

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

PARTICIA A. ORTIZ,
Plaintiff

CIVIL ACTION

v.

BURNHAM CORPORATION
Defendant

NO. 01-2039

ORDER AND MEMORANDUM

And now, this th10th day of January, 2002, upon consideration of the defendant's motion for summary judgment (Docket No. 5), the plaintiff's opposition thereto, and after oral argument, **IT IS** HEREBY ORDERED AND DECREED that the motion is GRANTED for the following reasons.

The plaintiff, a quality control inspector, has brought two claims under Title VII against her former employer, a manufacturer of residential and commercial boilers: a sexual harassment claim, based on a hostile working environment; and a claim of retaliation on account of the plaintiff's complaints about the incidents that give rise to the sexual harassment claim.

The basis of the sexual harassment claim are two incidents that involved the use of the computer by a co-worker to access sexual content. As part of her job, the plaintiff had to

input information regarding her inspections into a computer and generate reports for the boilers and parts inspected. There was one office for all the QC inspectors and one computer into which the inspection information was input. The co-worker whose conduct was at issue is also a QC inspector; he worked the first shift (6:00 a.m. to 2:30 p.m.) and the plaintiff worked the third shift (10:30 p.m. to 6:00 a.m.).

According to the plaintiff, the first incident of alleged sexual harassment occurred during the week of Thanksgiving of 1999. Towards the end of the plaintiff's shift, the co-worker came into the quality control office, said hello to the plaintiff and then used the computer. The plaintiff then saw the word "sex" appear on the computer screen. She also saw the phrase "sex without marriage" and the names Angela and Corey appear on the screen. The plaintiff witnessed this for a few seconds before leaving the room. The plaintiff did not see any graphic images or photographs.

The second incident occurred approximately two weeks later. According to the plaintiff, the co-worker again came into the QC office and used the computer. The plaintiff saw the word "sex" and a female's picture starting to appear on the screen and she immediately left the room. She observed these images for two

or three seconds and did not see any graphic physical images.

The plaintiff reported these incidents and the co-worker apologized to the plaintiff at a departmental meeting. The plaintiff never again witnessed the co-worker or any other employee of the defendant access pornography or other inappropriate material **on the** computer.

The plaintiff complains that the co-worker and her supervisor retaliated against her in various ways, and ultimately terminated her because of her complaints about **the** two incidents. The defendant contends that she was terminated because of poor job performance and poor attendance.

This case raises issues similar to the issues decided recently by the Supreme Court in Clark County School District v. Breeden, 121 S. Ct. 1508 (2001) (per curiam). In Clark County, the Supreme Court held that because no reasonable person could have believed that the incident at issue there violated Title VII, the employee could **not** make out a retaliation claim based on internal complaints about the incident.

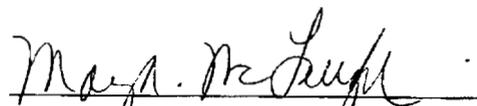
The Court reiterated its earlier rulings on the requirements for sexual harassment to be actionable under Title VII. "[S]exual harassment **is** actionable under Title VII only **if** it **is** 'so severe or pervasive as to alter the conditions of [the

victim's] employment and create an abusive working environment. " ' Id. at 1509 (quoting Faraqher v. Boca Raton, 524 W.S. 775, 786 (1998) and Meritor Savings Bank v. Vinson, 477 U.S. 57, 67 (1986) (some internal quotation marks omitted)). The Court reiterated that "simple teasing, offhand comments, and isolated incidents (unless extremely **serious**) will not amount to discriminatory changes in the 'terms and conditions of employment." Clark County, 121 S. Ct. at 1510 (quoting Faraqher, 524 U.S. at 788).

This Court holds that **no** reasonable person could have believed that the two incidents recounted above violated Title VII's standard. The plaintiff happened to see a co-worker access some sexual content on the computer. There **is** no allegation or evidence that the co-worker directed his conduct in any way to the plaintiff. It appears that he accessed the site **for** his personal pleasure, completely unrelated to the plaintiff. The plaintiff did not **see** any sexually explicit **images**. She **saw** some words that she apparently found offensive. These incidents "cannot remotely be considered 'extremely serious,'" as Supreme Court cases require. Clark County, 121 S. Ct. at 1510 (**quoting** Faraqher, 524 U.S. at 788).

The Court, therefore, will grant the defendant's motion for summary judgment and dismiss the case with prejudice. JUDGMENT IS HEREBY ENTERED for the defendant and against the plaintiff.

BY THE COURT:


McLaughlin, J. v

dated 1/11/02 to:

J. Crayhead, Esq

and to:

Jon Lyons, Esq