Mr. Lewis did not review the file during this time period and thus did not catch the service problem. At the same time, Ms. Rohman was not aware of the service problem because Mr. Lewis had told her he would attend to the matter. Ms. Deaton's replacement then unexpectedly left, and Ms. Deaton returned to an office where "routine record keeping was in shambles." Mr. Lewis did not learn of the service failure until Ms. Rohman advised him after her receipt of the Clerk's notice.

Under Rule 4(m), when a plaintiff fails to serve a defendant within the 120-day period, the court may either "dismiss the action without prejudice...or direct that service be effected within a specified time." Fed. R. Civ. P. 4(m). "If good cause is present, the district court must extend time for service. If good cause does not exist, the court may, in its discretion, decide whether to dismiss the case without prejudice or extend time for service." *Thompson v. Brown*, 91 F.3d 20, 21 (5th Cir. 1996). "Good cause" requires

> at least as much as would be required to show excusable neglect, as to which simple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice, and some showing of "good faith on the part of the party seeking an enlargement and some reasonable basis for noncompliance within the time specified" is normally required.

Lambert v. United States, 44 F.3d 296, 299 (5th Cir. 1995) (citation omitted). Nevertheless, the "plain language of rule 4(m) broadens a district court's discretion by allowing it to extend the time for service even when a plaintiff fails to show good cause." *Thompson*, 91 F.3d at 21.

Under the facts of this case, the court cannot find good cause exists for allowing additional time for service of process. In this court's view, the facts outlined by Mr. Lewis constitute inadvertence and mistake which, under *Lambert*, are not sufficient for good cause. The court chooses, however, to exercise its discretion in favor of allowing the additional time for service. It reaches this conclusion for several reasons. First, it is clear from the facts that plaintiff is not personally responsible for the delay; yet, she will suffer the consequences, including a possible statute of limitations problem, if the court dismisses this action. *Cf. Peters v. United States*, 9 F.3d 344, 346 (5th Cir. 1993) (inability to refile suit does not constitute good cause). Second, nothing suggests that counsel, who are experienced in federal court practice, intentionally delayed serving process. Without dispute, counsel experienced a series of converging events, including time constraints, vacation, and staff changes, which resulted in the oversight. Finally, defendant has not been prejudiced by the delay in service of process. Any prejudice which may have resulted can be cured by placing this matter upon an expedited track if defendant so desires. That possibility should be raised with the magistrate judge at the case management conference.

Therefore, having carefully considered the matter, the court finds that defendant's motion to dismiss is not well taken and is denied. An appropriate order shall issue.

This _____ day of September, 1998.

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SENIOR JUDGE