

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

KHALIL S. RAIE and	:	CIVIL ACTION
MADÉLINE RAIE	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA	:	NO. 99-1291

MEMORANDUM AND ORDER

HUTTON, J.

July 31, 2001

Presently before this are Defendant City of Philadelphia's Motion for Summary Judgment and Memorandum of Law in Support of Summary Judgment (Docket Nos. 51, 52), Plaintiffs' Brief in Opposition to Defendant's Motion for Summary Judgment (Docket No. 54), Defendant's Sur-Reply Brief to Plaintiffs' Answer to Defendant's Motion for Summary Judgment (Docket No. 60) and Plaintiffs' Brief in Response to Defendant's Sur-Reply to Plaintiffs' Answer to Defendant's Motion for Summary Judgment (Docket No. 61). For the following reasons, said Motion is **DENIED in part and GRANTED in part.**

**I. INTRODUCTION**

On March 11, 1999, Khalil Raie ("Plaintiff") and Madeline Raie ("Plaintiff's wife") filed a thirteen count complaint alleging various form of discrimination against him by his employer. In

this Motion, the City of Philadelphia, the Defendant, seeks summary judgment under Rule 56 of the Federal Rules of Civil Procedure on all counts.

## **II. STANDARD OF REVIEW**

Summary judgment is appropriate "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). The party moving for summary judgment has the initial burden of showing the basis for its motion. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Ultimately, the moving party bears the burden of showing that there is an absence of evidence to support the nonmoving party's case. See *id.* at 325. Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See *id.* at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" only if it might affect the outcome of the suit under the applicable rule of law. See *id.*

When deciding a motion for summary judgment, a court must draw

all reasonable inferences in the light most favorable to the nonmovant. See *Big Apple BMW, Inc. v. BMW of N. Am., Inc.*, 974 F.2d 1358, 1363 (3d Cir. 1992). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. See *id.* Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. See *Trap Rock Indus., Inc. v. Local 825*, 982 F.2d 884, 890 (3d Cir. 1992). The court's inquiry at the summary judgment stage is the threshold inquiry of determining whether there is need for a trial, that is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. See *Anderson*, 477 U.S. at 250-52. If there is sufficient evidence to reasonably expect that a jury could return a verdict in favor of plaintiff, that is enough to thwart imposition of summary judgment. See *id.* at 248-51.

### **III. ANALYSIS**

The Court will consider below each of the thirteen counts of Plaintiff's complaint which alleges various form of discrimination against him by his employer.

### **A. Title VII Claim**

Claims brought pursuant to Title VII are analyzed under a burden-shifting framework.<sup>1</sup> If plaintiff makes a prima facie showing of discrimination or retaliation, the burden shifts to defendants to establish a legitimate, nondiscriminatory reason for their actions. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). If defendants carry this burden, the presumption of discrimination drops from the case, and plaintiff must "cast sufficient doubt" upon defendants' proffered reasons to permit a reasonable factfinder to conclude that the reasons are fabricated. See *Sheridan v. E.I. DuPont de Nemours & Co.*, 100 F.3d 1061, 1072 (3d Cir. 1996) (en banc).

In a case of failure to promote under Title VII, the plaintiff must carry the initial burden of establishing a prima facie case of unlawful discrimination.<sup>2</sup> Thus, the plaintiff must establish that

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<sup>1</sup> The anti-discrimination provision of Title VII provides:

It shall be an unlawful employment practice for an employer--(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2(a).

<sup>2</sup> Plaintiff has failed to state which theory under Title VII that he proceeds. Based on a review of Plaintiff's Complaint and his Affidavit, the Court construes Count I to assert a claim for failure to promote under Title VII. The Court thus views Defendant's Motion for Summary Judgment under a failure to promote theory.

he or she (1) belongs to a protected category; (2) applied for and was qualified for a job in an available position; (3) was rejected; (4) and, after the rejection, the position remained open and the employer continued to seek applications from persons of plaintiff's qualifications for the position. See *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 506 (1993); *Green*, 411 U.S. at 802; *Bray v. Marriott Hotels*, 110 F.3d 986, 989-90 (3d Cir. 1997).

Here, Plaintiff states that his national origin is Lebanese and thus satisfies the first element of the prima facie case. See *Aff. of Khalil Raie*, ¶ 1. Plaintiff's Affidavit also asserts that he was qualified for the Audit Manager's position and he sat for the examination. See *id.* ¶¶ 17, 25. Also, Plaintiff satisfied the third element of the prima facie case in stating that he was not considered for the position. See *id.* ¶ 29. As to the fourth element, it is not clear from the Complaint or the parties submissions whether after the rejection, the position remained open and Defendant continued to seek applications from persons of Plaintiff's qualifications for the position. The Court, however, notes that even if the position did not remain open, variance from the McDonnell Douglas formula is permitted. See *Bray*, 110 F.3d at 990, n.5. As a result, the Court concludes that Plaintiff has made a prima facie showing of discrimination.

Because Plaintiff has made a prima facie showing of discrimination, the burden shifts to Defendant to establish a

legitimate, nondiscriminatory reason for its actions. Defendant meets this burden in stating that after an investigation, a report concluded that there was a lack of any evidence that Plaintiff's race or ethnicity played a factor in the employment decision. See Def.[']s] Mot. for Summ. J., at 5, ex. D.

At this point, the presumption of discrimination drops from the case. *Id.* To prevail at trial, the plaintiff must convince the factfinder "both that the reason was false, and that discrimination was the real reason." *Hicks*, 509 U.S. at 512. The plaintiff may then survive summary judgment by submitting sufficient evidence from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employers action. *Fuentes v. Perskie*, 32 F.3d 759, 763 (3d Cir. 1994); see also *Palmisano v. Electrolux, LLC*, Civ.A. 99-426, 2000 WL 1100785, \*5 (E.D. Pa. Aug 7, 2000). Under prong two of the *Fuentes* test, Plaintiff must identify evidence in the summary judgment record that "allows the fact finder to infer that discrimination was more likely than not a motivating or determinative cause of the adverse employment action." See *Keller v. Orix Credit Alliance, Inc.*, 130 F.3d 1101, 1111 (3d Cir. 1997); *Fuentes*, 32 F.3d at 762. In other words, under this prong, Plaintiff must point to evidence that proves discrimination in the same way that critical facts are

generally proved--based solely on the natural probative force of the evidence. See *Keller*, 130 F.3d at 1111.

Here, Plaintiff states that in 1991, he invited his superiors to an informal office celebration of Arab/Lebanese food. See *Aff. of Khalil Raie*, ¶ 5. One of the Administrators, Frederick Wise ("Wise") told Plaintiff that he did not attend the lunch because Plaintiff should abandon his foreign ways, become an American and adopt the ways of his new country, if he wished to get along with people. See *id.*

In 1994, at a meeting of his supervisors, there was a recommendation to reject Plaintiff for promotion. See *Administrators' Meeting - Minutes*, Feb. 24, 1994. The Minutes demonstrate that Wise "stated that [Plaintiff] may be technically competent . . . that whatever auditing skills he possesses are more than overshadowed by his inability to get along with people, take direction, unwillingness to accept constructive criticism, and his tendency to go over his supervisors' heads." See *id.* ¶ 2c. Plaintiff asserts that these incidents evidence a background and pattern of discriminatory conduct. See *Aff. of Khalil Raie*, ¶ 21.

Although a discrimination claim based on remarks made in 1991 and 1994 may be time-barred, the Third Circuit has rejected the notion that the events surrounding an adverse employment action are not relevant evidence that a plaintiff could use at trial. See *Stewart v. Rutgers, The State Univ.*, 120 F.3d 426, 433 (3d Cir.

1997); *United Air Lines v. Evans*, 431 U.S. 553, 558 (1977) ("A discriminatory act which is not made the basis for timely charge is the legal equivalent of discriminatory act which occurred before the statute was passed. It may constitute relevant background evidence in a proceeding in which the status of a current practice is at issue, but separately considered, it is merely unfortunate event in history which has no present legal consequences"); *McElhinney v. Quest Diagnostics, Inc.*, CIV. A. 99-2109, 2001 WL 568979, \*4 (E.D. Pa. May 22, 2001).

Plaintiff also asserts that on September 16 and 17, 1997 he sat for the Auditor Manager position which he failed. See *Aff. of Khalil Raie*, ¶¶ 25, 29. Plaintiff also points to deposition testimony of Fred Wise that indicates that he personally addressed the examiners or raters before they administered the exam. See *Depo. of Fred Wise*, at 54-55. Wise testified that there is supposed to be limited contact between individuals in his department and the examiners. See *id.* at 59. He further testified that in personally addressing them that there was potential that the presentation could be slanted to favor or disfavor a candidate. See *id.* at 55. Wise also knew two of the examiners. See *id.* 65-66, 68-69.

Based on this evidence, the Court finds that there is evidence in the summary judgment record that "allows the fact finder to infer that discrimination was more likely than not a motivating or

determinative cause of the adverse employment action." A fact finder could reasonably infer that Wise, who allegedly made comments about Plaintiff's national origin in 1991 and personally objected to Plaintiff's promotion in 1994, was more likely than not motivated by discrimination in addressing the examiners before the exam. Consequently the Court finds that there is a genuine issue of material fact on this issue and summary judgment must be denied on Count I.

**B. Retaliation Claims**

Count II of Plaintiff's Complaint asserts two retaliation claims under Title VII. The Complaint alleges that Defendant violated Title VII when it retaliated against Plaintiff's protesting Defendant's discriminatory practices. See Compl. ¶ 58. The Complaint also alleges that Defendant retaliated against Plaintiff by considering Plaintiff claims of discrimination in connection with Plaintiff's workers' compensation claim. To establish a prima facie case of retaliation, a plaintiff must show that: (1) he or she engaged in a protected employee activity; (2) the employer took an adverse employment action after or contemporaneous with the protected activity; and (3) a causal link exists between the protected activity and the adverse action. See *Weston v. Pennsylvania*, 251 F.3d 420, 430 (3rd Cir. 2001).

## **1. Retaliation for Filing EEOC Complaint**

Here, Plaintiff engaged in a protected activity, filing a complaint with the EEOC. See *Anderson v. Davila*, 125 F.3d 148, 161 (3rd Cir. 1997). The second element of the prima facie case has been met because Plaintiff has alleged various retaliatory acts such as manipulating Plaintiff's workers' compensation claim, adjustment of his work schedule and hours, and delay of medical treatment. See *Aff. of Khalil Raie*, ¶ 37. Plaintiff alleges a causal link exists between the protected activity and the adverse action because of the temporal proximity of alleged retaliatory acts and hearings before the Philadelphia Civil Service. See *id.* ¶ 38.

Plaintiff alleges that after three doctors had already recommended an operation, he was directed to get another opinion. This directive took place the same day that Plaintiff testified at his Civil Service Commission hearing regarding the improper test procedures. See *id.* These circumstances indicate that there are facts in the summary judgment that demonstrate a causal link between Plaintiff's protected activity and the adverse employment actions. Based on the record, the Court finds that Plaintiff has established a prima facie case of retaliation.

Defendant motions for summary judgment on this Count because, Defendant argues, Plaintiff has failed to allege any retaliatory

actions in his EEOC Complaint.<sup>3</sup> Defendant attacks Plaintiff's EEOC charge because (1) it does not believe that the document was provided during discovery; (2) the document is neither signed by Plaintiff nor verified by an agent of the EEOC, therefore not properly authenticated; and (3) the document is unsigned. The Court addresses these claims in turn.

The Court rejects Defendant's first argument because Defendant has failed to make any motion or cite any authority to support its contention that the Court should disregard Plaintiff's document simply because it does not "believe" that Plaintiff provided the document during discovery. The Court rejects Defendant's second and third arguments because, contrary to Defendant's position, Plaintiff's document is signed and the Court cannot identify on either parties' form where an EEOC verification would be required. Because Defendant has failed to demonstrate that there is no genuine issue of material fact, Summary Judgment is denied on this retaliation claim.

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<sup>3</sup> There is a dispute about which EEOC charge is authentic. See Def.['s] Mot. for Summ. J., at 6-7; Pl.['s] Brief in Opposition, at 4-10. Defendant contends that its version of Plaintiff's EEOC charge, dated November 1997, conspicuously leaves blank the box that should have been checked in order to complain of retaliation. See Def.['s] Mot. for Summ. J., ex. A. Plaintiff, however, submits an EEOC charge, dated October 17, 1997, that does mention retaliatory conduct. See Pl.['s] Brief in Opposition, ex. 11. For purposes of deciding this Motion, the Court will accept Plaintiff's document and view all reasonable inference in Plaintiff's favor. See *Big Apple BMW, Inc.*, 974 F.2d at 1363.

## **2. Retaliation for Filing Workers' Compensation Claim**

Here, Plaintiff satisfies the first element of a retaliation claim because he engaged in a protected activity, i.e. filing a workers' compensation claim. See *Landmesser v. United Air Lines, Inc.*, 102 F. Supp. 2d 273, 277-78 (E.D. Pa. June 26, 2000). The second element of the prima facie case has been met because Plaintiff has alleged various retaliatory acts such as interfering with his medical examinations and subjecting him to surveillance. See *Aff. of Khalil Raie*, ¶¶ 38-39. As noted above, Plaintiff alleges a causal link exists between the protected activity and the adverse action because of the temporal proximity of alleged retaliatory acts and hearings before the Philadelphia Civil Service Commission. See *Aff. of Khalil Raie*, ¶ 38. Based on the record, the Court finds that Plaintiff has established a prima facie case of retaliation.

Because Plaintiff has made a prima facie showing of discrimination, the burden shifts to Defendant to establish a legitimate, nondiscriminatory reason for their actions. Defendant, however, does not address this claim. Rather, Defendant asserts that Pennsylvania's Workers' Compensation Act ("WCA") provides that sole and exclusive means of recovery for all injuries arising out of an occurring within the course of employment. See *Def.[ 's] Mot. for Summ. J.*, at 7. While Pennsylvania's WCA may provide the exclusive remedy against an employer for an emotional distress

claim, see, e.g. Winterberg V. Trans. Ins. Co, 72 F3d 318, 322 (3d Cir. 1995), Plaintiff does not allege a such a claim in Count II. Rather, Count II alleges a retaliation Claim in violation of Title VII. Defendant has thus failed to put forth a legitimate, non discriminatory reason for its decisions. As a result, Defendant has failed to demonstrate that there is no genuine issue of material fact concerning this issue. Because Defendant has failed to demonstrate that there is no genuine issue of material fact, summary judgment is denied on this retaliation claim.

**C. PHRA Claims**

While Pennsylvania courts are not bound in their interpretations of Pennsylvania law by federal interpretations of parallel provisions in Title VII, its courts nevertheless generally interpret the PHRA in accord with its federal counterparts. See Kelly v. Drexel Univ. 94 F.3d 102, 105 (3d Cir. 1996). As a result, the Court's holdings with respect to Counts I and II apply to Plaintiff's PHRA claim in Count III of his Complaint. Thus, Defendant's motion for summary judgment on Count III is denied.

**D. Intentional Infliction of Emotional Distress, Defamation, False Light and Invasion of Privacy**

Defendant is entitled to summary judgment on Counts IV and V because Plaintiff's Claims fail as a matter of law. Pursuant to

the Political Subdivision Tort Claims Act ("TCA"), 42 Pa. C.S.A. § 8541, et seq., Plaintiff's state tort claims of Intentional Infliction of Emotional Distress must fail. The Act abolishes all types of governmental liability for damages on account of injury to persons or property, but for eight narrow exceptions stated in the Act. See 42 Pa. C.S.A. § 8542. The TCA states that:

[e]xcept as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person.

42 Pa. C.S.A. § 8541.

The Pennsylvania State Supreme Court has held that the TCA creates "the absolute rule of governmental immunity" and represents the "expressed legislative intent to insulate political subdivisions from tort liability. See *Mascaro v. Youth Study Center*, 523 A.2d 1118, 1123 (Pa. 1987).

A local agency, however, may be found liable for damages on account of an injury to persons or property under certain narrow and well defined circumstances. The Pennsylvania State Supreme Court has held that all eight exceptions must be strictly construed. See *Love v. City of Philadelphia*, 543 A.2d 531, 532 (Pa. 1988); *Mascaro*, 523 A.2d at 1123. The exceptions to the TCA deal with (1) operation of a motor vehicle; (2) care, custody or control of personal property; (3) care, custody or control of real

property; (4) trees, traffic controls and street lights; (5) utility service facilities; (6) streets; (7) sidewalks; and (8) animals. See 42 Pa. C.S.A. 8542(b)(1)-(8).

Federal Rule of Civil Procedure 56 states that "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading." Fed. R. Civ. P. 56(e). The adverse party's response, by affidavits or as otherwise provided in the rule, "must set forth specific facts showing that there is a genuine issue for trial." See *id.* "If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." See *id.* Here, Defendant asserts that it is immune from liability based on the TCA. Plaintiff responds that such immunity is "unconstitutional and should be ignored." Plaintiff further states that "[p]ublic policy alone should prohibit the Citye [sic] from behaving in such an outrageous fashion and not be held accountable for it." Plaintiff fails to cite any authority for its position. Additionally, Plaintiff makes no reference to evidence in the summary judgment record that would support its position.

Because Plaintiff fails to set forth specific facts showing that there is a genuine issue for trial, summary judgment granted on Counts IV and V.

**E. Fraud**

Count VI of Plaintiff's Complaint asserts that facts surrounding the alleged changes and deletions to Plaintiff's Audit Manager examination support a claim of fraud. See Pl.['s] Compl. ¶ 77. Plaintiff fails to point to any evidence in the summary judgment record that supports a claim of fraud.

Under Pennsylvania law, the essential elements of common law fraud include a material misrepresentation of an existing fact, scienter, justifiable reliance on the misrepresentation, and damages. See *Booze v. Allstate Ins. Co.*, 750 A.2d 877, 880 (Pa. Super. 2000); *Hammer v. Nikol*, 659 A.2d 617, 620-21 (Pa. Cmwlth. 1995). Plaintiff fails to cite any authority for his position. Additionally, Plaintiff makes no reference to evidence in the summary judgment record that would support its position.

Because Plaintiff fails to set forth specific facts showing that there is a genuine issue for trial, summary judgment shall be granted on Count VI.

**F. Breach of Implied Covenant of Good Faith and Fair Dealing and Conspiracy**

Counts VII and VIII of Plaintiff's Complaint respectively allege that an implied covenant of good faith and fair dealing existed in the employment relationship and Defendant breach and

conspired to breach that covenant. See Pl.[’s] Compl. ¶¶ 80-81, 85. The Court grants Defendant’s motion for summary judgment on Counts VII and VIII because Pennsylvania does not recognize a common law cause of action in tort for breach of the duty of good faith and fair dealing. See *Donahue v. Federal Express Corporation*, 753 A.2d 238, 243 (Pa. Super. 2000) (holding that employee "cannot as a matter of law maintain an action for breach of the implied duty of good faith and fair dealing, insofar as the underlying claim is for termination of an at-will employment relationship").

**G. Retaliation**

The Court construes Count IX of Plaintiff’s Complaint to state claim for retaliation based on state law. See Pl.[’s] Compl. ¶¶ 89-91. In particular, this Count alleges a claim of retaliation against Plaintiff because he filed a workers’ compensation claim. See *id.* Essentially Count IX makes the same claim Plaintiff makes in Count II. As a result, the Court denies summary judgment for the reasons set forth in connection with Plaintiff’s Title VII claim for retaliation.

**H. Violation of the Americans with Disabilities Act and the Age Discrimination in Employment Act**

Count X of Plaintiff’s Complaint alleges Plaintiff suffers

from a permanent injury, that this injury affects major life activities, that with reasonable accommodations he can perform the essential functions and duties of the position of Audit Manager and that Defendant has failed to reasonably accommodate Plaintiff. See Pl.[ 's] Compl. ¶¶ 95-99. Count XI of Plaintiff's Complaint alleges Plaintiff is a member of a protected class under the ADEA, that he is qualified to perform the essential function of the position of Audit Manager, that Defendant invidiously discriminated against Plaintiff in when Defendant failed to promote Plaintiff. See Pl.[ 's] Compl. ¶¶ 104-106.

"It is a basic tenet of administrative law that a plaintiff must exhaust all required administrative remedies before bringing a claim for judicial relief." *Robinson v. Dalton*, 107 F.3d 1018, 1020 (3d Cir. 1997). Under Title VII, a plaintiff must file charges with the EEOC and receive a right-to-sue letter before filing a complaint in federal court. See *Ostapowicz v. Johnson Bronze Co.*, 541 F.2d 394, 398 (3d Cir. 1976). Because the statutory scheme of Title VII stresses conciliation by the EEOC over formal adjudication, there are limitations on the presentation of new claims in the district court. See *Ostapowicz*, 541 F.2d at 398." The parameters of the civil action in district court are defined by the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination, including new acts which occurred during the pendency of proceedings before

the Commission." Robinson, 107 F.3d at 1025. If the EEOC investigation is too narrow, a plaintiff should not be barred from raising additional claims in district court. See Hicks v. ABT Assocs., Inc., 572 F.2d 960, 965 (3d Cir. 1978). The court must evaluate the reasonableness of the EEOC's investigation. See id. at 965. In addition, the Third Circuit has instructed that a court may want to consider whether there is enough overlapping in the subsequent allegation with the earlier complaint so that the one falls within the scope of the other. See Robinson, 107 F.3d at 1026.

Defendant asserts that summary judgment must be granted on these two Counts of Plaintiff's Complaint because Plaintiff did not raise these claims in his EEOC Complaint. In light of Defendants argument, the Court now considers whether there is enough overlapping in the subsequent allegations with the earlier complaint so that the one falls within the scope of the other. In Plaintiff's charge questionnaire dated October 17, 1997, Plaintiff set forth that he had been discriminated against because of his national origin and also stated he had been retaliated against for disclosing facts about the city pension fund. See Charge Questionnaire, dated Oct. 19, 1997. Plaintiff did not receive a response to his charge until February 2, 1998. See Letter from EEOC

to Khalil Raie, dated February 2, 1998.<sup>4</sup> The letter acknowledged Plaintiff's charge and the letter also advised him that he "need do nothing further at this time." See id. On April 15, 1998, Plaintiff received a letter from the EEOC stating that because of the volume of charges and the limited staff available, the EEOC was unavailable to assign Plaintiff's charge to an investigator. See Letter to Khalil Raie from EEOC, dated April 15, 1998. The letter also states that if Plaintiff has any information that he feels is important to his case, that Plaintiff may send information directly to the individual who wrote the letter to Plaintiff. See id.

On June 23, 1998, Plaintiff sent a letter to the EEOC stating that as a result of filing charges with the Commission, the City of Philadelphia retaliated against Plaintiff by not accurately and completely processing his workers' compensation claims. See Letter to EEOC from Khalil Raie, dated June 23, 1998. Plaintiff detailed his charges of retaliation, stating that the City intentionally made efforts to cancel his surgery. See id. The City responded to Plaintiff's charges in a letter to the EEOC, however, the City failed to address Plaintiff's additional claims of retaliation.

In a letter dated November 10, 1998, the EEOC advised Plaintiff that the City had responded to Plaintiff's complaint.

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<sup>4</sup> Conspicuously displayed on the letter from the EEOC to Plaintiff is a date that is crossed out. The date of February 2, 1998 is written above the crossed out date (which is November 1997).

See Letter from EEOC to Khalil Raie, dated Nov. 10, 1998. That letter did not mention the allegations that Plaintiff had provided in his June 23, 1998 letter. Plaintiff responded to the letter stating his response to the City's position and also reiterated his complaints about retaliation. See Letter from Khalil Raie to EEOC, dated November 22, 1998.

Based on these facts, the Court is uncertain why the EEOC failed to investigate the claims that Plaintiff alleged in his letter to the EEOC, which followed his initial complaint. The EEOC invited Plaintiff to file additional information. Consequently, the Court finds that it was unreasonable for the EEOC to overlook Plaintiff's additional charges. The Court, however, finds that there is enough overlapping in the subsequent allegation of retaliation by the City on the basis of his disability with the earlier complaint so that the one falls within the scope of the other. The Court consequently denies the motion for Summary Judgment on Count X.

There is, however, no evidence anywhere in the summary judgment record that indicates Plaintiff complained about age discrimination. As a result, Plaintiff has failed to exhaust his administrative remedies and has failed to state a claim as a matter of law. The Court thus grants Plaintiff's motion for summary judgment on Count XI.

### **I. Loss of Consortium**

Count XII alleges that due to Defendant's negligence, Plaintiff's wife, Madeline Raie has lost society, assistance, services, companionship, conjugal fellowship and wages of her husband. See Pl.[']s] Compl. ¶ 111. A wife's consortium claim is derivative from her husband's tort claim. *Stipp v. Kim*, 874 F. Supp. 663, 666 (E.D. Pa. Jan. 31, 1995); *Little v. Jarvis*, 219 Pa.Super. 156, 162, 280 A.2d 617 (1971). As a result, a wife's consortium claim will be barred when her husband's tort claim is barred. See *Quitmeyer v. SEPTA*, 740 F. Supp. 363, 370 (E.D. Pa. June 22, 1990).

Because the Court has granted summary judgment on Plaintiff's tort claims, his wife's claim for loss of consortium fails. The Court grants Defendant's Motion for summary judgment on Count XII.

### **J. Punitive Damages**

Count XIII alleges a claim for punitive damages. The law is clear that a municipality is not liable for punitive damages under Title VII or the ADA. See *McLaughin v. Rose Tree Media School Dist.*, 1 F. Supp. 2d 476, 483 (E.D. Pa. April 22, 1998) (holding that punitive damages not available against a municipality under Title VII); *Doe v. County of Centre, PA*, 242 F.3d 437, 457-58 (3d Cir. 2001) (noting Civil Rights Act of 1991 expressly amended Title

I of the ADA (employment discrimination) to allow awards of punitive damages against individuals and private entities, but not against municipalities and government entities). As a result, the

Court grants Defendant's Motion for summary judgment on Count XIII because Plaintiff's claim fails as a matter of law.

An appropriate Order follows.

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

KHALIL S. RAIE and : CIVIL ACTION  
MADELINE RAIE :  
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v. :  
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CITY OF PHILADELPHIA : NO. 99-1291

O R D E R

AND NOW, this 31<sup>st</sup> day of July, 2001, upon consideration of Defendant City of Philadelphia's Motion for Summary Judgment and Memo. of Law in Support of Summary Judgment (Docket No. 51), Plaintiffs' Brief in Opposition to Defendant's Motion for Summary Judgment (Docket No. 54), Defendant's Sur-Reply Brief to Plaintiffs' Answer to Defendant's Motion for Summary Judgment (Docket No. 60) and Plaintiffs' Brief in Response to Defendant's Sur-Reply to Plaintiffs' Answer to Defendant's Motion for Summary Judgment (Docket No. 61), IT IS HEREBY ORDERED that:

1. Summary Judgment is **DENIED** on Counts I-III and IX-X.
2. Summary Judgment is **GRANTED** on Counts IV-VIII, XI-XIII.

BY THE COURT:

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HERBERT J. HUTTON, J.