

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

RAYNITA A. CASSIDY, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
WILLIAM J. HENDERSON, :
Defendant. : NO. 99-CV-1209

MEMORANDUM & ORDER

J.M. KELLY, J.

MAY , 2000

Presently before the Court is a Motion to Dismiss, or in the alternative for Summary Judgment, filed by Defendant, William J. Henderson, and a Motion for Summary Judgment¹ filed by Plaintiff, Raynita A. Cassidy ("Cassidy"). As Cassidy's Motion fails to meet the stringent evidentiary requirements that would be necessary for a plaintiff to prevail on a motion for summary judgment, the Court shall deny Cassidy's Motion for Summary Judgment.² Cassidy's Motion appears, however, to be a response to Defendant's Motion. Therefore, the Court shall deem her Motion to be a Response in opposition to Defendant's Motion.

I. BACKGROUND

¹Cassidy's Motion also requests, in the alternative, a trial by jury. By previous Order, the Court granted this unopposed request.

²To be successful on a motion for summary judgment, a party must prove "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). Therefore, for a plaintiff to prevail on a motion for summary judgment, a plaintiff must present uncontradicted, persuasive evidence to support every element of its case. Cassidy has not met this burden.

Cassidy filed a pro se complaint pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-2000e-17 (1994) ("Title VII"), alleging that she was sexually harassed, retaliated against while employed by the United States Postal Service ("Postal Service"). She also alleges she was not provided with reasonable accommodation for her disability while employed by the Postal Service, in violation of the Rehabilitation Act, 29 U.S.C. § 794. Viewing Cassidy's Complaint liberally in light of her pro se status it appears that she alleges: (1) a co-worker harassed her and was disciplined, forming the basis of her sexual harassment claim; (2) the co-worker then was returned to her work station and she was sent to a different and inappropriate work station, forming the basis for her retaliation claim; and (3) while assigned to different and inappropriate work stations, a previous shoulder injury was re-aggravated, forming the basis for her disability discrimination claim.

II. DISCUSSION

A. Motion to Dismiss

In considering whether to dismiss a complaint for failing to state a claim upon which relief can be granted, the court must consider only those facts alleged in the complaint and must accept those facts as true. Hishon v. King & Spalding, 467 U.S. 69, 73 (1983). Moreover, the complaint is viewed in the light most favorable to the plaintiff. Tunnell v. Wiley, 514 F.2d 971, 975 n.6 (3d Cir. 1975). In addition to these expansive parameters, the threshold a plaintiff must meet to satisfy pleading requirements is exceedingly low; a court may dismiss a complaint only if the plaintiff can prove no set of facts that would entitle him or her to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

Review of the Plaintiff's Complaint indicates that it is sufficient to put Defendant on notice that Cassidy claims she was sexually harassed by a co-worker; she was retaliated against for alleging sexual harassment; and the Postal Service failed to make reasonable accommodations for her disability. Even though Cassidy has failed to set forth a jurisdictional statement in her Complaint, the Court is satisfied that Defendant has been put on notice that jurisdiction in this case is based upon Defendant's status as a federal employer and arises under § 2000e-16 of Title VII and the Rehabilitation Act. Defendant makes much of

Cassidy's statement that Defendant was negligent in responding to her sexual harassment claim. While, as Defendant argues, there is not an independent cause of action for negligent response to a complaint, the Court believes this can be read as part of Cassidy's retaliation claim. Defendant also claims that Cassidy, as a civil rights plaintiff, must meet a heightened factual pleading standard. While this was formerly a rule of civil rights pleading in the Third Circuit, a heightened pleading standard in civil rights cases has been specifically rejected. See Leatherman v. Tarrant Co. Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 168 (1993). The causes of action where a heightened pleading standard are required are specifically set forth in Federal Rule of Civil Procedure 9(b); all other causes of action are subject to the liberal pleading standard of Rule 8(a). See id.

The remaining issues argued by Defendant address questions of the timeliness of Cassidy's exhaustion of her administrative remedies. In Title VII cases, such "timeliness of exhaustion requirements are best resolved under Rule 12(b)(6)." Robinson v. Dalton, 107 F.3d 1018, 1022 (3d Cir. 1997). In this case, determination of the timeliness of exhaustion issues requires consideration of matters beyond the pleadings. Therefore, this issue shall be considered as a motion for summary judgment. See Fed. R. Civ. P. 12(b).

B. Summary Judgment

Summary judgment "shall be rendered forthwith 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). This court is required, in resolving a motion for summary judgment pursuant to Rule 56, to determine whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In making this determination, the evidence of the nonmoving party is to be believed, and the district court must draw all reasonable inferences in the nonmovant's favor. See id. at 255. Furthermore, while the movant bears the initial responsibility of informing the court of the basis for its motion and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact, Rule 56(c) requires the entry of summary judgment "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

A federal employee that claims employment discrimination

must follow the administrative procedures set forth in Title 29 of the Code of Federal Regulations at Part 1614. An employee must contact an Equal Employment Opportunity Commission ("EEOC") counselor with forty-five days of the alleged discrimination for informal pre-complaint counseling. 29 C.F.R. § 1614.105(a) (1996). If informal counseling is unsuccessful, the employee must file a formal complaint with the agency within fifteen days of receiving a Notice of Final Interview. Id. § 1614.106(b). After the agency issues a final decision, the employee has ninety days to file suit in federal court. Id. § 1614.108.

Cassidy alleges that she was deceived as to the EEOC procedures that she was required to follow and therefore should not be subject to pre-complaint processing time limits. See id. § 1614.105(a)(2). She attaches, as evidence, a portion of a document which appears to announce a campaign by the Postal Service to address the issue of sexual harassment in the workplace. Pl.'s Mot. for Summ. J., Ex. 1. There is nothing about this document that indicates that it either sets forth an employee's legal rights or is intended to hide an employee's legal rights. Therefore, there is no basis upon which to find that Cassidy is not subject to the appropriate pre-complaint processing deadlines.

Cassidy filed a Complaint with the EEOC dated June 2, 1996. The EEOC Complaint specifically charges discrimination based upon

race and sex, but not disability. Def.'s Mot. For Summ. J., Ex. 4. Accordingly, Cassidy has waived her claims for disability discrimination by failing to exhaust her administrative remedies. 29 C.F.R. § 1614.105.

Cassidy alleges that she was sexually harassed by a co-worker in June and July of 1995. Cassidy in fact reported this harassment to her supervisors and the co-worker was suspended for seven months. In March of 1996, the co-worker returned to the same station as Cassidy. Cassidy refused to work with the co-worker and was transferred to a number of different stations. Cassidy's allegation of sexual harassment by the co-worker was not taken to an EEOC counselor until after the co-worker was returned to her work station in March of 1996. Cassidy's harassment claim must therefore fail for failure to timely initiate contact with an EEOC counselor, unless the harassment was part of a continuing violation. A continuing violation of Title VII occurs when ongoing violations form a pattern of discrimination that does not have a discernable end. It does not occur when past isolated instances of discrimination were concluded in the past. See Delaware State College v. Ricks, 449 U.S. 250, 258 (1980). Accordingly, harassment of Cassidy that had a distinctive termination, following the complaint about the harassment, cannot be the basis for a continuing violation of Title VII. Summary judgment will be granted as to her claim of

sexual harassment.

Regarding Cassidy's retaliation claim, Defendant does not dispute that it was timely filed. The alleged retaliation took place in March of 1996 and an EEOC counselor was contacted within forty-five days. Defendant has not set forth a basis for a lack of material facts on this claim.

III. CONCLUSION

Cassidy's Complaint indicates that she has sufficiently alleged claims of sexual harassment, retaliation for engaging in a protected activity and failure to make reasonable accommodation for her disability to put Defendant on notice of these claims under Title VII. Her failure to exhaust her administrative remedies, however, requires that Defendant's Motion for Summary Judgment be granted as to her sexual harassment and disability discrimination claims. Cassidy's retaliation claim survives Defendant's Motion.

4. The Alternative Motion for Summary Judgment of Henderson is DENIED IN PART as to Cassidy's retaliation claim.

BY THE COURT:

JAMES MCGIRR KELLY, J.