

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

RAYNITA A. CASSIDY : CIVIL ACTION
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 v. :
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 WILLIAM J. HENDERSON : NO. 99-CV-1209

MEMORANDUM & ORDER

J.M. KELLY, J.

MARCH , 1999

Presently before the Court is the Motion for Appointment of Counsel, filed by Plaintiff, Raynita A. Cassidy ("Cassidy"). Cassidy filed her Title VII Complaint alleging that she was sexually harassed while employed by the United States Postal Service. Specifically, she alleges that a co-worker that had previously harassed her and was disciplined was returned to her work station. She was then sent to a different and inappropriate work station where a previous shoulder injury was re-aggravated. Cassidy alleges that when she injured her shoulder, she was constantly harassed, became depressed and resigned.

DISCUSSION

Title VII provides that "upon application of the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant." 42 U.S.C. § 2000e-5(f)(1) (1994). This provision leaves the decision as to whether counsel should be appointed solely within the judgment and discretion of the trial court judge. Castner v. Colorado Springs Cablevision, 979 F.2d 1417, 1420 (10th Cir. 1992) (citation omitted); McIntyre v. Michelin Tire Corp., 464 F. Supp. 1005 (D.S.C. 1978). There is no constitutional or statutory

right to the appointment of counsel in Title VII cases. Castner, 979 F.2d at 1420; Poindexter v. F.B.I., 737 F.2d 1173, 1179 (D.C. Cir. 1984). The factors which a court should consider in determining whether to appoint counsel under Title VII include the plaintiff's financial inability to pay; the plaintiff's diligence in attempting to find counsel; the meritoriousness of the plaintiff's allegations of discrimination; and the plaintiff's capacity to present his or her case without the assistance of counsel. Ivey v. Board of Regents of Univ. Of Alaska, 673 F.2d 266, 269 (9th Cir. 1982); Spanos v. Penn Cent. Transp. Co., 470 F.2d 806 (3rd Cir. 1972).

Cassidy asserts that her only source of income is unemployment insurance, which is scheduled to be terminated imminently. She also has alleges that she has a savings account with \$1,500.00. Consequently, it seems unlikely that she would be able to pay the fees for an attorney in this matter. This factor is tempered by the availability of attorneys who represent plaintiffs in Title VII cases on a contingent fee basis or who take advantage of Title VII's fee shifting provision. Cassidy has indicated that she has contacted two attorneys: one suggested she contact him again after the EEOC completed its investigation; the other was a referral from a bar association where she would have to pay \$25.00 for an initial consultation. Cassidy does not indicate that she actually ever consulted this attorney.

Cassidy has alleged facts that, when developed and if proved, would support a meritorious and potentially successful Title VII claim. To date she has filed her complaint, a motion

to proceed in forma pauperis and the present motion for appointment of counsel. The Court cannot say that, based upon the record presented, that she would be so severely hampered in presenting her case that the Court must appoint counsel.

Upon weighing these factors, the Court is struck by Cassidy's lack of diligence in finding an attorney. The first attorney she contacted did not refuse to take her case, but simply suggested that she wait until the EEOC investigation ran its course. Apparently she was upset that the second attorney did not give her a free consultation under the bar association's referral system. While Cassidy may well have a valid claim and clearly would be unable to afford an attorney, Title VII provides for fees to be paid to a prevailing plaintiff. There are many attorneys in the Philadelphia area that represent plaintiffs in Title VII cases, based upon the fee shifting provision. The Court will not appoint an attorney to represent Cassidy in this matter until it is clear that she has made a more significant effort to find an attorney on her own.

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O R D E R

AND NOW, this day of March, 1999, upon consideration of
the Motion for Appointment of Counsel, filed by Plaintiff,
Raynita A. Cassidy, it is ORDERED that the Motion is DENIED
WITHOUT PREJUDICE.

BY THE COURT:

JAMES MCGIRR KELLY, J.