

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

MARTIN LOZADA,	:	
	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	NO. 00-4081
	:	
THE READING HOSPITAL AND MEDICAL	:	
CENTER,	:	
	:	
Defendant.	:	

MEMORANDUM

ROBERT F. KELLY, J. APRIL 27, 2001

Presently before this Court are a Motion to Dismiss for Lack of Jurisdiction and a Motion for Summary Judgment filed by the Defendant, The Reading Hospital and Medical Center ("RHMC") of the claims against it by Martin Lozada ("Mr. Lozada"), a former employee.¹ For the reasons that follow, the Motion to Dismiss is denied and the Motion for Summary Judgment is granted.

I. BACKGROUND.

Mr. Lozada is a native of Puerto Rico currently residing in Reading, Pennsylvania. He was hired by RHMC in January, 1992, as a laundry worker. (Compl., ¶ 5.) On that date, Mr. Lozada acknowledged his awareness that RHMC's personnel policies applied to him and his requirement to comply with those policies as a condition of his employment. While working at RHMC

¹Mr. Lozada uses the proper name Martin, a shortened form of Martincito, in this lawsuit.

in a maintenance capacity, specifically as a trash collector, Mr. Lozada received written and verbal warnings from management regarding his performance.² On January 2, 1997, Mr. Lozada met with Robert Myers, RHMC's Human Resources Manager, during which Mr. Myers informed Mr. Lozada that he was required to follow the directions of his supervisor. (Def.'s Undisputed Material Facts, Tab A, Ex. 1.) Mr. Lozada was transferred to a mop and buff cleaning detail after the meeting. (Id., Tab A at 2, ¶ 6.)

Following his transfer, Mr. Lozada's disciplinary record was reset and his transfer was treated as a fresh start through the disciplinary process.³ (Id., Tab A at 2, ¶ 7.) After Mr.

²The warnings received by Mr. Lozada include the following: (1) a first warning, issued by Dorinda Kloepfer and dated October 21, 1994, for poor performance for mixing infectious waste trash with regular municipal waste trash (Def.'s Undisputed Material Facts, Tab A, Ex. 1); (2) a "First Notice of Warning or Suspension" issued by Scott Sulzer and received and signed by Mr. Lozada on December 8, 1994, for poor performance for not removing all of the trash from his assigned areas (Id.); (3) a "Second Warning" issued by Mary Bender which Mr. Lozada received but refused to sign on August 17, 1995, for poor performance for not removing trash from his assigned areas (Id.); (4) a "Second Warning" issued by Mary Bender on December 26, 1996, for poor performance for not removing trash from his assigned areas and for leaving blood waste on the floors (Id.); (5) a "Final Warning" issued by Mary Bender on December 29, 1996, which Mr. Lozada received but refused to sign for poor performance for not picking up trash as requested by his supervisor and for failing to pick up the trash in his assigned area. (Id.)

³Mr. Lozada also received verbal and written warnings after his transfer to the mop and buff assignment, including: (1) a June 6, 1997 "First Warning" issued by Linda Suglia for poor performance, specifically for failure to clean assigned stairwells (Def.'s Undisputed Material Facts, Tab A, Ex. 1); (2) an October 17, 1997 "Second Warning" issued by Perry Rosado for

Lozada failed to adequately perform that assignment, he met with Mr. Myers on March 17, 1998, and was informed by Mr. Myers that he would be suspended if his performance did not improve. (Id., Tab A, Ex. 1.) On June 29, 1998, Mr. Lozada received a "Notice of Suspension" issued by Scott Sulzer for poor performance, specifically for failure to clean his assigned stairwells. (Id.) Mr. Lozada was never suspended. (Id., Tab A at 2, ¶ 9.)

Following a July 29, 1998 meeting with Mr. Myers, Mr. Lozada was placed on probation for six months and he understood that failure to overcome his job performance deficiencies within that probationary period would result in his termination. (Id., Tab A, Ex. 1; M. Lozada Dep. at 121-122.) While on probation, he did not maintain a consistent level of acceptable performance.⁴

poor performance when he failed to clean assigned stairwells (Id.); (3) a March 9, 1998 "Final Warning" issued by Perry Rosado for poor performance, specifically for failure to clean his assigned stairwells, which Mr. Lozada received but refused to sign. (Id.)

⁴Mr. Lozada received six probationary performance evaluations issued by Perry Rosado, his supervisor who is also Hispanic. (Def.'s Undisputed Material Facts, Tab A, Ex. 1.) The first, received by Mr. Lozada on September 9, 1998, contained the note that his "performance in his vacuuming, dusting, polishing and finishing his duties has gone down dramatically" and he "has many areas that need improving, but it seems that his major problem is following orders given by supervisors. Even with structure, training and one on one talks employee still seems to do what he wants to do." (Id.) The second evaluation signed by Mr. Lozada on October 3, 1998, stated "[f]or his second probation appraisal little improvement was observed." (Id.) In a November 5, 1998 probationary performance appraisal, Mr. Rosado noted that "[i]nspections in the C and E stairwell on October 15, 18 and 20 still indicate that dust levels on horizontal surfaces are

On February 15, 1999, Mr. Lozada met with Mr. Myers to discuss his probationary performance. (Id., Tab A, Ex. 1.) At that meeting, Mr. Lozada disputed that he showed no improvement. (Id.) Despite Mr. Lozada's claim, Mr. Myers placed him on suspension until he could speak with the department head, Mr. Sulzer. (Id.) From February 15, 1999 through February 22, 1999, Mr. Myers investigated whether Perry Rosado, his Hispanic supervisor, lied in his probationary performance evaluations of Mr. Lozada and treated Mr. Lozada differently. (Id.) From this investigation, Mr. Myers determined that Mr. Lozada's claim was without merit. (Id.) On February 22, 1999, therefore, Mr. Myers met with Mr. Lozada and terminated him for unsatisfactory performance based on his unsuccessful completion of his probationary period. (Id.)

Mr. Lozada thereafter filed a Complaint with the Pennsylvania Human Relations Commission ("PHRC"). On June 1, 2000, Mr. Lozada received a PHRC right-to-sue letter stating "because it has been one year since you filed your Complaint with

unacceptable. Dust on stair treads also indicates that Martin is not thoroughly dry mopping." (Id.) Similarly, in Mr. Lozada's December 9, 1998 evaluation, Mr. Rosado notes that "[i]nspections in corridors in non-patient areas on November 10th and 24th still indicate that the dust levels in his areas are unacceptable." (Id.) While the January 12, 1999 probationary evaluation noted some improvement, it identified deficiencies with Mr. Lozada's performance. (Id.) Finally, Mr. Lozada received and signed his final probationary period evaluation dated January 26, 1999, in which Mr. Rosado noted that he "has shown no improvement on his six month probation." (Id.)

the PHRC, you are entitled to go to state court." (Pl.'s Resp. Mot. Dismiss, Ex. A.) Mr. Lozada then commenced an action against RHMC in the Court of Common Pleas of Berks County, Pennsylvania on July 10, 2000, alleging race discrimination pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. sections 2000e-2000e-17 (1994), and the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. C.S.A. sections 951-963 (West 1991).⁵ At the time he filed his state court complaint, Mr. Lozada was acting pro se. On August 11, 2000, RHMC removed the action to this Court. Mr. Lozada subsequently retained counsel.

On February 21, 2001, RHMC filed a Motion to Dismiss for lack of subject matter jurisdiction because Mr. Lozada lacked an EEOC right-to-sue letter. At an April 19, 2001 hearing on the Motion to Dismiss, Plaintiff's counsel represented to the Court that the EEOC refused to issue a right-to-sue letter because litigation had commenced in this Court. Defense counsel agreed to assist Mr. Lozada's counsel in contacting the EEOC to investigate this matter. The EEOC's right-to-sue letter has now

⁵Mr. Lozada initially filed his discrimination claim with the Pennsylvania Human Relations Commission ("PHRC"). The timeliness of that filing is not disputed. As noted by RHMC, the legal analysis of a Title VII claim applies equally to a PHRA claim, therefore these claims will be addressed as though filed solely under Title VII. See Def.'s Mem. Law in Supp. Mot. Summ. J. at 1 n.1 (citing Taylor v. Phoenixville Sch. Dist., 184 F.3d 296 (3d Cir. 1999); Kelly v. Drexel Univ., 94 F.3d 102, 105 (3d Cir. 1996)).

been issued to Mr. Lozada and provided to this Court. Thus, the Motions are ripe for decision.

II. MOTION TO DISMISS.

Receipt of a right-to-sue letter is a statutory prerequisite to filing a Title VII suit in federal court. Gooding v. Warner-Lambert Co., 744 F.2d 354, 358 (3d Cir. 1984)(citations omitted); Tori v. Shark Info. Sys., No. 95-5171, 1995 WL 764578, at *2 (E.D. Pa. Dec. 18, 1995). Although this case was properly removed to this Court because Mr. Lozada's state court claims included a Title VII violation, RHMC moved for dismissal after it learned, through discovery, that Mr. Lozada was never issued an EEOC right-to-sue letter.⁶ Although Mr. Lozada had not received an EEOC right-to-sue letter at the time that RHMC filed its Motion to Dismiss, the EEOC subsequently issued a right-to-sue letter dated April 19, 2001 stating "the EEOC is closing its file on this charge for the following reason: The Commission has received notice that you have filed a lawsuit in federal and/or state court based on the issues raised in your charge." Once the right-to-sue letter was issued to Mr. Lozada by the EEOC, this Court obtained jurisdiction over his race

⁶Although Mr. Lozada pled receipt of an EEOC right-to-sue letter in his pro se state court complaint, he never received such letter. (Compl., ¶ 13.) However, Mr. Lozada received a PHRA right-to-sue letter which enabled him to file suit in state court. (Pl.'s Resp. Mot. Dismiss, Ex. A.) Mr. Lozada properly filed suit, therefore, on July 17, 2000 in the Court of Common Pleas of Berks County, Pennsylvania.

discrimination claim. Page v. ECC Mgmt. Servs., No. 97-2654, 1997 WL 762789, at *3 (E.D. Pa. Dec. 8, 1997). Accordingly, this Court has jurisdiction over this matter and RHMC's Motion to Dismiss for lack of jurisdiction is denied.

III. MOTION FOR SUMMARY JUDGMENT.

A. Standard.

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper "if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 325 (1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 249 (1986). A factual dispute is material only if it might affect the outcome of the suit under governing law. Id. at 248.

To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). The non-moving party also has the burden of producing evidence to establish, prima facie, each

element of its claim. Celotex, 477 U.S. at 322-23. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Id. at 322.

B. RHMC's Summary Judgment Motion.

Mr. Lozada, a Hispanic male, claims that he was intentionally discriminated against by RHMC on the basis of his race when he was fired from his maintenance position. In McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1979), the United States Supreme Court set forth the following requirements Mr. Lozada must prove in order to establish a prima facie case of race discrimination: (1) he belongs to a protected class; (2) he was qualified for and performed his job in a satisfactory manner; (3) he suffered an adverse employment action; and (4) similarly situated employees outside his protected class were treated more favorably than he was treated. Poli v. SEPTA, No. 97-6766, 1998 WL 405052, at *5 (E.D. Pa. Jul. 7, 1998)(citing McDonnell Douglas, 411 U.S. at 802 and Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1066 n.5 (3d Cir. 1996)).

In the event that Mr. Lozada can establish his prima facie case, the burden of production shifts to RHMC to articulate a legitimate non-discriminatory reason for its decision to terminate Mr. Lozada. Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994)(citing McDonnell Douglas, 411 U.S. at 802). RHMC can

satisfy its burden of production "by introducing evidence which, taken as true, would permit the conclusion that there was a non-discriminatory reason for the unfavorable employment decision." Id. (citation omitted). However, RHMC need not prove that its reason "actually motivated its behavior," because "throughout this burden-shifting paradigm the ultimate burden of proving intentional discrimination always rests with the plaintiff." Id. (citation omitted). If RHMC meets its burden, the burden of production "rebounds to . . . [Mr. Lozada], who must . . . [then] show by a preponderance of the evidence that [RHMC's] . . . explanation is pretextual (thus meeting [his] . . . burden of persuasion)." Id. In order to survive summary judgment, Mr. Lozada must show through admissible evidence that RHMC's articulated reason was not merely wrong, but that it was "so plainly wrong that it cannot have been . . . [RHMC's] real reason [for his termination]." Jones v. Sch. Dist. of Phila., 198 F.3d 403, 413 (3d Cir. 1999)(quoting Keller v. Orix Credit Alliance, Inc., 130 F.3d 1101, 1109 (3d Cir. 1997)).

RHMC's reason for Plaintiff's termination is inadequate performance of his job duties. RHMC argues that Mr. Lozada cannot establish that its legitimate, non-discriminatory reason for his termination, that he did not perform his job adequately, was a pretext for race discrimination. To meet his pretext burden, Mr. Lozada must point to some evidence from which a fact-

finder could reasonably either (1) disbelieve RHMC's articulated legitimate reason for his termination; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of RHMC's action in terminating Mr. Lozada. Fuentes, 32 F.3d at 764. Mr. Lozada must demonstrate "such weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in . . . [RHMC's] proffered legitimate reasons for its action that a reasonable factfinder could rationally find them 'unworthy of credence.'" Id. at 765 (citation omitted).

RHMC notes that the United States Court of Appeals for the Third Circuit ("Third Circuit") has stated that this Court's role in reviewing an employer's termination decision is circumscribed and "[t]he question is not whether the employer made the best, or even a sound, business decision; it is whether the real reason is discrimination." (Def.'s Mem. Law in Supp. Mot. Summ. J. at 4-5)(citing Keller, 130 F.3d at 1109 (quoting Carson v. Bethlehem Steel Corp., 82 F.3d 157, 159 (7th Cir. 1996))). Also noted by RHMC is the Third Circuit's statement that "an employee's own view of . . . [his] job performance, or a court's view of an employee's performance, is not at issue in an alleged discrimination case. What is significant is the perception of the decision maker." (Id. at 5)(quoting Johnson v. Penske Truck Leasing Co., 949 F. Supp. 1153, 1172 (D.N.J.

1996)(citing Brewer v. Quaker State Oil Ref. Corp., 72 F.3d 326, 331 (3d Cir. 1995)).

In the instant case, this Court assumes, arguendo, that Mr. Lozada can establish his prima facie discrimination case.⁷ RHMC's proffered legitimate, non-discriminatory reason for Mr. Lozada's termination is that he was not performing his job duties and he unsuccessfully completed his probationary period of employment. RHMC provides Mr. Lozada's entire personnel file, including all of his disciplinary warnings, to support this non-pretextual reason. See supra, section I at 2-4. Mr. Lozada, in arguing that RHMC's proffered reason was a pretext for discrimination, disputes the accuracy of the facts surrounding the claims of unsatisfactory job performance. Significantly, however, Mr. Lozada does not state how these facts are

⁷Mr. Lozada argues that, prior to being hired by RHMC in 1992, he applied for employment with RHMC in November, 1990, and on August 21, 1991, he filed a PHRC race discrimination complaint because he was not hired by RHMC. Mr. Lozada states that RHMC never wanted to employ him. (Pl.'s Mem. Law in Opp'n Mot. Summ. J. at 5.) He further claims that his wife, a white RHMC employee, was told by the personnel department in 1991 that her husband had not been selected for employment because his clothes were soiled and his English was not good enough if he had to answer the telephone. (Id. at 2.) Personnel also allegedly suggested that Mr. Lozada take an English course at the Hispanic Center and wear a sports shirt for any future interview. (Id.)

This apparent attempt by Mr. Lozada to show a discriminatory animus by RHMC against Hispanics is belied by RHMC's actual hire and employment of Mr. Lozada for over six years. Accordingly, this information is not relevant to Mr. Lozada's current discrimination claim based upon his termination, and will not be considered by this Court.

inaccurate. (Pl.'s Mem. Law in Opp'n Mot. Summ. J. at 3.)

Mr. Lozada notes that, although not dispositive of the Motion for Summary Judgment, he was awarded unemployment compensation after his termination. (Pl.'s Undisputed Material Facts at 2, ¶ 6.) This unemployment ruling is not entitled to preclusive effect in a Title VII federal action. See Gallo v. John Powell Chevrolet, Inc., 765 F. Supp. 198, 207-208 (M.D. Pa. 1991)(citing Univ. of Tenn. v. Elliott, 478 U.S. 788, 796 (1986)(holding Congress did not intend to give preclusive effect in Title VII cases to judicially unreviewed findings of a state agency); Jones v. Progress Lighting Corp., 595 F. Supp. 1031 (E.D. Pa. 1984)(holding state FEP decision not a bar to a Title VII action); Cf. Pittman v. LaFontaine, 756 F. Supp. 834, 844 (D.N.J. 1991)(holding an administrative agency determination of the New York State Division of Human Rights which was appealed and affirmed in all respects given preclusive effect)). Thus, Mr. Lozada's unemployment compensation award will not preclude a decision by this Court on the merits of his claims.

Mr. Lozada has not provided any evidence that RHMC's proffered reason for termination was pretextual. Although Mr. Lozada stated in his Complaint that he "worked in a loyal and satisfactory manner, consistently performing at or above the level of his co-workers," (Compl., ¶ 6,) and "[d]uring the time he worked for defendant, he was complimented regularly for the

professional manner in which he performed his duties," (Id. at ¶ 7,) he does not present any evidence to support these averments in response to RHMC's Motion for Summary Judgment. Rather, the only defense Mr. Lozada raises is to dispute the accuracy of the facts surrounding RHMC's unsatisfactory job performance claims. Specifically, he argues:

[t]he number of disciplinary warnings received by Lozada is irrelevant at this juncture. The controversy over Lozada's job performance is not one where objective criteria are applied, but rather are matters of subjective assessments. Therefore, these disciplinary warnings are matters of credibility. Credibility is the exclusive province of the factfinder, and is not a proper subject for a summary judgment proceeding.

(Pl.'s Mem. Law in Opp'n Mot. Summ. J. at 6.) This argument, without any evidence for support, is insufficient to defeat RHMC's Motion because it is mere argument, not evidence from which this Court could reasonably disbelieve RHMC's articulated legitimate reason.

The record also reveals that Mr. Myers conducted at least two meetings with Mr. Lozada and an investigation into the facts surrounding the warnings received by Mr. Lozada, some of which were issued by Perry Rosado, a Hispanic supervisor.

(Def.'s Undisputed Material Facts, Tab A, Ex. 1.) Mr. Myers informed Mr. Lozada that he would lose his job if he failed to successfully complete his probationary period. (M. Lozada Dep.

at 121-122.) Mr. Lozada understood that he would receive a monthly evaluation when he was on probation. (Id. at 124.) In addition, in all of the probationary evaluations he received, Mr. Lozada never wrote anything in the employee comment block on the form which might indicate his disagreement with these evaluations. (Id. at 125.) As previously stated, to meet his burden, Mr. Lozada must point to some evidence from which a fact-finder could reasonably either (1) disbelieve RHMC's articulated legitimate reason for his termination; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of RHMC's action. Fuentes, 32 F.3d at 764. Mr. Lozada fails to provide evidence from which this Court could reasonably disbelieve RHMC's articulated legitimate reason. Accordingly, RHMC's Motion for Summary Judgment must be granted.

IV. CONCLUSION.

RHMC's Motion for Summary Judgment must be granted because Mr. Lozada has not presented evidence sufficient to establish that RHMC's proffered reason for his termination was a pretext for discrimination.

An Order follows.

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

MARTIN LOZADA,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 00-4081
	:	
THE READING HOSPITAL AND MEDICAL	:	
CENTER,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 27th day of April, 2001, upon consideration of the Defendant's Motion to Dismiss for Lack of Jurisdiction and the Defendant's Motion for Summary Judgment, and the Responses and Replies thereto, it is hereby ORDERED that:

1. the Motion to Dismiss (Dkt. No. 10) is DENIED;
2. the Motion for Summary Judgment (Dkt. No. 13) is GRANTED;
3. all other Motions are DENIED as moot; and
4. the Clerk of Court is ORDERED to mark this case CLOSED.

BY THE COURT:

Robert F. Kelly, J.