

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

SUSAN GETZ : CIVIL ACTION
v. :
COMMONWEALTH OF PENNSYLVANIA BLINDNESS :
and VISUAL SERVICES, et al. : NO. 97-7541

MEMORANDUM AND ORDER

HUTTON, J.

September 28, 1999

Presently before this Court is Defendants' unopposed Motion for Summary Judgment (Docket No. 23). For the reasons stated below, it is hereby ordered that Defendants' Motion is GRANTED in part and DENIED in part.

I. BACKGROUND

Pro se plaintiff Susan Getz ("Plaintiff") brought the underlying action against her employer, the Commonwealth of Pennsylvania Bureau of Blindness and Visual Services ("BVS"), and two individuals, Feather Houston ("Houston"), the Secretary of the Department of Public Welfare, and Joyce Taylor ("Taylor"), the District Manager of the Philadelphia BVS office. Plaintiff alleges various violations of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e et seq. and the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. Ann. § 951 et seq.

Plaintiff specifically alleges that her supervisor, Taylor, who is an African-American woman, discriminated against her on the

basis of her race (white), gender (female), and religion (Judaism). Plaintiff also claims that Taylor retaliated against her after she filed a discrimination charge with the Equal Employment Opportunity Commission ("EEOC"). Plaintiff's Amended Complaint fails to make any allegations against Houston.

On July 16, 1998, in response to Defendant's Motion to Dismiss or for [a] More Definite Statement, Plaintiff filed an Amended Complaint. On March 26, 1999, Defendant filed the instant Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56(c). Plaintiff failed to file a response to Defendants' instant Motion.

II. DISCUSSION

A. Summary Judgment Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there

is a genuine issue for trial. See id. at 324. A genuine issue is one in which 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, 106 S. Ct. 2509 (1986). A fact is "material" only if it might affect the outcome of the suit under applicable rule of law. Id.

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

Furthermore, a court may grant an unopposed motion for summary judgment where it is "appropriate." Fed. R. Civ. Pro. 56(e). This determination has been described as follows:

Where the moving party has the burden of proof on the relevant issues, . . . the district court must determine that the facts specified in or in connection with the motion entitle the moving party to judgment as a matter of law. Where the moving party does not have the burden of proof on the relevant issues, . . . the district court must determine that the

deficiencies in the opponent's evidence designated in or in connection with the motion entitle the moving party to judgment as a matter of law.

Anchorage Assocs. v. Virgin Islands Bd. of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990).

B. Defendant's Motion to Dismiss

Defendant moved for summary judgment on Plaintiff's Title VII and PHRA claims. The Court, drawing all reasonable inferences in the light most favorable to Plaintiff, considers whether Plaintiff's federal and state law claims survive Defendants' Rule 56(c) motion.

1. Plaintiff's PHRA claims

Plaintiff's Amended Complaint alleges various PHRA violations. Defendant argues that this Court has several grounds on which to grant summary judgment: (1) the Eleventh Amendments bars Plaintiff's suit; (2) the PHRA does not permit suit against Taylor and Houston as they are not "employers" within the meaning of the statute; and (3) Plaintiff failed to exhaust her administrative remedies as required by the PHRA. The Court first considers Defendant's third argument.

a. Exhaustion of administrative remedies

Before a civil action based on alleged violations of the rights provided and protected by the PHRA may be judicially

resolved, the plaintiff must exhaust the administrative remedies available through the Pennsylvania Human Relations Commission ("PHRC"). Woodson v. Scott paper, 109 F.3d 913, 925 (3d Cir. 1997); Clay, 559 A.2d 917. The PHRA expressly requires that a complainant file an administrative charge within 180 days of the alleged act of discrimination. 43 Pa. Cons. Stat. Ann. §§ 959(a) & 962 (West 1999).

The purpose of this filing requirement is that it allows the PHRC to employ its specialized knowledge to remedy such claims thereby averting judicial involvement in the parties' controversy. Woodson, 109 F.3d at 925. As a practical matter, the administrative scheme is designed to also assist the unsophisticated and unlearned enforce their statutory civil rights without resort to costly, lengthy, and complicated litigation.

In the instant matter, Plaintiff submitted a complete, signed EEOC Intake Questionnaire to the Equal Employment Opportunity Commission ("EEOC") on or about March 31, 1995, and filed a formal charge with the EEOC on or about September 9, 1995. On or about December 20, 1995, the EEOC sent a letter to Plaintiff notifying her of her right to file a charge with the PHRC. (Pl.'s Dep. at 175-78). Plaintiff's deposition testimony establishes that she received, read, and understood said letter. Nevertheless, Plaintiff did not file a charge with the PHRC.

As a general matter, failure to file a charge with the PHRC prevents a complainant from filing suit under the PHRA. Woodson, 109 F.3d at 927; Van Cleve v. Nordstrom, Inc., No. CIV.A. 99-1426, 1999 WL 712588, at * 3 (E.D. Pa. Sept. 10, 1999). Pennsylvania courts strictly interpret the PHRA's 180 day filing requirement, having repeatedly held that "persons with claims that are cognizable under the [PHRA] must avail themselves of the administrative process of the [PHRC] or be barred from the [PHRA's] judicial remedies. . . ." Woodson, 109 F.3d at 925 (citing Vincent v. Fuller, 616 A.2d 969, 974 (Pa. 1992); Clay v. Advanced Computer Applications, Inc., 559 A.2d 917, 919 (Pa. 1989)). By foregoing her right to file a charge with the PHRC, Plaintiff now cannot circumvent the PHRA's filing requirements, thereby abrogating the legislative scheme established by Pennsylvania legislature and observed heretofore by state and federal courts. Plaintiff is therefore foreclosed from pursuing the PHRA remedies prayed for in her Amended Complaint. Accordingly, Defendants' Motion for Summary Judgment on Plaintiff's PHRA claims is granted as a matter of law as to all Defendants.¹

2. Plaintiff's Title VII claims

Plaintiff's Amended Complaint alleges various Title VII violations. Defendant argues that this Court has several grounds

¹ This Court need not consider Defendants' Eleventh Amendment and statutory interpretation arguments as Plaintiff's PHRA claims are properly disposed of on the basis of her failure to exhaust administrative remedies.

on which to grant summary judgment: (1) Title VII does not permit suit against Taylor and Houston as they are not "employers" within the meaning of the statute; (2) Plaintiff failed to completely exhaust her administrative remedies as required by Title VII; and (3) Plaintiff cannot make out a prima facie case of discrimination, hostile work environment, or retaliation under Title VII. The Court first considers Defendants' argument that Taylor and Houston are not "employers" under Title VII and are therefore immune from suit.

a. Houston and Taylor are not "employers" under Title VII

Title VII provides that "[i]t shall be an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his [or her] compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . ." 42 U.S.C. § 2000e-2(a) (1999). "Employer" is defined as a person engaged in an industry affecting commerce who has fifteen or more employees . . . and any agent of such a person." 42 U.S.C. § 2000e(b) (1999).

It is well established that Title VII liability does not attach to individuals. Kachmar v. Sungard Data Sys., Inc., 109 F.3d 173, 184 (3d Cir. 1997); Sheridan v E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1077 (3d Cir. 1996); Irizarry v. Pennsylvania Dep't of Transp., No. CIV.A. 98-6180, 1999 WL 269917, at *3 (E.D.

Pa. April 19, 1999); Wils v. Phillips, No. CIV.A. 98-5752, 1999 WL 200674, at *2 (E.D. Pa. April 8, 1999); Goodwin v. Seven-Up Bottling Co. of Phila., No. CIV.A. 96-CV-2301, 1996 WL 601683, at *3 (E.D. Pa. Oct. 18, 1996). Thus, while Title VII liability may lie against an employer, liability may not attach to individual employees whose actions otherwise constitute a civil rights violation. Goodwin, 1996 WL 601683, at *3. Accordingly, the Court grants Defendant's Motion for Summary Judgment as to Plaintiff's Title VII claims against Taylor and Houston in their individual capacities.

b. The Plaintiff's lack of timeliness with respect to certain allegations and the appropriateness of Judicial review

Generally, Title VII requires a plaintiff to file his or her claim of unlawful discrimination within 180 days of the unlawful discriminatory act. 42 U.S.C. § 2000e5-(c) (1999). Where a state has established an agency or agencies to monitor and enforce civil rights laws, a plaintiff must file his or her claim of unlawful discrimination within 300 days of the unlawful discriminatory act. 42 U.S.C. § 2000e5-(c) (1999). Logically, therefore, unlawful discriminatory acts that occurred more than 300 days prior to the date of Plaintiff's administrative filing generally are not cognizable.²

² There are equitable doctrines that may in appropriate circumstances modify the statutory tolling period. In the instant matter, Plaintiff did not respond to Defendant's Motion for Summary Judgment and, consequently, did not argue that any

Defendants argue that Plaintiff did not submit to the EEOC a valid charge of discrimination until September 11, 1995. Defendants, applying Title VII's 300 day rule, then argue that Plaintiff cannot state a cognizable Title VII claim concerning any allegedly discriminatory acts that occurred before November 16, 1994. Defendants therefore conclude that they are entitled to judgment as a matter of law on Plaintiff's allegations of unlawful discriminatory conduct that occurred in September and October 1994.

Although Plaintiff did not respond to Defendant's Motion for Summary Judgment, the record reveals that she filed a completed and signed EEOC Intake Questionnaire on or about May 1, 1995. (See Plaintiff's Allegations of Employment Discrimination). The record also reveals, however, that Plaintiff did not file a formal charge with the EEOC until September 9, 1995. (See Plaintiff's Charge of Discrimination). In a letter to Plaintiff dated September 18, 1997, an EEOC investigator wrote that "[t]he [EEOC] can only investigate matters that occurred within the most recent 300 days prior to the filing of your charge. Even considering the date on which your questionnaire was returned to [the EEOC], April 30, 1995, the dates on which you were denied training are untimely."³ (See Ltr. of 9/18/99 to Plaintiff from EEOC investigator, Susan M. Kelly, at 2 (emphasis added)). The EEOC investigator's letter

equitable doctrines should be employed.

³ The reference to "training" is not borne out by the record supplied to the Court.

indicates that the EEOC possibly considered Plaintiff's charge "filed" as of April 30, 1995. If this was the case, Plaintiff's claims dating back to September and October 1994 fall within the 300 day statutory tolling period.

In cases that challenge the timeliness of an EEOC filing, there often arises a dispute over whether plaintiff's submission of a completed EEOC Intake Questionnaire satisfied the requirements of 29 C.F.R. § 1601.9. Section 1601.9 provides that "[a] charge shall be in writing and signed and shall be verified." 29 C.F.R. § 1601.9 (1999). The submission of an EEOC Intake Questionnaire generally precedes the filing of a formal charge and describes the alleged improper conduct. Courts are split on how to treat EEOC Intake Questionnaires and formal EEOC Charges in the context of 29 C.F.R. § 1601.9.⁴ While the Third Circuit Court of Appeals has not spoken directly on this issue, at least one Eastern District of Pennsylvania court discussed the interplay of EEOC Intake Questionnaires and formal EEOC charges.

⁴ For example, the Seventh Circuit Court of Appeals held that a timely filed questionnaire followed by an untimely verified charge may be sufficient to constitute a charge in some circumstances, such as where the plaintiff and the EEOC both treated the questionnaire as the charge. Philbin v. General Elec. Capital Auto Lease, 929 F.2d 321, 324 (7th Cir. 1991). The Tenth Circuit Court of Appeals held that a subsequently filed formal charge may amend the plaintiff's unverified but timely EEOC "questionnaire," at least where there is no prejudice to the accused party. Peterson v. City of Wichita, 888 F.2d 1307, 1308-09 (10th Cir. 1989). The Eighth Circuit Court of Appeals rejected the notion that the questionnaire and the charge should be read together such that a verified charge filed after the filing deadline relates back to the date of that the intake questionnaire was completed. Shempert v. Harwick Chem. Corp., 151 F.3d 793, 796-98 (8th Cir. 1998), cert. denied, ___ U.S. ___, 119 S. Ct. 1028 (1999).

In Gulezian v. Drexel Univ., No. CIV.A. 98-3004, 1999 WL 153270 (E.D. Pa. March 19, 1999), defendant denied tenure to plaintiff professor. Soon thereafter, on February 16, 1995, plaintiff submitted an EEOC Intake Questionnaire in which he provided no substantive details regarding his Title VII discrimination claim. Gulezian, 1999 WL 153270, at *2. On February 16, 1995, plaintiff also met with an EEOC employee to file a formal charge but the employee was unable to complete the charge that day. Gulezian, 1999 WL 153270, at *2. On February 23, 1995, plaintiff faxed to the EEOC a statement detailing the basis of his allegations of discrimination. Gulezian, 1999 WL 153270, at *2. An EEOC employee used this information to draft a formal charge for plaintiff. Gulezian, 1999 WL 153270, at *2. After further communications between plaintiff and the EEOC, plaintiff's charge was filed on March 10, 1995. Gulezian, 1999 WL 153270, at *2. Internal EEOC records indicated, however, that plaintiff's charge was received on February 16, 1995. Gulezian, 1999 WL 153270, at *2 (emphasis added).

The Gulezian court considered and rejected plaintiff's argument that the presentation of an EEOC Intake Questionnaire automatically satisfies Title VII's administrative filing requirement. Gulezian, 1999 WL 153270, at *2. The court reasoned that a communication to the EEOC in "writing, including an [I]ntake [Q]uestionnaire, may constitute a charge if it is of a 'kind that

would convince a reasonable person that the grievant has manifested an intent to activate [Title VII's] machinery.'" Gulezian, 1999 WL 153270, at *3 (quoting Bihler v. Singer, 710 F.2d 96, 99 (3d Cir. 1983)). The court stated that in making such a determination courts essentially consider the effect and content of the communication. Gulezian, 1999 WL 153270, at *3. The court recognized, however, that courts generally do not equate Intake Questionnaires to formal charges where the EEOC advises the grievant that he or she must provide more information or get back in touch with EEOC personnel for a formal charge to be executed. Gulezian, 1999 WL 153270, at *3 (citations omitted).

In the instant matter, there is no evidence that the EEOC either advised Plaintiff that she needed to provide more information or that she needed to get back in touch with EEOC personnel before a formal charge could be executed. Moreover, Plaintiff submitted a signed EEOC Intake Questionnaire that was accompanied by seven single-spaced, typed pages which substantively detailed Plaintiff's allegations of Title VII violations. In the absence of Plaintiff's response to the instant motion, reasonable people may differ as to whether Plaintiff manifested an intent to activate Title VII's machinery when she submitted her Intake Questionnaire to the EEOC.

Therefore, there is a genuine issue of material fact as to whether Plaintiff timely filed her allegations of unlawful

discriminatory conduct for the September and October 1994 occurrences. The Court holds that Defendant's Motion for Summary Judgment is denied with regard to the untimeliness of Plaintiff's allegations of unlawful discriminatory conduct that occurred in September and October 1994.⁵

c. Plaintiff's claims of hostile work environment, discrimination, and retaliation under Title VII

(1) Hostile work environment

Defendant argues that Plaintiff fails to raise a genuine issue of material fact as to her hostile work environment claim. In the absence of a response to the instant Motion from Plaintiff, this Court evaluates whether it is "appropriate" to grant Defendants' Motion for Summary Judgment on this claim.

Title VII provides to an employee a cause of action where she was subjected in her work place to sexual harassment so pervasive that it created a hostile, intimidating, or offensive work environment. Andrews v. City of Phila., 895 F.2d 1469, 1482 (3d Cir. 1990). To sustain a hostile work environment claim, Plaintiff must show severe or pervasive conduct. Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 118 S. Ct.2257, 265 (1998). A hostile environment claim must show that the environment was as such that

⁵ This Court's holding is particularly appropriate in this circumstance where Plaintiff is proceeding pro se and is likely to be unfamiliar with the complexities of the EEOC's administrative procedures. See Kocian Getty Refining & Mktg. Co., 707 F.2d 748, 754 (3d Cir. 1983); Wassem v. Romac Int'l, Inc., No. CIV.A. 97-7825, 1998 WL 834094, at *4 (E.D. Pa. Dec. 1, 1998).

not only would a reasonable person find the environment hostile and abusive but that the actual plaintiff found it in fact to be hostile and abusive. Faragher v. City of Boca Raton, 524 U.S. 775, 118 S. Ct. 2275, 2283 (1998).

The Third Circuit employs a five-factor test to evaluate a hostile environment claim: "(1) the employee[] suffered intentional discrimination because of [her] sex; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same sex in that position; and (5) the existence of respondeat superior liability. Andrews, 895 F.2d at 1482. Whether a hostile working environment existed can be ascertained only upon an examination of the totality of the circumstances. Id. at 1485; Afrassiabian v. ProCredit Holdings, Inc., No. CIV.A.98-4757, 1999 WL 605589 (E.D. Pa. Aug. 9, 1999).

The record before the Court does not demonstrate that a genuine issue of material fact exists concerning Plaintiff's claim that she suffered severe or pervasive sexual harassment. Plaintiff provides absolutely no evidence that there existed a hostile work environment at BVS or that the terms, conditions, or privileges of her employment were adversely impacted in any unlawful manner. Indeed, when asked about the harassment she allegedly suffered as a woman working in BVS' Philadelphia office, Plaintiff responded that the basis of her discrimination claim is that she is who she

is, a "Jewish white female." (Pl.'s Dep. at 196-97). Therefore, the only evidence in the record that supports Plaintiff's hostile work environment claim are Plaintiff's conclusory and vague allegations in her Amended Complaint and deposition testimony. The conduct described by Plaintiff does not rise to unlawful activity proscribed by Title VII and no reasonable fact-finder presented with the materials currently before this Court could return a verdict for Plaintiff on her hostile work environment claim. Accordingly, the Court grants Defendants' Motion for Summary Judgment on Plaintiff's hostile work environment claim.

(2) Retaliation

Defendants argue that Plaintiff cannot raise a genuine issue of fact as to her retaliation claim because, inter alia, Defendants never took an adverse employment action against Plaintiff after she invoked Title VII's administrative machinery. Title VII makes it unlawful for an employer to retaliate against an employee who has opposed any practice unlawful under Title VII. 42 U.S.C. § 2000e-(3)a. Plaintiff must show the following to prove a Title VII retaliation claim: (1) she engaged in conduct protected under Title VII; (2) her employer took an adverse employment action against her; and (3) a causal link exists between her protected conduct and her employer's adverse action. Charlton v. Paramus Bd. of Educ., 25 F.3d 194, 201 (3d Cir. 1994).

Plaintiff alleges that the following unlawful retaliatory acts

occurred at her work place after she submitted to the EEOC her Intake Questionnaire: (1) on May 4, 1995, Taylor imitated Plaintiff's walk and smile and charged Plaintiff with gross insubordination (Pl.'s Amend. Compl. ¶ 31); (2) on May 18, 1995, Plaintiff was charged with gross insubordination for "disrupting the office" although Taylor allegedly disrupted the office by preventing Plaintiff from leaving her office (Pl.'s Amend. Compl. ¶ 32); (3) on October 3, 1996, Plaintiff was charged with "making false statements which are slanderous and defamatory in regard to another Commonwealth employee." (Pl.'s Amend. Compl. ¶ 34).

Plaintiff clearly satisfied the first prong of the Andrews test for filing an EEOC charge is a protected activity under Title VII. In examining the second prong of the Andrews test, the Court considers the Third Circuit's definition of the nature of conduct that amounts to an "adverse employment action:"

Retaliatory conduct other than discharge or refusal to hire is thus proscribed by Title VII only if it alters the employee's "compensation, terms, conditions, or privileges of employment," deprives him or her of "employment opportunities," or "adversely affect[s] his [or her] status as an employee." It follows that "not everything that makes an employee unhappy" qualifies as retaliation, for [o]therwise minor and even trivial employment actions that 'an irritable chip-on-the-shoulder employee did not like would form the basis of a discrimination suit.'"

Robinson v. City of Pittsburgh, 120 F.3d 1286, 1300 (3d Cir. 1997) (citations omitted); Kidd v. Pennsylvania, No. Civ. 97-5577, 1999 WL 391496, at *8 (E.D. Pa. May 20, 1999).

Plaintiff fails to allege any acts that amount to an "adverse employment action" under the Robinson court's standard. Moreover, the Court finds no evidence whatsoever that Plaintiff suffered an adverse employment action for she remains employed in the position she held at the time she initiated the instant matter, she alleges no diminution of compensation or benefits and the Court finds no evidence to the contrary, and the record reveals that Plaintiffs' employment opportunities have not been compromised. Therefore, Plaintiff fails to state a prima facie case of retaliation actionable under Title VII. Having failed to allege facts or evidence sufficient to state a Title VII retaliation claim, Plaintiff's claim is dismissed.

(3) Religious, gender, and race discrimination

Defendants argue that even if Plaintiff could make out prima facie cases of race, gender, and religious discrimination, her claims ultimately must fail because Defendants had legitimate, nondiscriminatory, and nonpretextual reasons for its actions. In the absence of a response from Plaintiff to the instant Motion, this Court evaluates whether it is "appropriate" to grant Defendants' Motion for Summary Judgment on these claims.

Claims of Title VII discrimination may be substantiated by presentation of direct evidence of discrimination, Price Waterhouse v. Hopkins, 490 U.S. 228 (1989), or evidence which creates an inference of discrimination. United States Postal Service Bd. Of

Governors v. Aikens, 460 U.S. 711, 714 n.3 (1983). Indirect evidence is that from which the trier of fact infers discrimination. Torre v. Casio, Inc., 42 F.3d 825, 829 (3d Cir. 1994). Where a plaintiff does not present direct evidence of discrimination, her Title VII claims must be evaluated under the McDonnell Douglas/Burdine burden shifting framework. The Supreme Court established the following four-part test for establishing a prima facie Title VII discrimination case: Plaintiff must show that (1) she is a member of a protected class, (2) she was qualified for her position, (3) she suffered an adverse employment action, and (4) other who are not members of her protected class were more favorably treated. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 80(1973).

Once a plaintiff satisfies the now familiar four-part test, thereby establishing a prima facie case, there arises a presumption of discriminatory intent by the defendant-employer. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993). Although the ultimate burden of persuasion remains with the plaintiff, the burden of production shifts to the defendant-employer who must explicate a nondiscriminatory, legitimate justification for its treatment of the plaintiff. Id. at 507. To satisfy its burden, the defendant-employer must clearly set forth through the introduction of admissible evidence, the reasons for the plaintiff's allegedly

unlawful treatment. Burdine, 450 U.S. at 255. The defendant-employer must only explain clearly the nondiscriminatory reasons for its actions, however. Id. at 260. If the defendant-employer satisfied its burden, the presumption is rebutted and thereafter drops from the case. Id. at 255 & n.10.

The plaintiff, to prevail on his or her discrimination claim, must prove by a preponderance of the evidence the legitimate reasons proffered by the employer "were not its true reasons, but were a pretext for discrimination." McDonnell Douglas, 411 U.S. at 802. Therefore, to survive summary judgment where an employer-defendant articulated a legitimate nondiscriminatory reason for its actions,

the plaintiff must point to evidence, direct or circumstantial, from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action.

Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994).

In the instant case, Plaintiff neither alleges nor offers any direct evidence of race, gender, or religious discrimination. Accordingly, Plaintiff's claims are analyzed pursuant to the McDonnell Douglas/Burdine burden shifting framework. Therefore, Plaintiff must establish a prima facie case of discrimination per said framework. See Burdine, 450 U.S. at 252-53.

Defendants fail to argue that Plaintiff is not a member of a protected class. Thus, the Court finds that the first element of

Plaintiff's prima facie case is satisfied. Second, upon review of the record, that Plaintiff remains a BVS employee is evidence sufficient to show that she is qualified for her position at BVS. Plaintiff therefore satisfies the second element of her prima facie case. The Court now turns to the third and fourth elements of Plaintiff's prima facie case.

Upon consideration of Plaintiff's pro se status and her failure to respond to the instant Motion, the record before the Court indicates that Plaintiff may have suffered an adverse employment action in that the "privileges" of her employment were different from the "privileges" enjoyed by her co-workers. Plaintiff claims that she was denied time-off when she requested such time to observe the tenets of her religion, Judaism. (See Pl.'s Amend. Compl. ¶¶ 11-16). Plaintiff claims that other employees were treated more favorably than her and were given requested time-off on the exact days she requested time-off to celebrate Jewish holidays or observe the Jewish Sabbath. (Pl.'s Amend. Compl. ¶¶ 11-16). That Plaintiff's requests were denied when she was wished to observe her religious beliefs suggest that she suffered adverse employment actions because of her religion. Thus, the Court finds that Plaintiff satisfied the third element of her prima facie case of religious discrimination.⁶ Finally, that

⁶ The Court, however, finds nothing in the record available to support whatsoever Plaintiff's claims that she suffered race or gender discrimination while a BVS employee. Specifically, the record does not support Plaintiff's claim that she was treated less favorably than men or people of other races. Accordingly, the Court

other BVS employees outside of Plaintiff's protected class benefitted from the privileges requested by and denied to Plaintiff indicates that Plaintiff satisfied the fourth element of her prima facie case. (See Pl.'s Amend. Compl. ¶¶ 11-16). After drawing all inferences in the light most favorable to Plaintiff, the Court holds that Plaintiff stated a prima facie case of religious discrimination under the McDonnell Douglas/Burdine framework. The Court now considers whether Defendants proffered a sufficient nondiscriminatory, legitimate reason for its conduct toward Plaintiff to rebut the presumption raised by Plaintiff's prima facie case.

It is Defendants' burden to offer legitimate, nondiscriminatory reasons for its actions. Defendants fail to meet this burden, thereby failing to rebut the presumption raised by Plaintiff's satisfaction of her prima facie case. Defendant does not proffer legitimate nondiscriminatory reasons for its conduct toward Plaintiff but instead baldly asserts that Getz cannot substantiate that the actions she complains about were taken because of her , inter alia, religion. (Def.s' Mot. for Summ. J. at 28). Accordingly, Defendant's Motion for Summary judgment on Plaintiff's religious discrimination claim is denied.

An appropriate Order follows.

grants Defendant's Motion for Summary Judgement on Plaintiff's claims of race and gender discrimination.

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

SUSAN GETZ : CIVIL ACTION
 :
 v. :
 :
 COMMONWEALTH OF PENNSYLVANIA BLINDNESS :
 AND VISUAL SERVICES, et al. : NO. 97-7541

O R D E R

AND NOW, on this 28th day of September, 1999, upon consideration of Defendants' unopposed Motion for Summary Judgment (Docket No. 23), IT IS HEREBY ORDERED that:

- (1) Plaintiff's PHRA claims are **DISMISSED with prejudice;**
- (2) Plaintiff's claims against Defendants Houston and Taylor in their individual capacities are **DISMISSED with prejudice;**
- (3) Plaintiff's Title VII retaliation claim is **DISMISSED with prejudice;**
- (4) Plaintiff's Title VII hostile work environment claim is **DISMISSED with prejudice;**
- (5) Plaintiff's Title VII gender discrimination claim is **DISMISSED with prejudice;**
- (6) Plaintiff's Title VII race discrimination claim is **DISMISSED with prejudice;**
- (7) Defendants' Motion for Summary Judgment on Plaintiff's Title VII religious discrimination claim is **DENIED;** and

(8) Defendants' Motion for Summary Judgment on Plaintiff's Title VII claims of discrimination in September 1994 and October 1994 claim is **DENIED**.

BY THE COURT

HERBERT J. HUTTON, J.