

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

CHERYL SOLOMEN,	:	
Plaintiff,	:	
	:	
v.	:	00-CV-858
	:	
REDWOOD ADVISORY COMPANY,	:	
Defendant.	:	

EXPLANATION AND ORDER

Anita B. Brody, J. **September , 2002**

On January 31, 2002, I signed an explanation and order granting defendant’s motion for summary judgment on both claims of plaintiff’s complaint that alleged pregnancy discrimination under federal law and state law. On February 6, 2002, plaintiff moved for reconsideration of this order, pursuant to Fed.R.Civ.P. 59(e), claiming that I improperly granted summary judgment by viewing the evidence in the light most favorable to the defendant. Defendant filed its opposition to this motion on February 25, 2002. On March 11, 2002, plaintiff filed a “supplemental motion for reconsideration under Fed.R.Civ.P. 60(b)” claiming that the complaint included allegations of sex discrimination and retaliation that I improperly failed to address in my explanation and order. Defendant filed its opposition to this motion on March 25, 2002. I shall address each motion separately.

Rule 59(e) Motion

Plaintiff’s 59(e) motion simply argues that, in deciding the summary judgment motion, I improperly viewed the evidence in the light most favorable to defendant. This argument is aimed

at certain comments made by Solomen's manager Ricardo Dunston ("Dunston") concerning a decrease in her pay and lack of a long term future with the company. Plaintiff asserts that these comments were sufficient evidence to preclude a grant of summary judgment to defendant. In granting summary judgment, I relied upon plaintiff's deposition testimony that these comments made by Dunston were not related to her pregnancy. In light of this admission, I found that plaintiff had failed to produce any evidence that her pregnancy had affected Dunston in the period between when she returned from maternity leave and her termination. Plaintiff claims that this was improper.

A court may grant relief from a judgment under Rule 59(e) only where (1) there is a need to correct a clear error of law or to prevent manifest injustice, (2) new evidence not previously available has become available, or (3) there has been a change of controlling law. See NL Indus., Inc. v. Comm. Union Ins. Co., 65 F.3d 314, 324 n.8 (3d Cir. 1995); Abu-Jamal v. Horn, 2001 WL 1609761, *9 (E.D.Pa. December 18, 2001). "A motion for reconsideration is not to be used as a means to reargue matters already argued and disposed of or as an attempt to relitigate a point of disagreement between the Court and the litigant." Abu-Jamal, 2001 WL 1609761, *9. Plaintiff's only argument in support of her Rule 59(e) motion is that a clear error of law occurred in that I failed to properly view the evidence in the light most favorable to the plaintiff in deciding the summary judgment motion.

The crux of plaintiff's argument is the characterization of her deposition testimony that the comments made by Dunston were not related to her pregnancy. Plaintiff asserts that this statement should not outweigh the other evidence of discriminatory intent and that, ignoring this admission, she could conceivably make out a pregnancy discrimination claim. Examining the

transcript of plaintiff's deposition, I reaffirm my understanding of Solomen's testimony. Her admission that Dunston's alleged desire to fire her was not related to her pregnancy eliminates the necessary nexus between these comments and her pregnancy. Thus, even assuming that Dunston uttered every word that plaintiff alleges, these comments are insufficient to make out a prima facie case of pregnancy discrimination. Therefore, I shall deny plaintiff's motion for reconsideration.

Rule 60(b) Motion

On March 11, 2002, plaintiff filed a "Supplemental Motion for Reconsideration Pursuant to Rule 60(b)." Essentially, Solomen argues that she adequately alleged claims of retaliation and sex and gender discrimination in her complaint¹ and that I improvidently granted summary

¹Plaintiff identifies an allegation that "[t]he true reasons why Ms. Solomen was fired is because she was pregnant, she took pregnancy leave and she was a married woman with two children at home," located in the facts section of her complaint, as the substance of her retaliation claim. See Plaintiff's Supplemental Motion for Reconsideration, at 2 (quoting Complaint ¶18). She asserts that her sex and gender discrimination claims were properly pled in her allegation under Count I that defendant "violated 42 U.S.C. §2000(k) et seq. [sic] by discriminating against, treating plaintiff...in a disparate manner, and terminating [her] based on her sex, gender and pregnancy." Id., at 2 (quoting Complaint ¶23).

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that the complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). The Supreme Court has interpreted Rule 8(a)(2) to require the complaint to provide defendants with "fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47 (1957).

Under this standard, the complaint cannot be fairly read to provide defendant with fair notice of either a retaliation claim or sex and gender discrimination claims. The alleged basis of the retaliation claim is found nowhere in either Count of the complaint. As for the alleged claims of sex and gender discrimination, plaintiff's argument that she provided fair notice ignores the explicit reference to the Pregnancy Discrimination Act contained in the allegation allegedly supporting these claims. See Plaintiff's Supplemental Motion for Reconsideration, at 2 (asserting violation of 42 U.S.C. §2000(k) [sic], which does not exist, but can only be construed as a reference to 42 U.S.C. §2000e(k), the Pregnancy Discrimination Act). Viewed in this context, it is clear that the allegations identified by plaintiff as providing fair notice of sex and gender discrimination claims instead only provide notice of plaintiff's pregnancy discrimination claims,

judgment to defendant on these claims. Defendant vigorously opposes this motion, asserting that there is neither a legal nor a factual basis for it.

Rule 60(b) “does not confer upon the district courts a ‘standardless residual discretionary power to set aside judgments.’” Martinez-McBean v. Gov’t of the Virgin Islands, 562 F.2d 908, 911 (3d Cir. 1977)(quoting Mayberry v. Maroney, 558 F.2d 1159, 1163 (3d Cir. 1977); Mayberry v. Maroney, 529 F.2d 332, 337 (3d Cir. 1976)). Due to the judicial system’s interest in finality, the “movant under 60(b) bears a heavy burden.” Bohus v. Beloff, 950 F.2d 919, 930 (3d Cir. 1991). The remedy provided by Rule 60(b) is “extraordinary, and special circumstances must justify granting relief under it.” Page v. Schweiker, 786 F.2d 150, 158 (3d Cir. 1986) (Garth, J., concurring). The six prongs of Rule 60(b) are mutually exclusive with respect to each other and relief under the broad language of Rule 60(b)(6) cannot be granted for any reason encompassed by subsections (1)-(5). See Liljeberg v. Health Serv. Acquisition Corp., 486 U.S. 847, 863 n.11 (1988); DeFeo v. Allstate Ins. Co., 1998 WL 328195, *3 (E.D.Pa. June 19, 1998).

A quick review of the order from which plaintiff seeks relief under Rule 60(b) reveals that plaintiff’s motion is meritless. Plaintiff’s motion seeks relief from those portions of my order of January 31, 2002 in which I granted summary judgment to defendant on plaintiff’s claims of retaliation and sex and gender discrimination. However, the explicit terms of the January 31, 2002 order address only plaintiff’s “pregnancy discrimination claims under both Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2(a)(1) [as amended by the Pregnancy Discrimination Act, 42 U.S.C. §2000e(k)], and the Pennsylvania Human Relations Act, 43 P.S.

which are a specific type of sex discrimination. See 42 U.S.C. §2000e(k) (“The terms ‘because of sex’ or ‘on the basis of sex’ include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions...”).

§951 et seq.” Solomen v. Redwood Advisory Co., 183 F.Supp.2d 748, 751-52 (E.D.Pa. 2002).

Therefore, to the extent that plaintiff’s Rule 60(b) motion seeks relief on claims of retaliation or sex and gender discrimination, it is meritless and shall be denied.²

²Additionally, this motion raises arguments that plaintiff failed to offer in her complaint, her opposition to defendant’s summary judgment motion, or her timely filed 59(a) motion. As such, plaintiff would be hard-pressed to satisfy the heavy burden necessary for relief under Rule 60(b). See Bohus 950 F.2d at 930.

ORDER

AND NOW, this _____ day of September, 2002, upon review of the filings of the parties, it is **ORDERED** that:

- (1) Plaintiff's Motion for Reconsideration (Docket Entry #43) is **DENIED**;
- (2) Plaintiff's Supplemental Motion for Reconsideration Pursuant to Rule 60(b) (Docket Entry #47) is **DENIED**; and

ANITA B. BRODY, J.

Copies **FAXED** on _____ to:

Copies **MAILED** on _____ to: