

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

PEARL MARTIN : CIVIL ACTION  
 :  
 v. :  
 :  
 HEALTHCARE BUSINESS RESOURCES :  
 and JAMES RANDOLPH : NO. 00-3244

M E M O R A N D U M

WALDMAN, J.

March 26, 2002

I. Introduction

Plaintiff has asserted claims in this action against defendant Healthcare Business Resources ("HBR") under Title VII and the Pennsylvania Human Relations Act ("PHRA") for race, age and gender discrimination, including subjection to a hostile work environment.<sup>1</sup> She also asserted a supplemental state common law claim for assault and battery against defendant James Randolph which she has not pursued.<sup>2</sup>

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<sup>1</sup> Plaintiff does not reference the ADEA or specifically allege age discrimination in her complaint. At plaintiff's deposition, however, she identified her claims as "sexual discrimination, sexual harassment, race discrimination and age discrimination." Defendant took plaintiff at her word and has litigated the action as one encompassing a claim of age discrimination. The parties each address the "claim" for age discrimination in their briefs. Accordingly, the court is proceeding as if a claim for age discrimination were pled.

<sup>2</sup> In her brief, plaintiff states defendant Randolph "has not been served" and "his liability in regard to offensive touching is moot." In any event, plaintiff has failed to prosecute this claim and it will be dismissed without prejudice.

Presently before the court is defendant's motion for summary judgment.

## II. Legal Standard

In considering a motion for summary judgment, the court must determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Arnold Pontiac-GMC, Inc. v. General Motors Corp., 786 F.2d 564, 568 (3d Cir. 1986). Only facts that may affect the outcome of a case are "material." Anderson, 477 U.S. 248. All reasonable inferences from the record are drawn in favor of the non-movant. See id. at 256.

Although the movant has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. See J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)), cert. denied, 499 U.S. 921 (1991). A plaintiff cannot avert summary judgment with speculation or by resting on the allegations in his pleadings, but rather must present competent evidence from which a jury could reasonably find in his favor. Anderson, 477 U.S. at

248; Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 252 (3d Cir. 1999); Williams v. Borough of West Chester, 891 F.2d 458, 460 (3d Cir. 1989); Woods v. Bentsen, 889 F. Supp. 179, 184 (E.D. Pa. 1995).

### **III. Facts**

From the competent evidence of record, as uncontroverted or otherwise taken in the light most favorable to plaintiff, the pertinent facts are as follow.

Plaintiff is an African American woman. She was hired as the manager of the Cash Balancing and Posting Department of defendant HBR in December of 1994 by Allen Smith, Vice President of Operations. She was then fifty-two years of age. Ms. Martin was supervised by Mr. Smith until October 1997. From October 1997 through her termination on December 29, 1998, plaintiff reported directly to Al Benson who was hired as Director of Client Receivables.

Under plaintiff, the Cash Balancing and Posting Department experienced poor performance. Plaintiff and Mr. Smith disagreed as to the reasons for the poor performance and the appropriate remedy.

On January 6, 1995, plaintiff sent an unsolicited operation analysis to Mr. Smith in which she acknowledged numerous problems within the department ranging from uncontrolled work flows to low morale and high absenteeism about which she

asked to speak with Mr. Smith. He indicated he would read the analysis but declined to speak with her about it. Plaintiff followed up with a February 1, 1995 memo in which she proposed the addition of five to seven employees to her department which then had fifteen employees. Mr. Smith was unresponsive. In March 1995, plaintiff prepared a memo requesting the addition of one to three employees. When she discussed the request with Mr. Smith, he responded that he would be fired if he presented this to the President.

Plaintiff considered the dismissal of her proposals simply to reflect the manner in which HBR operated. She now believes it was motivated by gender discrimination. She points to her recollection of a comment by another female manager, Patty Cullotta, that Mr. Smith did not want to listen to anything a woman had to say and "gossip" that three female managers had been unable to work with Mr. Smith and left.<sup>3</sup> Plaintiff also points to two other incidents that she now ascribes to gender discrimination. One involved a complaint she made to Mr. Smith concerning the practice of two managers of other departments to place certain accounts "on hold" when posting requests were pending. Mr. Smith expressed his approval of the practice. The other incident involved a decision by Mr. Smith to modify a

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<sup>3</sup> Plaintiff has not submitted an affidavit or deposition testimony from Ms. Cullotta or any of the three unidentified female former managers.

billing form. Plaintiff told Mr. Smith that she would like to participate but Mr. Smith proceeded to redesign the form himself.

In an initial performance review for the first five months of 1995, Mr. Smith generally described plaintiff's early performance positively and identified six "business objectives" on which he asked plaintiff to "focus her energies." He made clear that plaintiff's "year end performance review will be based largely on her success in these areas." The areas or objectives identified included improvement of employee performance and productivity. Mr. Smith concluded that he wanted plaintiff "to remain focused on maximizing the productivity of her department at existing staff levels."

Plaintiff's disagreement with her supervisors as to the best method for improving the performance of her department continued throughout her tenure at HBR. Plaintiff proposed increased spending on infrastructure and labor while her supervisors sought increased productivity at existing cost levels.

In the formal 1996 evaluation for the complete year of 1995, Mr. Smith noted continuing productivity problems and plaintiff received an overall performance rating of 2 on a scale of 0 to 4. In the comment section of the accompanying employee self-evaluation form, plaintiff wrote "we are like two ships that pass in the night." In a December 30, 1996 memo to Mr. Smith,

plaintiff wrote "Cost factors and corporate priorities limit what I can/cannot do" and "the corporation has changed, the industry has/is changing, what individual clients expect has changed and increased so many things directly, and indirectly, affecting cash balancing/posting but nothing has been done for cash balancing to help accommodate these changes."

In January 1997, plaintiff drafted a memo titled "harassment" for placement in her file. She wrote that she had informed Mr. Smith that Charles Craig, the manager of patient services, had recently displayed unprofessional behavior by blurting out "it's just incompetence" and walking out of a meeting while plaintiff was responding to a question.<sup>4</sup> Plaintiff threatened to sue Mr. Craig and HBR if such behavior was repeated.

In October 1997, defendant added a new level of management when it hired Al Benson as director of client receivables.<sup>5</sup> Plaintiff then reported directly to Mr. Benson who reported to Mr. Smith. Plaintiff's responsibilities, income and benefits remained the same. Plaintiff complained to Mark Jacobs, the HBR director of

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<sup>4</sup> Mr. Craig, also an African American, had no supervisory authority over plaintiff.

<sup>5</sup> In this capacity, Mr. Benson was also responsible for supervising several departments in addition to plaintiff's.

human resources, that Mr. Benson would now take credit for all of the things she had tried to achieve.

At a meeting with plaintiff upon his arrival, Mr. Benson informed her that he wanted to work as a team and would do whatever he could to help her. Plaintiff responded that since Mr. Benson was a man, he would have the opportunity to achieve what plaintiff had strived for. Plaintiff believes that Mr. Benson did not recognize her skills and abilities. He was not responsive to various suggestions she made regarding improvement of the department. She believes the decision to hire Mr. Benson and have her report to him was motivated by gender, race and age discrimination.

Shortly after Mr. Benson's arrival, Mr. Jacobs advised plaintiff that additional staffing for her department had been approved. Plaintiff was able to hire fifteen additional employees, doubling the size of the department.

Plaintiff's evaluation for 1997, prepared jointly by Mr. Smith and Mr. Benson, noted that "productivity has continued to decrease," that there were "backlogs in the dep't." and that "numerous items sent from patient services fail to be posted." The supervisors were critical of plaintiff for her tendency "to blame the system for the majority of the operational problems," failure "to realize we have to work with the resources available"

and inability "to communicate the necessary training skills to staff." She again received an overall rating of 2.

On July 14, 1998, Mr. Benson handed plaintiff a memo stating that her department was not meeting expectations and it was her responsibility as manager to ensure that production standards were met in all areas. Mr. Benson specifically noted a 23% drop in productivity per full-time employee over the previous year. Mr. Benson asked plaintiff to take six steps to remedy the situation including the monitoring of day-to-day activities of employees within her department and submission of weekly sheets showing the hourly production of posters in the department.

On August 26 and again on August 27, 1998, Ms. Martin received an anonymous vulgar note through interoffice mail. She reported this to Mark Jacobs. Plaintiff, Mr. Jacobs, Mr. Benson and Mr. Smith then met to discuss what response would be appropriate. They agreed to undertake an investigation to attempt to determine the source of the notes and to convene a staff meeting after several days at which this conduct would be condemned as intolerable and a warning issued that the perpetrator, if not then identified, would be terminated. James Randolph, a mail room clerk, told investigators he had noticed nothing and agreed to monitor to see if any additional notes were sent. The sender was not identified. The staff meeting was held

and the stern admonition was delivered. Plaintiff received no further such notes.

Ms. Martin concluded that management did not take the matter as seriously as other comparable incidents and points to two examples. She recalls an incident in May 1998 when an employee confiscated another employee's personnel information and distributed confidential information regarding his performance evaluations to everyone in his department. The president of HBR called in a friend, a former FBI agent, to interrogate people in the department. She also notes that after Mr. Randolph threatened three managers with a knife, police were called in.

On September 24, 1998, Mr. Randolph returned from lunch intoxicated. He went into Ms. Martin's office, swiped everything off her desk, put his arm around her shoulder, kissed her on the cheek and told her he had always liked her. Later, Mr. Randolph got into a fight with another employee at the elevator. When Messrs. Smith, Benson and Jacobs came to intervene, Mr. Randolph drew a knife and menaced the managers. Police were called and took Mr. Randolph away. He was terminated immediately. The company never pressed criminal charges. Plaintiff reported her incident with Mr. Randolph to Mr. Benson and Mr. Jacobs five days later. Mr. Jacobs indicated that Mr. Randolph would have been terminated for his offensive conduct toward her had he not already been terminated for the assault.

On October 22, 1998, Mr. Benson informed plaintiff that the Cash Balancing/Posting Department was going to be split into two departments and she would manage the new Posting Department. Her compensation and benefits were unaffected. Plaintiff was not upset by the new division of managerial responsibility but was offended by what she felt was an implicit suggestion the action was necessary because of the problems in the department.

By memorandum of November 18, 1998 from Mr. Benson, plaintiff was placed on "corrective probation" for failure to monitor the day-to-day activities of employees and to submit weekly employee production statistics as directed on July 14, 1998, and for the failure to issue a verbal or written warning to two employees who had engaged in unacceptable behavior. Plaintiff was given two days to discipline the two employees and thirty days to comply with the monitoring and reporting requirements. Plaintiff was advised that she would be subject to termination if she failed to do so. Plaintiff disciplined the offending employees but otherwise failed to comply.

On December 8, 1998, plaintiff filed an EEOC administrative charge of race, gender and age discrimination and sexual harassment. She claimed that such discrimination took place between July 14, 1998 and August 27, 1998. In support of her hostile work environment claim, plaintiff pointed to three

incidents: the July 14, 1998 performance evaluation memo, the two vulgar notes and the offensive conduct by Mr. Randolph.

Defendant publishes a Guide to Business and Professional Conduct which plaintiff read in its entirety in March 1996. She also attended meetings wherein the contents of the guide were summarized for employees. Plaintiff was thus aware that employees were required to report incidents of racial or sexual discrimination to the Human Resources Department and that the company provided a confidential help-line whereby employees could report misconduct. Prior to the EEOC filing, plaintiff never notified the company of any incident she attributed to racial, gender or age discrimination.

Plaintiff was terminated on December 29, 1998.<sup>6</sup> Maureen Hays, a fifty-four-year-old African American female was hired to replace plaintiff, then fifty-six.

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<sup>6</sup> On January 11, 1999, plaintiff filed a second EEOC charge alleging retaliatory dismissal. The EEOC issued a "Determination" in which the District Director concluded that the agency investigation did not substantiate that claim or the earlier claims of race, gender and age discrimination. Plaintiff did not assert a retaliation claim in her complaint or suggest she was pursuing such a claim when questioned at her deposition. Neither party discusses such a claim in their briefs. Any such claim has thus been abandoned.

#### IV. Discussion

##### A. Discrimination Claims

The same general standards and analyses are applicable to plaintiff's Title VII, ADEA and PHRA claims. See Jones v. School Dist. of Philadelphia, 198 F.3d 403, 410-11 (3d Cir. 1999) (Title VII and PHRA); Gomez v. Allegheny Health Serv., Inc., 71 F.3d 1079, 1083-84 (3d Cir. 1995), cert. denied, 518 U.S. 1005 (1996)(same); Newman v. GHS Osteopathic, Inc., Parkview Hosp., 60 F.3d 153, 156-57 (3d Cir. 1995)(Title VII and ADEA); Griffiths v. Cigna Corp., 988 F.2d 457, 469 n.10 (3d Cir. 1993), cert. denied, 510 U.S. 865 (1993)(same).

Plaintiff can sustain these claims by presenting direct evidence of discrimination or by using circumstantial evidence which satisfies the McDonnell Douglas requirements. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993); Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973); Starceski v. Westinghouse Elec. Corp., 54 F.3d 1089, 1095-96 n.4 (3d Cir. 1995); Torre v. Casio, Inc., 42 F.3d 825, 829 (3d Cir. 1994).

Direct evidence is overt or explicit evidence which directly reflects a discriminatory bias by a decision maker. See Armbruster v. Unisys Corp., 32 F.3d 768, 778, 782 (3d Cir. 1994). Where it appears from such evidence that some form of illegal

discrimination was a substantial factor in an adverse employment decision, the burden shifts to the defendant to show that "the decision would have been the same absent consideration of the illegitimate factor." Price Waterhouse v. Hopkins, 490 U.S. 228, 276 (1989). See also Keller v. Orix Credit Alliance, Inc., 130 F.3d 1101, 1113 (3d Cir. 1997); Jones v. School Dist. of Phila., 19 F. Supp. 2d 414, 417-18 (E.D. Pa. 1998). Where, as here, the plaintiff does not present direct evidence of discrimination, she may nevertheless survive summary judgment on a McDonnell Douglas pretext theory.

The plaintiff must first establish a prima facie case by showing that she was a member of a protected class; she was qualified for the job she held; she was discharged; and, she was replaced by a person not in the protected class or by someone sufficiently younger to create an inference of age discrimination, or otherwise present evidence sufficient to support an inference of unlawful discrimination. See Pivirotto v. Innovative Systems, Inc., 191 F.3d 344, 353-54 (3d Cir. 1999); Showalter v. Univ. of Pittsburgh Medical Ctr., 190 F.3d 231, 234 (3d Cir. 1999); Keller v. Orix Credit Alliance, Inc., 130 F.3d 1101, 1108 (3d Cir. 1997).<sup>7</sup> The burden then shifts to the

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<sup>7</sup> For purposes of a prima facie ADEA case, the fourth element contemplates an age difference of at least five years. See Fakete v. Aetna, Inc., 152 F. Supp. 2d 722, 735 (E.D. Pa. 2001).

employer to proffer a legitimate, non-discriminatory reason for the adverse employment action. See St. Mary's Honor Ctr., 509 U.S. at 506-07; Goosby v. Johnson & Johnson Medical Inc., 228 F.3d 313, 319 (3d Cir. 2000).

The plaintiff may still prevail by demonstrating that the employer's proffered reasons were not its true reasons but rather a pretext for unlawful discrimination. See Reeves v. Sanderson Plumbing Products Inc., 530 U.S. 133, 143 (2000); Goosby, 228 F.3d at 319. The plaintiff must present evidence from which a factfinder could reasonably disbelieve the employer's proffered reasons, from which it may then be inferred that the real reason was discriminatory, or otherwise present evidence from which one could reasonably find that unlawful discrimination was more likely than not a determinative cause of the employer's action. See Hicks, 509 U.S. at 511 & n.4; Keller, 130 F.3d at 1108. To discredit a legitimate reason proffered by the employer, a plaintiff must present evidence demonstrating "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions" in that reason that one could reasonably conclude it is incredible and unworthy of credence, and ultimately infer that the employer did not act for the asserted non-discriminatory reasons. See Fuentes v. Perskie, 32 F.3d 759, 765 (3d Cir. 1994).

The ultimate burden of proving that a defendant engaged in intentional discrimination remains at all times on the plaintiff. See Hicks, 509 U.S. at 507, 511.

Plaintiff is a member of each of the three protected classes upon which she bases her discrimination claims. The court assumes in addressing the instant motion that plaintiff had the basic objective qualifications for the job she held.<sup>8</sup> The termination, of course, was an adverse employment action.

Defendant stresses that plaintiff was replaced by a fifty-four-year-old African American woman who was thus a member of the same protected classes as plaintiff. While this fact is not per se fatal to plaintiff's discrimination claims, it hardly helps to sustain them. Plaintiff's mere pronouncement or subjective belief that she was terminated because of her race, gender and age is not a substitute for competent evidence. See Pilgrim v. Trustees of Tufts College, 118 F.3d 864, 871 (1st Cir. 1997); Douglass v. United Services Auto. Ass'n, 79 F.3d 1415, 1430 (5th Cir. 1996). Plaintiff in her brief points to no competent evidence to sustain the final element of a prima facie case. One simply cannot reasonably find from the competent evidence of record that plaintiff's race, gender or age, or

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<sup>8</sup> See Goosby, 228 F.3d at 320-21 (noting distinction between objective qualifications and performance which generally is more appropriately considered at pretext stage).

combination thereof, was more likely than not a determinative factor in her termination.

Perhaps in response to the dearth of such evidence, plaintiff attempts to recast the adverse employment action in her brief by suggesting that she was "constructively terminated" by the hiring of Mr. Benson and then "replaced" by Mr. Benson, a younger white male. Plaintiff in fact continued in her employment for two years thereafter. Plaintiff remained a manager with the same compensation and benefits. Mr. Benson did not assume her position or functions. He was engaged to fill a new supervisory position. Such action did not constitute a "constructive termination" of plaintiff or the managers of the other departments who also thereafter reported to Mr. Benson.

Plaintiff has also failed to discredit defendant's reason for terminating her. One cannot reasonably find from the competent evidence of record that defendant's reason is incredible and unworthy of credence. It is uncontroverted that plaintiff's department suffered from poor productivity even after she was allowed to hire more employees and that she failed over a five-month period to comply with actions requested of her by the employer to address the problem. Plaintiff has presented no evidence that any similarly situated department manager, of any race, gender or age, was treated more favorably.

That plaintiff may believe she was unfairly blamed for the deficiencies in her department does not establish pretext. It is the employer's belief that is important. See Fuentes, 32 F.3d at 765 ("To discredit the employer's proffered reason, the plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is 'wise, shrewd, prudent or competent.'"); Billet v. CIGNA Corp., 940 F.2d 812, 825 (3d Cir. 1991) ("what matters is the perception of the decision maker"); Billups v. Methodist Hosp. of Chicago, 922 F.2d 1300, 1304 (7th Cir. 1991) (inquiry regarding genuineness of employer's nondiscriminatory reason for terminating plaintiff "is limited to whether the employer's belief was honestly held"); Holder v. City of Raleigh, 867 F.2d 823, 829 (4th Cir. 1989) ("a reason honestly described but poorly founded is not a pretext") (citation and internal quotations omitted); Hicks v. Arthur, 878 F. Supp. 737, 739 (E.D. Pa.) (that a decision is ill-formed or ill-considered does not make it pretextual), aff'd, 72 F.3d 122 (3d Cir. 1995); Doyle v. Sentry Ins., 877 F. Supp. 1002, 1009 n.5 (E.D. Va. 1995) (it is the perception of the decision maker that is relevant); Orisakwe v. Marriott Retirement Communities, Inc., 871 F. Supp. 296, 299 (S.D. Tex. 1994) (employer who wrongly believes there is

legitimate reason to terminate employee does not discriminate when he acts on that belief).

**B. Hostile Work Environment Claim**

As noted, plaintiff predicated her hostile work environment claim on the critical evaluation of July 14, 1998 by Mr. Benson, her receipt of the two anonymous vulgar notes and the incident with Mr. Randolph.

A hostile work environment exists when a workplace is permeated with discriminatory intimidation, ridicule and insult so severe or pervasive as to alter the conditions of the victim's employment and create an abusive working environment. See Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). Conduct that is not sufficiently severe or pervasive to create an objectively hostile or abusive environment is not actionable. See id. at 21. Incidents of harassment are pervasive if they occur in concert or with regularity. See Andrews v. City of Philadelphia, 895 F.2d 1469, 1484 (3d Cir. 1990).

The pertinent factors in determining whether a work environment is hostile or abusive include "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; [and] whether it unreasonably interferes with an employee's work performance." Weston v. Pennsylvania, 251 F.3d 420, 426 (3d Cir. 2001) (quoting Harris, 510 U.S. at 23).

An employer is liable for sex-based mistreatment of an employee by a supervisor which rises to the level of a tangible adverse employment action. See Durham Life Ins. Co. v. Evans, 166 F.3d 139, 152 (3d Cir. 1999). Where the plaintiff claims a hostile workplace based upon the actions of a co-worker, the employee must show that she suffered intentional discrimination because of her sex; the discrimination was pervasive and regular; the discrimination detrimentally affected the plaintiff and would detrimentally affect a reasonable person of the same sex in that position; and the existence of respondeat superior liability. See Weston, 251 F.3d 426; Kunin v. Sears, Roebuck & Co., 175 F.3d 289, 293 (3d Cir. 1999).

To establish vicarious liability of an employer for the actions of the plaintiff's co-worker, the plaintiff must show that the employer failed to provide a reasonable avenue for complaint or was aware of the alleged harassment and failed to take appropriate remedial action. See Weston, 251 F.3d at 427. An employer cannot be liable when it responds in a manner which stops the harassment. Id.

Mr. Benson was plaintiff's supervisor. His memorandum of July 14, 1998 noting a 23% drop in productivity in plaintiff's department and directing her to take steps to address the problem, however, was not hostile or abusive and was designed to improve, not unreasonably interfere with, plaintiff's work

performance. Moreover, one cannot reasonably find from the competent evidence of record that the memorandum was motivated by plaintiff's gender.

The two anonymous notes to plaintiff and Mr. Randolph's offensive conduct may reasonably be viewed as acts of sex-based harassment. These acts, however, were isolated and not regular or pervasive. There is no showing or even suggestion that any supervisor was complicit in the sending of the two notes. Mr. Randolph was not a supervisor. In each instance, defendant took appropriate action which stopped the harassment. Although the sender of the notes was not identified, they ceased after defendant's forceful statements at the promptly convened staff meeting.<sup>9</sup> Mr. Randolph was terminated and removed from the workplace for other unrelated intolerable conduct before plaintiff advised defendant of her encounter with him.

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<sup>9</sup> Plaintiff's suggestion that defendant did not take the matter as seriously as two comparable incidents is unfounded. While the sending of two notes with vulgar language was offensive and unacceptable conduct, it was not comparable to a physical assault with a deadly weapon. Moreover, there was no investigation regarding the assault. Police were called in to remove Mr. Randolph and ensure the physical safety of persons at the site. Persons were interviewed about the dissemination of confidential information. This was at a time, however, when the perpetrator necessarily knew that knowledge of what he or she had done would be widespread. It was entirely appropriate in plaintiff's case for investigators to focus on the mailroom through which the interoffice mail flowed without alerting the perpetrator by widespread interviews that his conduct had been reported and he should be on his guard. There was no apparent reason at the time to distrust Mr. Randolph.

Defendant's director of human resources made clear that had this not occurred, Mr. Randolph would have been terminated for his offensive conduct toward plaintiff. In short, defendant displayed zero tolerance for the conduct about which plaintiff complained.

Plaintiff appears to concede that she has failed to sustain the hostile work environment claim.<sup>10</sup> In any event, plaintiff has not presented competent evidence from which one could reasonably find that she was subjected to a hostile work environment, let alone one for which defendant is liable.

#### V. Conclusion

If there is evidence to support plaintiff's claims, she has not produced it. Speculation and subjective opinions are not competent evidence. One cannot reasonably conclude from the competent evidence of record that plaintiff was terminated because of race, sex, age, or any reason other than defendant's belief that she was accountable for the deficient performance of her department and her continued failure to comply with two specific requests aimed at alleviating the situation. One cannot reasonably conclude from the competent evidence of record that plaintiff was a victim of a hostile work environment.

Accordingly, defendant is entitled to summary judgment. Defendant's motion will be granted. An appropriate order will be entered.

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<sup>10</sup> In plaintiff's brief, she states that "Plaintiff concedes to the arguments of moving defendant regarding the sexual harassment (pages 41-46 of defendant's brief), and concedes his [sic] absence of liability on this issue."

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

PEARL MARTIN : CIVIL ACTION  
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 v. :  
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 HEALTHCARE BUSINESS RESOURCES :  
 and JAMES RANDOLPH : NO. 00-3244

O R D E R

AND NOW, this                    day of March, 2002, upon  
consideration of the Motion of remaining defendant Healthcare  
Business Resources for Summary Judgment (Doc. #12) and  
plaintiff's response thereto, consistent with the accompanying  
memorandum, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and  
accordingly **JUDGMENT** is **ENTERED** in the above action against  
plaintiff and for defendant Healthcare Business Resources.

BY THE COURT:

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JAY C. WALDMAN, J.

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O R D E R

AND NOW, this                    day of March, 2002, consistent  
with the accompanying memorandum, **IT IS HEREBY ORDERED** that the  
claim in this action against James Randolph is **DISMISSED** without  
prejudice, and he is dismissed and terminated as a party  
defendant to this action.

BY THE COURT:

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JAY C. WALDMAN, J.