

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

HASSAN H. SHERIF, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
ASTRAZENECA, L.P., et al. : NO. 00-CV-3285
Defendants. : NO. 00-CV-3938

MEMORANDUM & ORDER

J.M. KELLY, J.

JANUARY , 2002

The following claims remain in the Consolidated Amended Complaint of Plaintiff, Hassan H. Sherif ("Sherif"), who has sued Defendants Robert C. Stoner ("Stoner"), Letitia A. Baldez ("Baldez"), Chester P. Yuan ("Yuan") (collectively the "individual Defendants") and AstraZeneca, L.P. ("AstraZeneca"):

- (1) discrimination based on sex, race, religion and ethnic origin pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. §§ 2000e to 2000e-17 (1994) against AstraZeneca;
- (2) disability discrimination pursuant to Title I of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12111-12117 against AstraZeneca;
- (3) retaliation for filing a complaint with the Equal Employment Opportunity Commission ("EEOC"), pursuant to Title VII and the ADA against AstraZeneca;
- (4) parallel discrimination and retaliation claims under the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Con. Stat. Ann. §§ 951-963 (West 1991) against AstraZeneca;
- (5) defamation, libel and slander by AstraZeneca;
- (6) invasion of privacy by holding

Sherif in a false light; and (7) aiding and abetting in a violation of the PHRA by the individual Defendants. Sherif's claims arise from his demotion and termination from employment by AstraZeneca. Stoner was the Human Resources Business Partner at AstraZeneca who made the ultimate decision to suspend, demote and terminate Sherif. Baldez was Sherif's immediate supervisor and reported to Chester Yuan, the Customer Center Leader for the Mid-Atlantic Region.

BACKGROUND

The following relevant facts are not in dispute. Sherif was employed by AstraZeneca and its predecessors in various sales and sales management positions. He was successful in building sales and won several company awards. In 1997, Sherif applied for and was hired as a Developmental Specialist in the Philadelphia Customer Sales Unit ("PCU") of Astra-Merk, a predecessor to AstraZeneca. His main duties were related to training Pharmaceutical Specialists. Baldez was Director of the PCU. Baldez was on maternity leave from April through October of 1998 and Sherif was responsible for some of her Director's responsibilities. Due to a shortage of Pharmaceutical Specialists, Sherif was also responsible for sales to some customer accounts. In August of 1998, Sherif was informed that he had not submitted expense reports since the beginning of the year. He compiled these expense reports and submitted them in

late September.

Sherif was encouraged to apply for a position as a Business Unit Planning and Operations Leader. In a meeting with Baldez, he informed her of his decision to apply for the position. Baldez informed him that she was not comfortable with his application because of questions of the timeliness and accuracy of his expense reports and that an investigation was under way. The inaccuracies in the expense reports were a reflection of initial scheduled dates for sales calls rather than actual dates of sales calls. Baldez referred to the expense inaccuracies as a terminable offense.

Sherif attended a meeting concerning the expense reports with Baldez and Stoner. Baldez informed Sherif that the late, inaccurate expense reports violated company policy. She also claimed that he violated company policy when he submitted the expense reports to someone else, despite that she was on maternity leave when he submitted the expense reports. Stoner suspended Sherif, with pay, pending an investigation of his expenses. Sherif's voice mail and computer passwords were disabled although AstraZeneca's disciplinary policy only called for a written warning. AstraZeneca's employees were told that Sherif was temporarily unavailable and that they should respect his privacy. Sherif received several calls from co-workers who thought he was ill or in trouble.

In November of 1998, Sherif was allowed to return to work at AstraZeneca, with a demotion to Pharmaceutical Specialist and with a six month probationary period. He was assigned to the south Philadelphia territory, the farthest available from his home. AstraZeneca disciplinary policy does not provide for demotions. Sherif wrote a memorandum to Baldez, Stoner and Yuan in which he outlined differences in working conditions and discipline between Sherif and other workers in the PCU.

Yuan nominated the PCU leadership team for an award based upon their restructuring effort in the Summer of 1998. Sherif was not included in the nomination. In February 1999, Baldez gave Sherif his annual evaluation, which included all excellent ratings. AstraZeneca has failed to produce this evaluation in discovery. Despite his evaluation, Sherif's salary remained below the previous average for Developmental Specialists and almost \$10,000 below the current average for Developmental Specialists.

Baldez criticized Sherif for asking a manager questions at a sales meeting. He was told that he had to answer questions from managers but they need not answer his questions.

Sherif filed complaints with the Pennsylvania Human Relations Commission ("PHRC") and the Equal Employment Opportunity Commission ("EEOC"). Following the PHRC and EEOC complaints, Sherif alleges he was given misconfigured computer

software, not visited by his supervisor in the field and his sales were not reported correctly. In April 1999, Stoner and Baldez met with Sherif concerning his sales levels. They would not accept his explanation that the computer software misreported sales. He was told he was being held to a different standard than anybody else.

Baldez criticized Sherif for taking vacation in May of 1999. Sherif followed company policy in asking for vacation and arranged for coverage of his customers. He then received an annual pay increase of 1.5% when the average was 4.5%. Sherif was terminated on May 24, 1999.

STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 56(c), 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." 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).

DISCUSSION

A. Religious Discrimination

The enforcement provision of Title VII requires that an injured party must file a charge with the EEOC within 180 days or an appropriate state enforcement agency within 300 days after the alleged unlawful employment practice occurred. See 42 U.S.C. § 2000e-5(e)(1). This filing requirement acts as a statute of limitations, barring relief for conduct which occurred outside the statutory period. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1387 (3d Cir. 1994).

Where a plaintiff does not pursue an administrative claim before the EEOC or an appropriate state agency, such as the PHRC, that claim is waived in a subsequent lawsuit. See Hopson v. Dollar Bank, 994 F. Supp. 332, 337-38 (W.D. Pa. 1997) (holding

plaintiff's failure to assert continuing violations theory in administrative filing and complaint was "fatal"). It is undisputed that Sherif has not asserted religious discrimination in his PHRC charge, either by checking off the religious discrimination box or by alleging facts in his charge that would support a religious discrimination claim. Accordingly, AstraZeneca's Motion for Summary Judgment must be granted as to the claim of religious discrimination.

B. ADA Claim

Sherif has failed to identify any evidence in the record that AstraZeneca perceived him as disabled or that his job was affected in any way because of Sherif's disability or perceived disability. Accordingly, AstraZeneca's Motion for Summary Judgment is granted as to the ADA claim.

C. The Employment Discrimination Burden Shifting Scheme

Sherif alleges sex, race and national origin discrimination in violation of Title VII and the PHRA.¹ The McDonnell Douglas scheme of shifting burdens of production and persuasion controls the analysis of individual disparate treatment claims brought under Title VII and the PHRA. See generally McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

¹Sherif's state-law claim pursuant to the PHRA is appropriately analyzed under the same framework as his Title VII claim. See Weldon v. Kraft, Inc., 896 F.2d 793, 796 (3d Cir. 1990); Lewis v. Univ. of Pittsburgh, 725 F.2d 910, 915 n.5 (3d Cir. 1983).

Under the general burden-shifting scheme in an individual disparate treatment claim where no direct evidence of discrimination exists, the plaintiff must begin by proving his prima facie case of discrimination by a preponderance of the evidence. Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981). The elements of the prima facie case will vary depending on the facts alleged and the type of claim presented. If the plaintiff cannot meet this burden, his claim must fail. Satisfying this burden, however, dispenses with the most common non-discriminatory reasons for adverse employment actions and accordingly gives rise to a rebuttable presumption of discriminatory intent. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993); Burdine, 450 U.S. at 254. Although the ultimate burden of persuasion still remains with the plaintiff, the burden shifts to the defendant to produce a legitimate non-discriminatory reason for the adverse employment decision. Hicks, 509 U.S. at 507; Burdine, 450 U.S. at 254. This is merely a burden of production; the defendant need not prove that this was the actual reason for the adverse employment action. Burdine 450 U.S. at 260. In the unusual scenario where a defendant cannot produce such a reason, judgment in favor of the plaintiff is appropriate. If the defendant can, however, the presumption of discriminatory intent is rebutted and drops from the case entirely. Hicks, 509 U.S. at 507; Burdine, 450 U.S. at 255 &

n.10.

The burden then shifts back to the plaintiff to prove by a preponderance of the evidence that the employer's motivation for the adverse employment action was discriminatory. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143 (2000). To do this, the employee must prove by a preponderance of the evidence that the employer's legitimate non-discriminatory reason was pretextual. Id. Although a plaintiff may also present additional evidence of discriminatory animus, he may, if he chooses, rely solely on a showing of pretext in order to prove discriminatory intent. Id. (rejecting the "pretext plus" requirement adopted by many courts). The outcome of the case turns on whether the plaintiff can prove discriminatory intent; if he can not, judgment in favor of the defendant is appropriate.

In the context of a motion for summary judgment, a defendant in this kind of case may prevail in one of two ways. First, the defendant may show that the plaintiff can raise no genuine issue of fact as to one or more elements of his prima facie case. Spangle v. Valley Forge Sewer Auth., 839 F.2d 171, 173 (3d Cir. 1988). Second, the defendant may present a legitimate non-discriminatory reason for its actions and then show that the plaintiff can raise no genuine issue of material fact as to whether the proffered reason is a pretext for discrimination. Id. Stated conversely, if the plaintiff shows that such genuine

issues of fact do exist, summary judgment is inappropriate.

D. Sherif's Prima Facie Case

Title VII makes it unlawful for an employer 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." 42 U.S.C. §2000e-2(a)(1). To establish a prima facie case of disparate treatment under Title VII, Sherif must present evidence that he: (1) is a member of a protected class; (2) is qualified for his position; and (3) suffered an adverse employment action under circumstances that would give rise to an inference of discrimination. Jones v. School Dist. of Philadelphia, 198 F.3d 403, 410-12 (3d Cir. 1999); Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1066 n.5 (3d Cir. 1996). Assuming Sherif established his prima facie case, and rebutted a legitimate non-discriminatory reason offered by the Defendants, he would still bear "the ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against [him]." Burdine, 450 U.S. at 252-53.

Because Sherif is of Egyptian origin, he is a member of a protected class. He is also entitled to not be subjected to adverse employment decisions because he is white or a male. At the prima facie stage of a case, a plaintiff need only prove by some credible evidence, including his own testimony, that he was

minimally qualified for the position from which he was fired. See, e.g., Sheridan, 100 F.3d at 1084. Sherif has presented evidence that he is qualified for his job at AstraZeneca, including his evaluation with a perfect score. Sherif's suspension and termination constitute adverse employment actions.

The success of Sherif's claim for disparate treatment depends on whether the circumstances of those adverse employment actions give rise to an inference of discrimination. Sherif has presented anecdotal evidence of discriminatory comments in the workplace and evidence of similarly situated workers of different race, sex and national origin who received different treatment. This is sufficient for Sherif to create a prima facie case.

D. AstraZeneca's Legitimate Non-discriminatory Reason

AstraZeneca offers Sherif's violation of company reimbursement policy as its legitimate non-discriminatory reason for firing him. Assuming Sherif has presented genuine issues of material fact concerning each element of his prima facie case, AstraZeneca's production of this reason for Sherif's suspension, demotion and firing would shift the burden back to Sherif, who would then have to prove that the adverse employment decisions were the result of discriminatory animus. For purposes of the instant motion, Sherif would have to present, at a minimum, a genuine issue of material fact concerning the validity of AstraZeneca's proffered reason for his suspension, demotion and

termination.

Sherif has presented a litany of AstraZeneca employees who were similarly situated in their failure to comply with the company expense policy and were not suspended, demoted or terminated. Likewise, he has presented other Pharmaceuticals Representatives who failed to meet company performance guidelines and were not terminated. Finally, he has presented evidence that the performance guidelines he violated were implemented after he was accused of the violations. Accordingly, Sherif has presented issues of fact and summary judgment is not appropriate on this issue.

E. Retaliation

Complaint alleges retaliation in violation of Title VII and the PHRA. In order to prevail on such a claim, Sherif must demonstrate that: (1) he was engaged in a protected activity; (2) he suffered an adverse employment action; and (3) there exists a causal connection between the protected activity and the adverse employment action. See, e.g., Kachmar v. Sungard Data Sys., Inc., 109 F.3d 173, 177 (3d Cir. 1999); see also 42 U.S.C. §2000e-3(a) ("It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice under this subchapter, or because he has made a charge . . . under this subchapter."). For the purposes of a motion for

summary judgment, a plaintiff must establish, at a minimum, a genuine issue of material fact regarding each of these elements. Sheriff's filing an internal discrimination complaint and a claim with the PHRC clearly constitute statutorily protected activities, and the decisions to suspend, demote and terminate Sheriff amount to adverse employment actions. The question therefore becomes whether a causal connection between those events exists.

Sheriff's internal complaint was filed immediately after his demotion and prior to, but within six months, of his termination. His PHRC complaint was filed mere days before his termination. This creates a factual issue as to whether a causal connection exists and summary judgment must be denied.

F. Defamation and False Light

Sheriff alleges that AstraZeneca's statements that he was "unavailable" and that his demotion was for "personal reasons" and that his co-workers should "respect his privacy" were defamatory. Pennsylvania has adopted the relevant sections of the Restatement, and holds a statement is defamatory "if it tends to so harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." Corabi v. Curtis Publishing Co., 273 A.2d 899, 904 (Pa. 1971); Cosgrove Studio and Camera Shop, Inc. v. Pane, 182 A.2d 751, 753 (Pa. 1962); Restatement

(Second) of Torts § 559. Nothing in AstraZeneca's statements would tend to harm Sherif's reputation or suggest that his co-workers should not associate with him. If anything, it is most likely that Sherif was protected by the innocuous statements made by AstraZeneca. Similarly, those statements would not tend to hold out Sherif in a false light as there is no evidence that the statements were in any way false. Accordingly, summary judgment is appropriate on these issues. Sherif has not presented evidence of libel or slander, accordingly summary judgment will be granted as to those claims as well.

F. Aiding, Abetting, Inciting & Compelling

An individual supervisory employee can be held liable under the PHRA for aiding, abetting, inciting or compelling a discriminatory act. 42 Pa. Con. Stat. Ann. § 955(e). The supervisor's liability can be predicated upon direct acts of discrimination or the failure to prevent discrimination by others. Davis v. Levy, Angstreich, Finney, Baldante, Rubenstein & Coren, P.C., 20 F. Supp. 2d 885, 887 (E.D. Pa. 1998). Here, Sherif has presented sufficient evidence that Stoner and Baldez were in supervisory positions and actively participated in his termination. Further, there is evidence of direct discrimination by Baldez. Yuan was a supervisor who was made aware of and did not prevent Sherif's discriminatory demotion and termination. Accordingly, Sherif has adequately created a question of fact as

to aiding and abetting under the PHRA to survive this Motion for Summary Judgment.

CONCLUSION

Following the Court's Decision upon Defendants' Motion for Summary Judgment, the following issues remain for trial in this matter: (1) Sherif's claims for racial, sexual and national origin discrimination pursuant to Title VII and the PHRA; (2) Sherif's claims for retaliation pursuant to Title VII and the PHRA; and (3) Sherif's claim for aiding and abetting by Yuan, Baldez and Stoner.

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O R D E R

AND NOW, this day of January, 2002, upon consideration of the Motion for Summary Judgment of Defendants Robert C. Stoner, Letitia A. Baldez, Chester P. Yuan and AstraZeneca, L.P. (Doc. No. 39), the Response of Plaintiff, Hassan H. Sherif, the Reply of Defendants and after a Hearing held in open Court, it is ORDERED:

1. The Motion for Summary Judgment is GRANTED in part. Judgment is ENTERED in favor of Defendant AstraZeneca, L.P., and against Plaintiff, Hassan H. Sherif on Plaintiff's claims of religious discrimination, disability discrimination, defamation, libel, slander and invasion of privacy by holding Sherif in a false light.

2. The Motion for Summary Judgment is DENIED in part as to all remaining claims.

BY THE COURT:

JAMES MCGIRR KELLY, J.