

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

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|-------------------------------|---|-----------------|
| CAROL B. LAURENZANO, |) | |
| |) | Civil Action |
| Plaintiff |) | No. 00-CV-02621 |
| |) | |
| vs. |) | |
| |) | |
| LEHIGH VALLEY HOSPITAL, INC., |) | |
| |) | |
| Defendant |) | |

* * *

APPEARANCES:

WILLIAM J. FRIES, ESQUIRE and
JEANETTE N. SIMONE, ESQUIRE
On behalf of Plaintiff

A. JAMES JOHNSTON, ESQUIRE,
MICHELLE L. OSTRELICH, ESQUIRE, and
GLENN GUANOWSKY, ESQUIRE
On behalf of Defendant

* * *

O P I N I O N

JAMES KNOLL GARDNER
United States District Judge

This matter is before the court on Defendant's Objections to Magistrate Judge's Order Entered on June 27, 2003, which objections were filed July 11, 2003. Specifically, Magistrate Judge Arnold C. Rapoport entered a discovery Order compelling defendant Lehigh Valley Hospital, Inc. to produce certain budget, revenue and expenditure documents concerning the psychiatry department of defendant hospital. Plaintiff's Reply in Opposition to Defendant's Objections to Magistrate Judge's

Order Entered on June 27, 2003 was filed July 23, 2003. For the reasons set forth below, we overrule defendant's objections and affirm the June 27, 2003 Order of Magistrate Judge Rapoport.

Complaint

Plaintiff Carol B. Laurenzano alleges four causes of action in her Complaint. Count I alleges a cause of action for gender discrimination pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e-2000e-17. Count II alleges a cause of action for gender discrimination pursuant to the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, No. 222, §§1-13, as amended, 43 P.S. §§951-963 ("PHRA"). Count III alleges a cause of action for disability discrimination pursuant to the Americans with Disabilities Act, 42 U.S.C. §§12101-12213 ("ADA"). Finally, Count IV alleges a cause of action for disability discrimination pursuant to the PHRA.

Facts

Based upon the pleadings, record papers, discovery depositions, defendant's motion, plaintiff's reply, and the exhibits attached to the motion and reply, the pertinent facts are as follows. Plaintiff Carol B. Laurenzano is a licensed psychologist who was hired by defendant Lehigh Valley Hospital in

April 1992. She worked in the psychiatry department until 1997, after which she no longer worked for the hospital. Plaintiff alleges that she had double hip replacement surgery in 1982, and that deterioration of her condition constitutes a physical disability.

Plaintiff also contends that from April 1992 until January 1997 she was subjected to gender and disability discrimination by defendant. Specifically, plaintiff asserts that she was denied the opportunity to perform her employment responsibilities to the best of her ability, denied promotions, subjected to a larger workload than her co-workers, and denied the same access as her co-workers to secretarial staff. In addition plaintiff claims that she was denied the opportunity to attend to a greater number of patients, and thereby denied the same opportunity to augment her income as her co-workers.

Plaintiff avers that she was forced to share her office with a social worker instead of being given her own office, and denied reimbursement for travel and hotel expenses for attendance at professional conferences. Finally, plaintiff contends that she was denied reasonable accommodations for her disability. She cites denial of her requests for a parking space in the parking garage, relocation of her computer to be closer to where she performed her duties, and reassignment to a position with fewer work hours.

The undersigned entered a Rule 16 Status Conference Order on March 12, 2003. The Order provided that all discovery in this case was to be completed by April 30, 2003. On April 15, 2003 plaintiff served on defendant her Fifth Request for Production of Documents Directed to Defendant, Lehigh Valley Hospital. On May 15, 2003 Defendant, Lehigh Valley Hospital's Objections to Plaintiff's Fifth Request for Production of Documents was served on counsel for plaintiff.

By letter dated May 27, 2003 counsel for plaintiff advised defense counsel that there was no merit to defendant's objections and requested that the documents be provided by June 4, 2003, or plaintiff would seek court intervention. On June 4, 2003 plaintiff's counsel wrote to Judge Rapoport requesting an Order compelling defendant to produce the documents. By letter to Judge Rapoport dated June 10, 2003 defendant responded to plaintiff's request for an Order compelling disclosure.

On June 24, 2003 Judge Rapoport conducted a telephone conference with counsel concerning the discovery dispute. Thereafter, on June 27, 2003 Judge Rapoport entered an Order compelling defendant to produce some of the documents requested by plaintiff. Specifically, Judge Rapoport required defendant to produce "any and all budgets, revenues and expenditures for the

Defendant's Psychology Department¹ for the years 1992-1997 inclusive."

However, Judge Rapoport denied plaintiff's remaining requests. Judge Rapoport ruled that defendant was not required to produce documents regarding the budget, revenues and expenditures of Lehigh Valley Hospital from 1992 to present, nor any annual reports of Lehigh Valley Hospital from 1992 to present, nor the budget, revenues and expenditures of the psychology department after 1997.

On July 11, 2003 defendant filed the within objections to Magistrate Judge Rapoport's June 27, 2003 Order. Defendant raises two allegations of error in its objections. First, defendant contends that it was not required to respond to plaintiff's fifth request for documents because the request was untimely. Second, defendant asserts that Judge Rapoport's Order is overly broad and unduly burdensome. Defendant contends that the documents required to be produced by the Order are not relevant to the subject matter involved in this litigation, nor reasonably calculated to lead to the discovery of admissible evidence. For the following reasons, we overrule defendant's objections.

¹ In her answer, plaintiff contends that defendant does not have a psychology department. Rather, defendant has a psychiatry department. Thus, the Order accompanying this Memorandum reflects that defendant shall produce the information regarding the psychiatry department at Lehigh Valley Hospital.

A Standing Order of the undersigned dated January 2, 2003 provides that all discovery disputes which cannot be amicably resolved shall be brought to the attention of Magistrate Judge Rapoport "by letter or other informal means". Moreover, the Standing Order provides that any party contending that the Order of the Magistrate Judge is "clearly erroneous or contrary to law" may file a petition to reconsider, together with a proposed Order, directed to the undersigned, pursuant to 28 U.S.C. §636(b)(1)(A). Section 636(b)(1)(A) provides that a District Judge "may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law."

Timeliness of Discovery Request

Defendant's initial objection is that plaintiff's fifth request for production of documents is untimely. Specifically, defendant contends that the deadline for completion of all discovery was April 30, 2003. Because plaintiff did not serve her request for production until April 15, 2003, defendant's response would not be due until May 15, 2003 under Fed.R.Civ.P. 34(b), which requires a response within 30 days after service of the request. Thus, defendant contends that because its response was not required until after the deadline for all discovery, it was not required to respond to plaintiff's request.

In support of its position, defendant relies on Gluck v. Ansett Australia Ltd., 204 F.R.D. 217 (D.D.C. 2001) and Jones v. Stachelek, 1992 U.S. Dist. LEXIS 12556 (E.D.Pa. 1992). For the following reasons, we decline to follow the cases cited by defendant. Rather, we find persuasive the decision of our colleague United States District Judge Herbert J. Hutton in Mines v. City of Philadelphia, 1994 WL 376914 (E.D.Pa. 1994).

In Mines Judge Hutton stated:

Although the Amended Scheduling Order does not specify whether discovery requests are to be filed before the deadline or whether responses must be received by the deadline, it is clear that the former is the approach contemplated by the Court. The approach advocated by the defendants would enable litigants to withhold discovery until after the expiration of the deadline and then claim that the discovery was untimely.

1994 WL 376914 at *2.

Our March 12, 2003 status conference Order provides that "all discovery motions, including motions concerning expert witnesses, shall be filed and served prior to the close of discovery. Any motions filed in violation of this Order may be deemed waived in the absence of good cause shown." Defendant argues that we could not have intended the discovery deadline to be the date when the last discovery request could be served. Otherwise, our discovery motion deadline would be meaningless

because any motions objecting to discovery requests filed on the last day would necessarily be filed after the deadline for discovery motions. We disagree.

The discovery motion deadline is included in our standard Rule 16 Status Conference Order for the purpose of setting a deadline to request extensions of deadlines concerning the length of the discovery period, extensions of time to produce expert reports and to settle any other discovery disputes that have not been previously settled by the parties. We included the language "[a]ny motions filed in violation of this Order may be deemed waived in the absence of good cause shown."

That language is included to cover situations such as exist in this case, namely, where one party has properly served discovery requests prior to the expiration of the discovery deadline and the other party does not respond. A party cannot automatically presume that the other party will not answer, thus, a dispute does not arise until such time as the response is past due.

Moreover, in our Standing Order, we specifically direct that all discovery disputes can be brought before Magistrate Judge Rapoport on an informal basis, without the necessity of filing a formal motion. Not only is this Judge Rapoport's preference, but often this approach facilitates a speedy, informal resolution of discovery disputes. There is no

requirement that a party do anything other than what is contemplated by our Standing Order, and we do not find our Standing Order in conflict with our Rule 16 Status Conference Order.

In this case, plaintiff served its discovery request 15 days prior to the discovery deadline, attempted to resolve the discovery dispute with defendant without court intervention, then when that was not possible, in a timely manner requested action by Judge Rapoport. Accordingly, we conclude as did Judge Hutton in Mines, that to construe our scheduling Order in the manner advocated by defendant, we would frustrate, rather than advance, the discovery process.

Because plaintiff made a timely discovery request and properly followed the procedures set forth in our Standing Order, defendant is required to respond to plaintiff's fifth request for production of documents as directed by Judge Rapoport. Judge Rapoport determined that because plaintiff's discovery request was served prior to the discovery deadline, it was timely. His conclusion was neither clearly erroneous, nor contrary to law as contemplated by 28 U.S.C. §636(b)(1)(A).

Scope of Discovery Request

Next, we address defendant's assertion that Judge Rapoport's Order is overly broad, unduly burdensome and that the information subject to the Order is not relevant to the subject

matter involved in this litigation and is not reasonably calculated to lead to the discovery of admissible evidence. For the following reasons, we disagree.

Initially, we note that Judge Rapoport limited the scope of plaintiff's discovery request. He did not order defendant to produce all of the documents requested by plaintiff. Rather, he narrowly tailored his Order and required defendant to respond in a manner consistent with the parameters of the discovery rules.

Specifically, he did not require defendant to produce all of the budgets, revenues and expenditures of the entire hospital. Such an Order might have been overly broad and unduly burdensome. Rather, he required defendant to produce those items only for the psychology department. Moreover, plaintiff requested the information from 1992 to present. However, Judge Rapoport directed defendant to produce only the documents relating to the period of plaintiff's employment by defendant, from 1992 to 1997.

In addition, defendant asserts that even as narrowly tailored by Judge Rapoport, the request is overly broad and unduly burdensome, without specifically stating how and why this is the case. Accordingly, we conclude that Judge Rapoport properly narrowed the scope of the document production and absent any specific reason why this is overly broad or unduly

burdensome, defendant fails to meet its burden of showing that this decision was clearly erroneous or contrary to law.

Relevance of Discovery Request

Federal Rule of Civil Procedure 26(b)(1) provides, in part, that parties "may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party.... Relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Regarding defendant's assertions that the information sought is not relevant to the subject matter involved in this litigation and is not reasonably calculated to lead to the discovery of admissible evidence, we conclude that the information sought may be relevant and may lead to the discovery of admissible evidence.

Plaintiff claims that she was denied a reasonable accommodation when defendant denied her request to relocate her computer closer to where she performed her duties. Defendant has maintained as a defense to plaintiff's claim that it would be too expensive to accommodate plaintiff's request and that there was not money in the psychiatry department budget for such an accommodation. Because the budget, revenue and expenditure information requested by plaintiff could refute, or lead to information that might refute, this contention, it is certainly

both relevant and reasonably calculated to lead to the discovery of admissible evidence.

Conclusion

In summary, we conclude that plaintiff's discovery request was timely. We also conclude that plaintiff's request for production, to the extent approved by Magistrate Judge Rapoport, is not overly broad, nor unduly burdensome. The information subject to the Order is relevant to the subject matter involved in this litigation and is reasonably calculated to lead to the discovery of admissible evidence. Moreover, we conclude that Judge Rapoport's Order is not clearly erroneous or contrary to law. Therefore, we overrule defendant's objections to Judge Rapoport's Order to compel discovery.

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

CAROL B. LAURENZANO,)
)
) Civil Action
 Plaintiff) No. 00-CV-02621
)
 vs.)
)
 LEHIGH VALLEY HOSPITAL, INC.,)
)
 Defendant)

O R D E R

NOW, this 25th day of July, 2003, upon consideration of Defendant's Objections to Magistrate Judge's Order Entered on June 27, 2003, which objections were filed July 11, 2003; upon consideration of Plaintiff's Reply in Opposition to Defendant's Objections to Magistrate Judge's Order Entered on June 27, 2003, filed July 23, 2003; and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that defendant's objections are overruled.

IT IS FURTHER ORDERED that plaintiff's Fifth Request for Production of Documents is granted in part and denied in part.

IT IS FURTHER ORDERED that on or before August 6, 2003 defendant shall provide plaintiff's counsel with copies of all budgets, and any documents reflecting revenues and expenditures, for the psychiatry department of defendant hospital for the years 1992-1997, inclusive.

IT IS FURTHER ORDERED that on or before August 6, 2003 the parties shall execute a confidentiality agreement concerning disclosure of the documents ordered to be produced.

IT IS FURTHER ORDERED that in all other respects, plaintiff's Fifth Request for Production of Documents is denied.

BY THE COURT:

James Knoll Gardner
United States District Judge