

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

JAMIE G. HARE	:	CIVIL ACTION
	:	
v.	:	NO. 02-CV-7373
	:	
JOHN POTTER	:	

MEMORANDUM AND ORDER

Kauffman, J.

October 26, 2005

In this employment discrimination action against Defendant John Potter, Postmaster General, United States Postal Service (“Defendant”), Jamie G. Hare (“Plaintiff”) alleges that she was a victim of retaliation (Count I), gender discrimination (Count II), and a hostile work environment in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq. (Count III) while she was a Postal Service employee. Plaintiff further contends that Defendant violated the Equal Pay Act, 29 U.S.C. § 206 (Count IV) and constructively discharged her (Count V). Now before the Court is (1) Defendant’s Renewed Motion for Summary Judgment on Counts I through IV and (2) Defendant’s Motion to Dismiss or, in the alternative, for Summary Judgment on Count V.¹ For the reasons stated below, the Court will grant summary judgment on all counts.

I. Background

Plaintiff began working as a Postal Service employee in July 1994. Amended Complaint

¹ The Court has treated Defendant’s Motion to Dismiss, or in the alternative, for Summary Judgment on Count V as a Motion for Summary Judgment because (1) both parties stated that their briefs on the Motion covered both the motion to dismiss and a motion for summary judgment under Fed. R. Civ. P. 56 and (2) the Court has considered “matters outside the pleading [that were] presented to and not excluded by the [C]ourt.” See Fed. R. Civ. P. 12(b).

¶ 9. In February 2000, while working in her capacity as a Postmaster of Nesquehoning, Pennsylvania, Plaintiff had a violent encounter with a customer. Id. ¶¶ 13-14. Lawrence McCullough (“McCullough”), a Postal Inspection Service employee, was assigned to investigate the incident. Id. ¶ 16. During the course of the investigation later that month, Plaintiff alleges that there were intrusive, threatening, and embarrassing encounters with McCullough that had sexual and overly personal overtones. Id. ¶¶ 15-26. After submitting a written complaint to McCullough’s supervisor on February 13, 2000, Plaintiff met with the district manager on February 25, 2000. Id. ¶¶ 27-29, 32-34.

On March 21, 2000, Plaintiff’s supervisor recommended her for a Career Management Program (“CMP”) training class, but she was not selected. Id. ¶ 40, 47. On March 30, 2000, Plaintiff submitted her application for a Post Office Operations Manager (“POOM”) position, which was posted for the Harrisburg district. Id. ¶ 48. She was not selected as one of the five recommended candidates. Id. ¶¶ 54, 56.

On July 18, 2000, Plaintiff contacted an Equal Employment Opportunity Commission (“EEOC”) counselor regarding the alleged sexual harassment by McCullough, her failure to be selected for the POOM position, and her failure to be admitted to the CMP class. Defendant’s Memorandum of Law in Support of Defendant’s Renewed Motion for Summary Judgment (“Defendant’s Renewed Summary Judgment Motion”) at 8. Plaintiff filed a formal EEOC complaint alleging gender discrimination, retaliation, and sexual harassment on October 30, 2000. Id., Ex. 6 (Plaintiff’s EEOC Complaint dated October 30, 2000). On August 20, 2001, an EEOC administrative judge dismissed Plaintiff’s claims accusing McCullough as untimely and then later, on November 29, 2001, found that Plaintiff had not been discriminated or retaliated

against when she was not interviewed or selected for the POOM position and when she was not selected for participation in the CMP class. Id. at 8-9.

In April 2001, Plaintiff was promoted to Postmaster in Nazareth, Pennsylvania. Amended Complaint ¶ 62. In August 2001, Plaintiff discussed her EEOC complaint with her direct supervisor Jeffrey Ruth (“Ruth”). Id. ¶ 63. She contends that after that meeting, Ruth retaliated against her and tried to intimidate her into dropping her harassment and retaliation claims by failing to adequately supervise her and provide her with necessary resources. Id. ¶¶ 64-76. In addition, her post office received excessive audits and was investigated for alleged credit card fraud. Id. ¶¶ 91-98. In January 2002, prior to her return from extended sick leave, Plaintiff requested that she be transferred to a POOM other than Ruth. Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment (“Plaintiff’s Opposition Motion”), Ex. A at 185. Defendant granted her request. Id. at 185-86. Plaintiff learned later that month that Ruth gave her a “met objectives/expectations” performance evaluation for Fiscal Year 2001. Id. ¶¶ 84, 86.

On February 12, 2002, Plaintiff filed a second EEOC complaint involving Ruth, alleging harassment, retaliation, gender discrimination, hostile work environment, and an Equal Pay Act claim. Plaintiff’s Opposition to Defendant’s Motion to Dismiss Supplemental Complaint or in the Alternative, for Summary Judgment, Ex. 1 at 10-18, 30-43 (Excerpts from Plaintiff’s Second EEOC Investigative File, 4-C-170-0006-02); Hare v. Potter, 4-C-170-0006-0, at 1 (April 29, 2003) (“ Final Agency Decision”). Following the EEOC investigation, Plaintiff requested a final agency decision without a hearing. Final Agency Decision at 1.

On September 19, 2002, Plaintiff filed the original complaint in this action. On January 28, 2003, the Court granted Plaintiff’s motion to stay her action pending a final agency decision

in her second EEOC complaint. On April 23, 2003, a final agency decision was issued, finding no harassment, retaliation, gender discrimination, hostile work environment, or Equal Pay Act claim. On July 10, 2003, Plaintiff filed an amended complaint, adding new claims. On January 15, 2004, the Court ordered that the case be removed from the civil suspense file. Defendant filed a motion for summary judgment on October 8, 2004.

On December 18, 2004, Plaintiff tendered her resignation, effective December 23, 2004. Id. ¶ 22. On December 26, 2004, Plaintiff filed a motion to supplement her complaint, which the Court granted. On February 8, 2005, Defendant filed (1) a Renewed Motion for Summary Judgment on the retaliation, gender discrimination, hostile work environment, and Equal Pay Act claims and (2) a Motion to Dismiss or, in the alternative, for Summary Judgment on Plaintiff's constructive discharge claim.

II. Legal Standard

In deciding a motion for summary judgment pursuant to Fed. R. Civ. P. 56, the test is “whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.” Med. Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (quoting Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994)). “[S]ummary judgment will not lie if the dispute about a material fact is ‘genuine,’ that is, if 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). The Court must examine the evidence in the light most favorable to the non-moving party and resolve all reasonable inferences in that party's favor. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986) (citing United States v. Diebold, Inc., 369 U.S. 654, 655 (1962)). However, “there can be ‘no genuine issue as

to any material fact' . . . [where the non-moving party's] complete failure of proof concerning an essential element of [its] case necessarily renders all other facts immaterial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

The party moving for summary judgment bears the initial burden of showing the basis for its motion. See Shields v. Zuccarini, 254 F.3d 476, 481 (3d. Cir. 2001). If the movant meets that burden, the onus then "shifts to the non-moving party to set forth specific facts showing the existence of [a genuine issue of material fact] for trial." Id.

III. Analysis

A. Constructive Discharge

Plaintiff alleges that she was constructively discharged from her Postmaster position in Nazareth, Pennsylvania as a result of a continuing pattern of discrimination by Defendant. To find constructive discharge, a court "need merely find that the employer knowingly permitted conditions of discrimination in employment so intolerable that a reasonable person subject to them would resign." Goss v. Exxon Office Sys. Co., 747 F.2d 885, 888 (3d Cir. 1984). In other words, the plaintiff must show that the alleged discrimination goes beyond a "threshold of 'intolerable conditions.'" Duffy v. Paper Magic Group, Inc., 265 F.3d 163, 169 (3d Cir. 2001).

Factors the Court may consider in determining whether there was a constructive discharge include threats of discharge, being urged to resign or retire, demotion or reduction in pay or benefits, involuntary transfer to a less desirable position, alteration of job responsibilities, and unsatisfactory job evaluations. Clowes v. Allegheny Valley Hosp., 991 F.2d 1159, 1161 (3d Cir. 1993). The record does not reveal any such action. Instead, Defendant promoted Plaintiff to a higher-paying and higher-level position when Plaintiff began working as the Postmaster in

Nazareth. Plaintiff also received annual pay raises. Plaintiff's Opposition Motion, Ex. A at 189 (Deposition of Plaintiff dated June 7, 2004). In addition, Plaintiff received satisfactory job evaluations throughout her employment.² Id.

In Duffy, the Third Circuit found that the employer was entitled to summary judgment on a claim of constructive discharge. 265 F.3d at 171. The plaintiff alleged that she was not considered for a promotion; her department was consistently understaffed; management delayed in providing needed assistance; her supervisors made negative remarks about her age; she was excluded from a training seminar for managers; she was removed from work-related committees; she was prevented from participating in hiring decisions even though she was the departmental supervisor; other employees and departments failed to cooperate with her; she was the only supervisor given a weekly "report card," which meant increased "close monitoring"; she was reprimanded for failing to participate in company events; and other salaried employees were paid for overtime work, while she was not. Id. at 167-68. The court determined that while these situations together were "certainly stressful and frustrating," the conditions that the plaintiff complained of would not render a job so unbearable that a reasonable person would be forced to

² Plaintiff consistently received a "met objectives/expectations" rating except for one year when she received a "far exceeded objectives/expectations" rating. Defendant's rating system consists of the following: "far exceeded objectives/expectations," "met objectives/expectations," "unacceptable," and "not rated." "Far exceeded objectives/expectations" is defined as "[o]verall contribution to the business, both functionally and organizationally, exceeded expectations of the job. Individual consistently produced very good to excellent results." "Met objectives/expectations" is defined as "[o]verall contribution to the business, both functionally and organizationally, met and sometimes exceeded expectations of the job. Individual consistently produced proficient results." "Unacceptable" is defined as "[i]ndividuals' performance relative to the basic expectations of the job was unsatisfactory, including poor quality results and failure to meet commitments." "Not rated" means that the "experience with the individual's performance was insufficient to determine an appropriate performance category or other relevant contingency."

resign. Id.

Here, like in Duffy, the work conditions on which Plaintiff bases her constructive discharge claim include understaffing, inadequate budgeting, insufficient resources, increased monitoring, audits, and strained relationships with co-workers. Plaintiff's Opposition Motion, Ex. A at 185-86, 194-98 (Deposition of Plaintiff dated June 7, 2004); Supplemental Complaint at 2-4. Plaintiff's tasks remained the same while she was a Postmaster at Nazareth. She was never assigned degrading or menial tasks and she consistently received pay increases during her employment. Accordingly, the work conditions that the Plaintiff complains of do not amount to constructive discharge.

Nor does Plaintiff's strained relationship with various co-workers rise to the level of intolerable conditions. Plaintiff alleges that her EEOC complaint against Ruth was common knowledge in the workplace and that her co-workers worked in a concerted effort to help support Ruth's case. On multiple occasions, one of Plaintiff's POOMs asked her if she thought he was harassing her. The severity of these interactions with co-workers is similar to what the plaintiff in Duffy experienced. In Duffy, the plaintiff claimed that her supervisors made disparaging remarks about her age and failed to give her a promotion. 265 F.3d at 170. The court determined that while these comments were "inappropriate, they were not sufficiently derogatory or offensive to compel a reasonable person to resign." Id. Similarly, here, the comments from co-workers about Plaintiff's EEOC complaint were not so intolerable that they would cause a reasonable person to resign.

Further, Defendant did not knowingly permit conditions so intolerable that a reasonable person would resign. See Aman v. Cort Furniture Rental Corp., 85 F.3d 1074, 184-85 (3d Cir.

1996) (holding that constructive discharge may occur “when the employer is aware that the employee has been subjected to a continuous pattern of harassment and the employer has done nothing to stop it.”). In fact, Defendant granted Plaintiff’s request to transfer to a POOM other than Ruth. Plaintiff’s Opposition Motion, Ex. A at 185-86 (Deposition of Plaintiff dated June 7, 2004).

Thus, drawing all reasonable inferences in Plaintiff’s favor, no genuine issue of material fact exists as to whether Defendant knowingly permitted working conditions so intolerable that a reasonable person would resign. Accordingly, the Court will grant summary judgment in favor of Defendant with respect to Count V.

B. Discriminatory Retaliation

Plaintiff contends that, after she filed her complaints with the EEOC, she suffered reprisals at work. Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a), makes it “an unlawful employment practice” for “an employer” to discriminate against an employee “because [she] has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII].” “To establish discriminatory retaliation under Title VII, a plaintiff must demonstrate that: (1) she engaged in activity protected by Title VII; (2) the employer took an adverse employment action against her; and (3) there was a causal connection between her participation in the protected activity and the adverse employment action.” Robinson v. City of Pittsburgh, 120 F.3d 1280, 1299 (3d Cir. 1997) (quoting Nelson v. Upsala College, 51 F.3d 383, 386 (3d Cir. 1995) (citations omitted)).

An adverse employment action is a “significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a

decision causing a significant change in benefits.” Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 749 (1998). It is undisputed that Plaintiff’s EEOC complaint constitutes protected activity under Title VII. Plaintiff contends that Defendant’s retaliation against her included the following: failing to promote her for the POOM position in 2000, failing to select her to the CMP class, and constructively discharging her.

The failure to promote Plaintiff to the POOM position in 2000 is an adverse employment action. Id. However, Plaintiff has failed to support her charge that there was a causal connection between the failure to promote her and her participation in the protected activity. Defendant asserts that his decision not to promote Plaintiff was based on merit. The three board members who reviewed her application did not know about her EEOC complaint accusing McCullough. Defendant’s Renewed Summary Judgment Motion at 6-7. Furthermore, Plaintiff offered no proof that the review board was pressured not to select her by any of Defendant’s employees. Accordingly, the board members could not have been influenced by unlawful consideration of Plaintiff’s EEOC complaint. Thus, Plaintiff has failed to produce evidence that would allow a reasonable fact-finder to reject as pretextual Defendant’s explanation that he did not select her based on merit.

In addition, Defendant’s failure to select Plaintiff for the CMP class in 2000 does not rise to an adverse employment action. The CMP class is a management program held by the Postal Service to develop leadership and managerial skills, but there is no guarantee that individuals attending the program will be promoted. Defendant’s Renewed Summary Judgment Motion at 8, 25. Moreover, not everyone promoted to a high level supervisory position has attended the

program.³ Defendant's Renewed Summary Judgment Motion, Ex. 9 at 186. Because attending the CMP program is not a prerequisite for a promotion, failure to be selected for the CMP class does not constitute a "significant change in employment status" and therefore cannot support the retaliation claim.

Finally, Plaintiff alleges that Defendant took an adverse employment action against her when she was constructively discharged. See Duffy, 265 F.3d at 167. However, as previously discussed, Plaintiff has failed to establish constructive discharge.

Because Plaintiff has failed to establish any causal connection between her participation in the protected activity and an adverse employment action, no reasonable trier of fact could find that Plaintiff's allegations support a retaliation claim. Accordingly, the Court will grant summary judgment in favor of Defendant with respect to Count I.

C. Hostile Work Environment

Title VII makes it unlawful for an employer to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to [her] compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex." 42 U.S.C. § 2000e-2(a)(1). Plaintiff contends that she was subjected to a hostile work environment by McCullough, one of Defendant's employees, when McCullough sexually

³ For example, the district manager did not attend a CMP class. Defendant's Renewed Summary Judgment Motion, Ex. 9 at 186. Also, among the final candidates considered for the POOM promotion that Plaintiff applied for in 2000, four out of five candidates did not attend a CMP class. Defendant's Renewed Motion for Summary Judgment at 22-23, Exs. 10-14 (991s for Candidates Selected for Interview).

harassed her during the course of his investigation into her violent altercation with a customer.⁴

Defendant argues that Plaintiff's hostile work environment claim accusing McCullough is time-barred. A Title VII plaintiff cannot bring claims in a civil lawsuit that have not been administratively exhausted by filing an EEOC claim. Robinson v. Dalton, 107 F.3d 1018, 1020-21 (3d Cir. 1997); Johnson v. Chase Home Fin., 309 F. Supp. 2d 667, 671 (E.D. Pa. 2004); Zezelewicz v. Port Auth. of Allegheny County, 290 F. Supp. 2d 583, 590 (W.D. Pa. 2003) (citation omitted). The applicable regulations require aggrieved persons to (1) initiate contact with an EEOC counselor within forty-five days of the alleged discriminatory conduct; and (2) file a formal EEOC complaint within fifteen days after being informed by the EEOC counselor that the grievance has not been resolved. 29 CFR § 1614.105 (2004). Here, Plaintiff's encounters with McCullough occurred in February 2000. She attempted to seek resolution of her complaints accusing McCullough through internal avenues until early April 2000. However, Plaintiff did not contact an EEOC counselor regarding McCullough's alleged conduct until July 18, 2000 and did not file a formal EEOC complaint until October 30, 2000. Defendant's Renewed Summary Judgment Motion at 5, Gov't Ex. 6 (EEOC Complaint of Discrimination dated October 30, 2000). An EEOC administrative judge dismissed Plaintiff's claims involving McCullough as untimely on August 20, 2001. Plaintiff argues, however, that the applicable time limit should have been equitably tolled.⁵

⁴ Because the Court has granted summary judgment in Defendant's favor on the retaliation claim, the Court will not further address Plaintiff's hostile work environment claim based on retaliation. Accordingly, the hostile work environment claim is limited to the charge of sexual harassment by McCullough.

⁵ Plaintiff alleges that Defendant's illegal acts developed into a persistent, on-going pattern and that, consequently, she is entitled to a continuing violations exception to the EEOC

Plaintiff bears the burden of demonstrating that equitable tolling is appropriate. Parker v. Royal Oak Entm't, 2003 WL 23101851, at *2 (3d Cir. Dec. 29, 2003). The doctrine of equitable tolling must be applied sparingly and only in cases where the plaintiff has exercised due diligence in defending her legal rights. Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 95 (1999). Equitable tolling “may be appropriate: (1) where the defendant has actively misled the plaintiff respecting the plaintiff’s cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; or (3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum.” Oshiver v. Levin, Fishbein, Sedran, & Berman, 38 F.3d 1380, 1387 (3d Cir. 1994) (internal citations omitted) (emphasis added).

Plaintiff has not claimed that she has been prevented from asserting her rights in some extraordinary way or that she mistakenly filed in a wrong forum. As a result, Plaintiff must establish that Defendant actively misled her. Factors the Court may consider in determining whether Defendant misled Plaintiff include: (1) Defendant misleading Plaintiff into believing she did not have an EEOC action, (2) Defendant telling Plaintiff that his investigation was part of an EEOC action, or (3) Defendant leading Plaintiff to believe that Defendant’s own investigation

deadlines. Plaintiff must satisfy the two-part test required for a continuing violations exception: (1) that at least one act occurred within the filing period and (2) that the harassment is “more than the occurrence of isolated or sporadic acts of intentional discrimination.” West v. Philadelphia Elec. Co., 45 F.3d 744, 754-55 (3d Cir. 1995) (internal citations omitted); Jewett v. Int’l Tel. & Tel. Corp., 653 F.2d 89, 91 (3d Cir. 1981). However, Plaintiff has asserted a hostile work environment claim based on sexual harassment against only one of Defendant’s employees, McCullough. Defendant’s Renewed Summary Judgment Motion, Ex. 23 (Excerpts from Defendant’s First Set of Interrogatories and Plaintiff’s Response Thereto), Interrogatory No. 4; Defendant’s Renewed Summary Judgment Motion at 20. After February 2000, Plaintiff had no further contact with McCullough and there is no indication that the alleged harassment by McCullough was ever repeated. Thus, Plaintiff is unable to establish that the alleged acts were part of a larger pattern and is not entitled to a continuing violations exception. See also footnote 4.

precluded Plaintiff from bringing an EEOC action. See Dougherty v. Henderson, 155 F. Supp. 2d 269, 276 (E.D. Pa. 2001). The record does not reveal any such conduct.

Instead, Plaintiff contends that Defendant actively misled her when her supervisors discouraged her from pursuing her claims and when she sought resolution through the Office of the Inspector General, the only channel recommended to her by her supervisors. However, the act of discouraging Plaintiff from pursuing her claim does not in itself mean that Defendant actively misled her. Koschoff v. Henderson, No. 98-CV-2736, 1999 U.S. Dist. LEXIS 16184, *23-24 (E.D. Pa. Oct. 7, 1999) (holding equitable tolling unwarranted even though the plaintiff's supervisor told her that it would be beneficial to drop her complaint).

In addition, Plaintiff's supervisors' recommendation that she seek resolution through the internal avenues of the Office of the Inspector General is not sufficient grounds for equitable tolling. See Johnson v. Henderson, 314 F.3d 409, 415-17 (9th Cir. 2002) (holding that although the plaintiff complained regularly to supervisors and complied with internal harassment procedures, the conduct did not extend the official EEOC deadline); Washington v. Washington Metro. Area Transit Auth., 160 F.3d 750, 752-53 (D.D.C. 1998) (holding that an EEOC deadline was not extended even though the plaintiff claimed that the employer's insistence that the internal procedures were an appropriate complaint forum lured him into presuming he had met the necessary requirements). Furthermore, Plaintiff clearly understood the necessity of filing with the EEOC, as evidenced by the two EEOC complaints she actually filed. Plaintiff has thus failed to produce evidence sufficient to enable a reasonable fact-finder to determine that she was misled by Defendant in a manner that would justify equitable tolling. Accordingly, the Court will grant summary judgment in favor of Defendant on Count III.

D. Gender Discrimination

Defendant has also moved for summary judgment on Plaintiff's gender discrimination claim. Plaintiff has the initial burden of establishing a prima facie case of gender discrimination by offering evidence adequate to create an inference that she was denied an employment opportunity on the basis of a discriminatory criterion enumerated in Title VII. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). The employer must then produce "evidence that the plaintiff was rejected, or someone else was preferred, for a legitimate, nondiscriminatory reason." Texas Dep't of Comty. Affairs v. Burdine, 450 U.S. 248, 254 (1981). If the defendant meets his burden, the plaintiff, in order to survive a motion for summary judgment, must point to evidence that: (1) casts sufficient doubt upon each of the legitimate reasons proffered by the defendant so that a fact-finder could reasonably conclude that each reason was a fabrication; or (2) allows the fact-finder to infer that discrimination was more likely than not a motivating or determinative cause of the adverse employment action. Fuentes v. Perskie, 32 F.3d 759, 762 (3d Cir. 1994).

Plaintiff first contends that Defendant engaged in gender discrimination when she was not promoted in 2000 for the POOM position. While Plaintiff has met her initial burden by demonstrating that two males were referred for consideration when she was not, Defendant has proffered evidence that the decision was based on merit. The candidates selected for interview had a longer range of service (from fifteen to twenty-six years) and a greater variety of work experience within the Postal Service than Plaintiff. Defendant's Renewed Motion for Summary Judgment at 22-23, Exs. 10-14 (991s for Candidates Selected for Interview). Moreover, Defendant interviewed several females and eventually chose a female for the position. Id. at 22-

23. Thus, Plaintiff has failed to provide evidence from which a reasonable fact-finder could infer that Defendant's choice of another candidate for the promotion was the result of gender discrimination.

Plaintiff also claims that she was discriminated against when she received a "met objectives/expectations" rating for Fiscal Year 2001. Here, she cannot meet her initial burden of creating an inference that she was discriminated against, since in that same fiscal year, Ruth gave only two "far exceeded objectives/expectations" ratings, both of which went to female Level 20 Postmasters.⁶ Id. at 23. All male Level 20 postmasters under Ruth's supervision received the same ratings as Plaintiff. Id.

Accordingly, because no reasonable trier of fact could find that Plaintiff's allegations support a gender discrimination claim, the Court will grant summary judgment in favor of Defendant on Count II.

E. Equal Pay Act

Finally, Defendant moves for summary judgment on Plaintiff's Equal Pay Act ("EPA") claim. 29 U.S.C. § 206(d)(1) prohibits payment of unequal wages "for equal work on those jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to . . . a seniority system [or] a merit system . . ." Claims based upon the EPA follow a two-step burden-shifting paradigm. See Stanziale v. Jargowsky, 200 F.3d 101, 107 (3d Cir. 2000); Ryan v. Gen. Mach. Prods., 277 F. Supp. 2d 585, 596 (E.D. Pa. 2003). The plaintiff must first establish a prima facie case by demonstrating that male employees were paid differently for performing "equal work,"

⁶ Plaintiff was a Level 20 Postmaster at this time.

which is work of substantially equal skill, effort and responsibility, under similar working conditions. Stanziale, 200 F.3d at 107; Ryan, 277 F. Supp. 2d at 596 (citations omitted). The burden of persuasion then shifts to the employer to demonstrate that one of the following four affirmative defenses applies: (1) a bona fide seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on any factor other than sex. Stanziale, 200 F.3d at 107; EEOC v. Delaware Dep't of Health & Human Servs., 865 F.2d 1408, 1414 (3d Cir. 1989). Because Plaintiff has failed to present any evidence to support her claim, she has not met her initial burden of showing that a male employee was paid differently for performing “equal work.”⁷ Accordingly, the Court will grant summary judgment in favor of Defendant on Count IV.

IV. Conclusion

For the foregoing reasons, the Court will grant both of Defendant’s motions for summary judgment. An appropriate Order follows.

⁷ In her opposition brief to Defendant’s motion for summary judgment, Plaintiff did not address this claim.

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

JAMIE G. HARE	:	CIVIL ACTION
	:	
v.	:	NO. 02-CV-7373
	:	
JOHN POTTER	:	

ORDER

AND NOW, this 26th day of October, 2005, upon consideration of Defendant's Renewed Motion for Summary Judgment on Counts I through IV (docket no. 40) and Defendant's Motion to Dismiss, or in the alternative, for Summary Judgment on Count V (docket no. 41) and Plaintiff's responses thereto, it is **ORDERED** that Defendant's motions for summary judgment on Counts I through V are **GRANTED** for the reasons stated in the accompanying Memorandum.¹ Accordingly, judgment on all counts is entered in favor of Defendant. The Clerk of the Court shall mark this case **CLOSED**.

BY THE COURT:

/s/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.

¹ The Court has treated Defendant's Motion to Dismiss, or in the alternative, for Summary Judgment on Count V as a Motion for Summary Judgment because (1) both parties stated that their briefs on the Motion covered both the motion to dismiss and a motion for summary judgment under Fed. R. Civ. P. 56 and (2) the Court has considered "matters outside the pleading [that were] presented to and not excluded by the [C]ourt." See Fed. R. Civ. P. 12(b).