

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS**

**Richard V. Bailey,**

**Plaintiff,**

v.

**Case No. 12-2101-JWL**

**Advantage Metals Recycling, LLC,**

**Defendant.**

**MEMORANDUM AND ORDER**

After defendant terminated his employment, plaintiff filed a two-count petition in state court alleging violations of Title VII of the Civil Rights Act of 1964 and wrongful discharge under state law. Defendant removed the action to federal court and has now moved to dismiss plaintiff's petition in its entirety based on Federal Rule of Civil Procedure 12(b)(6). As will be explained, the motion is granted in part and denied in part and the court will permit plaintiff to amend his complaint no later than May 9, 2012.

Plaintiff's petition alleges that defendant discriminated against him because of his age in violation of Title VII of the Civil Rights Act of 1964. As noted by defendant in its motion to dismiss, Title VII does not prohibit age discrimination and plaintiff's petition does not allege any facts that would support a violation of Title VII. Plaintiff acknowledges as much in his response and seeks to file an amended complaint to change the Title VII references to ADEA references. Finding no prejudice to defendant, the court will permit this amendment.

Plaintiff's second count alleges that he was wrongfully discharged without just cause. Defendant moves to dismiss this claim on the grounds that Kansas is an employment-at-will state

such that just cause is not required for discharge in Kansas. In response, plaintiff concedes that he has failed to state a claim under Kansas law and agrees to abandon this claim. Plaintiff, then, is directed to remove this claim when he files his amended complaint.

**IT IS THEREFORE ORDERED BY THE COURT THAT** defendant's motion to dismiss (doc. 4) is granted in part and denied in part. Plaintiff shall file an amended complaint consistent with this order no later than May 9, 2012.

**IT IS SO ORDERED.**

Dated this 19<sup>th</sup> day of April, 2012, at Kansas City, Kansas.

s/ John W. Lungstrum  
John W. Lungstrum  
United States District Judge