

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

JOYCE WATFORD : CIVIL ACTION
: :
: :
v. : :
: :
LINCOLN UNIVERSITY OF THE :
COMMONWEALTH SYSTEM OF HIGHER :
EDUCATION, et al. : NO. 98-5252

MEMORANDUM and ORDER

Norma L. Shapiro, S.J.

June 28, 2000

Plaintiff Joyce Watford ("Watford"), filing this action against defendants Lincoln University of the Commonwealth System of Higher Education ("Lincoln"), its board members, and former Lincoln president Niara Sudarkasa ("Sudarkasa"), alleged violation of the Pennsylvania Whistleblower Law, 43 Pa. Con. Stat. Ann. § (1421-28), wrongful discharge, and deprivation of her First Amendment rights under 42 U.S.C. § 1983.¹ Lincoln moves for summary judgment based on Eleventh Amendment immunity and the statute of limitations. It also moves for summary judgment on plaintiff's claim for punitive damages. Sudarkasa moves for summary judgment based on her qualified immunity, the non-availability of punitive damages, and all claims against her in her official capacity.

BACKGROUND

¹By order of September 3, 1999, numerous individual board member defendants were dismissed, as was plaintiff's wrongful discharge claim.

Act 101 provides state funds to Pennsylvania colleges to support the education of disadvantaged students. Lincoln combines its Act 101 program with its own tutorial assistance program called "TIME." Act 101 requires fund recipients and their employees to follow certain regulations.

Watford was employed by as director of Lincoln's "Act 101/TIME" program in August, 1993. Her written contract was effective September 1, 1993 through June 30, 1994, and was renewed annually until April 8, 1998, when Sudarkasa informed Watford that she would be terminated as of June 30, 1998, because of "adverse letters and reports concerning your performance." The termination was recommended by the Vice President for Academic Affairs. Watford alleges that she was actually terminated because of her attempts to enforce Lincoln's compliance with Act 101 regulations.

DISCUSSION

I. Standard of Review

Summary judgment may be granted only "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 judgment as a matter of law." Fed. R. Civ. P. 56(c). A defendant moving for summary judgment bears the initial burden of demonstrating there are no facts supporting the

plaintiff's legal claim; then the plaintiff must introduce specific, affirmative evidence there is a genuine issue for trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-324 (1986). "When a motion for summary judgment is made and supported as provided in [Rule 56], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

The court must draw all justifiable inferences in the non-movant's favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). A genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id. at 248. The non-movant must present sufficient evidence to establish each element of its case for which it will bear the burden at trial. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-86 (1986).

II. Lincoln University

A. Eleventh Amendment Immunity

The Eleventh Amendment generally bars an action against the state or its employees, in their official capacities, for monetary damages, but not an action against state officers in

their official capacities for injunctive or declaratory relief. See Ex Parte Young, 209 U.S. 123 (1908). The Eleventh Amendment does not bar actions for monetary damages against state officers in their individual capacities. See Hafer v. Melo, 502 U.S. 21 (1991).

While an agency of state government (such as the state Department of Health) is the "state" for Eleventh Amendment purposes, see Florida Dept. of Health and Rehabilitative Servs. V. Florida Nursing Home Assn., 450 U.S. 147 (1981), the law is inconsistent concerning immunity of other state entities, such as a state university. The Supreme Court has held that the Eleventh Amendment bars an action in federal court when "'the state is the real, substantial party at interest' and any relief will effectively run against the state." Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 101 (1984) (Eleventh Amendment prohibited federal district court from ordering state officials to conform their conduct to state law since state was real, substantial party in interest).

The factors a court should assess in determining whether an entity is subject to Eleventh Amendment immunity include whether payment of the judgment will be made out of the state treasury, the agency has the funds and the power to satisfy the judgment, the agency is performing a governmental or proprietary function, the agency has been separately incorporated, the agency has

autonomy over its operations, the agency has the power to sue and be sued and to enter into contracts, agency property is immune from state taxation, and the sovereign has immunized itself from responsibility for the agency's operations. See Skehan v. State System of Higher Education, 815 F.2d 244, 247 (3d Cir. 1987).

The Pennsylvania State University System, as an entity, is entitled to Eleventh Amendment protection, see Skehan v. State System of Higher Education, 815 F.2d 244 (3d Cir. 1987); some member institutions of that system have been granted Eleventh Amendment immunity. See Seybert v. West Chester University, 83 F. Supp. 547, 553 (E.D. Pa. 2000); Lach v. Robb, 679 F.Supp. 508, 513 (W.D. Pa.), aff'd, 857 F.2d 1464 (3d Cir. 1988)(California University of Pennsylvania); Wynne v. Shippensburg University, 639 F. Supp. 76, 82 (M.D. Pa. 1985). Other state schools in Pennsylvania, such as Temple University, the University of Pittsburgh and Penn State University, have not been granted Eleventh Amendment immunity. See Kovats v. Rutgers, 822 F. 2d 1303, 1312 (3d Cir. 1987) (Rutgers University is not entitled to Eleventh Amendment immunity). Immunity of each state university its determined by its relationship to the state or commonwealth.

In Krupp v. Lincoln University, et al., 663 F. Supp. 289 (E.D. Pa. 1987), Judge Pollak held that Lincoln's health care plan did not fall within the "governmental plan" exception to the Employee Retirement Income Security Act ("ERISA") because

Lincoln, a "state-related institution," was not a state agency. Id. at 292. The Lincoln University Commonwealth Act, 24 P.S. § 2510-401 et seq., allowed the Commonwealth to give Lincoln significantly greater financial support, but it did not transform Lincoln into a state agency; it remained a non-profit corporation chartered for educational purposes. See id. at 291. Krupp relied in part on Philadelphia National Bank v. United States, 666 F.2d 834 (3d Cir. 1981) (interest received from loans to Temple University was not tax-exempt because Temple was neither a "political subdivision" of Pennsylvania, nor acting on behalf of the Commonwealth). Krupp found Lincoln's relationship to the Commonwealth quite similar to that of Temple. See Krupp, 663 F. Supp. at 291-92.

As noted in Krupp, following the Lincoln University Commonwealth Act, Lincoln remained a non-profit corporation. See Krupp, 663 F. Supp. at 291. Such a corporation is subject to suit for damages like any corporation. Lincoln has produced no record evidence requiring the court to depart from the Krupp court's assessment. By its order of September 3, 1999, this court found Lincoln was a "state-related educational institution part of the Pennsylvania System of Higher Education and chartered, funded and regulated by the Commonwealth of Pennsylvania," but a ruling on the Eleventh Amendment issue was explicitly reserved, because being state-related is not

synonymous with being entitled to Eleventh Amendment immunity. Lincoln's summary judgment motion based on Eleventh Amendment immunity will now be denied.

B. Statute of Limitations

In Section 1983 actions, a court applies the statute of limitations applicable to a personal injury action in the state in which it sits. See Wilson v. Garcia, 471 U.S. 261, 276-78 (1985). In Pennsylvania, the statute of limitations for a personal injury action is two years. See 42 Pa.C.S.A. § 5524(2). The statute of limitations under the Pennsylvania Whistleblower Law is 180 days. See 43 P.S. § 1424(a).

On October 1, 1996, Watford wrote a letter to Lincoln's Vice President for Academic Affairs stating "I will not resign from the positions that I currently hold at Lincoln University." (Def. Lincoln's Mot. for Summ. J. (Statute of Limitations) Ex. A.) Watford was not placed on an indefinite involuntary leave of absence and barred from entering the department in which she had worked until November 5, 1997. (Compl. ¶ 63.) A recommendation for termination followed; that led to the April, 1998 letter notifying her of termination as of June 30, 1998. This action was filed on October 2, 1998.

Watford's one sentence letter of October 1, 1996 is not evidence that a cause of action had accrued at that time. The letter does not establish that as of that date she knew she was

terminated, placed on a leave of absence or disciplined in any way; at the most it suggests recognition on her part that her resignation was desired by someone at Lincoln. However, she also knew she had an employment contract until June 30, 1998. Her October 1, 1996 letter did not begin the two year limitations period. Both her involuntary leave of absence and termination occurred within two years of the date the action was filed; plaintiff's section 1983 claim is not barred by the Statute of Limitations.

The Pennsylvania Whistleblower Law's 180 day statute of limitations prohibits Watford from recovering for the November 5, 1997 "indefinite involuntary leave of absence," but she was not notified of her actual termination from Lincoln until April 8, 1998. Her action was filed within 180 days of her termination. Her claim under the Pennsylvania Whistleblower Law is barred by its statute of limitations only to the extent she seeks to recover for Lincoln's actions before April 5, 1998, 180 days prior to filing this action.

C. Punitive Damages

Plaintiff acknowledges in her response to Lincoln's motion that she does not seek punitive damages on her Pennsylvania Whistleblower Law claim. (Pl.'s Resp. to Def. Lincoln's Mot. for Summ. J. at 7.) She also states her claim for punitive damages is asserted against defendant Sudarkasa only, not Lincoln

University. (Pl.'s resp. to Def. Lincoln's Mot. for Summ. J. at 2.) Lincoln's motion for summary judgment on punitive damages will be granted.

III. Niara Sudarkasa

A. Official Capacity Claims

Plaintiff acknowledges that she cannot obtain injunctive relief against Sudarkasa, because Sudarkasa is no longer Lincoln's president. A suit against a person in his or her official capacity is identical to a suit against the entity of which the officer is an agent. See Kentucky v. Graham, 473 U.S. 159, 166 (1985). Plaintiff agrees that all claims against Sudarkasa in her official capacity should be dismissed. (Pl.'s Resp. to Def. Sudarkasa's Mot. for Summ. J. at 6.)

B. Qualified Immunity

Government officials performing discretionary functions are "shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The "inquiry is whether a reasonable official could have believed that his or her conduct was lawful, in light of the clearly established law and the information in the officer's possession." Sharrar v. Felsing, 128 F.3d 810, 826 (3d Cir. 1997). Government officials who "reasonably but mistakenly" violate a plaintiff's

constitutional rights are immune from liability. See Anderson v. Creighton, 483 U.S. 635, 641 (1987). "The qualified immunity standard 'gives ample room for mistaken judgments' by protecting 'all but the plainly incompetent or those who knowingly violate the law.'" Hunter v. Bryant, 502 U.S. 224, 229 (1991) (quoting Malley v. Briggs, 475 U.S. 335, 341, 343 (1986)). In addressing a qualified immunity defense prior to discovery, "the court must determine whether, assuming the truth of the plaintiff's allegations, the official's conduct violated clearly established law." Crawford-El v. Britton, 523 U.S. 574, 597-598 (1998).

Watford has alleged that Sudarkasa terminated her employment because Watford reported wrongdoing and waste in Lincoln's Act 101 program and attempted to compel Lincoln to comply with Act 101 regulations. The right of a public employee to comment on matters of public concern without fear of retaliation is well established. See Azzaro v. County of Allegheny, 110 F.3d 968 (3d Cir. 1997); Connick v. Myers, 461 U.S. 138 (1983).

To prove a First Amendment retaliation claim, the employee must show: 1) her speech involved a matter of public concern; 2) her interest in speaking about the matter of public concern outweighed the government's concern with the effective and efficient fulfillment of its responsibilities to the public; 3) the speech caused the retaliation; and 4) the adverse employment decision would not have occurred but for the speech. See Fogarty

v. Boles, 121 F.3d 886, 888 (3d Cir.1997).

Whether the speech is a matter of public concern depends upon the "content, form and context of a given statement." See Connick, 461 U.S. at 1690. Allegations of "inefficient, wasteful and possibly fraudulent" use of government resources are matters of public concern. Czurlanis v. Albanese, 721 F.2d 98, 104 (3d Cir. 1983) (county acted unconstitutionally in suspending employee for making allegations of inefficiency, false reports, duplication, and unnecessary work by the Department of Motor Vehicles at a county board meeting).

In Johnson v. Lincoln Univ., 776 F.2d 443(3d Cir. 1985), the Court of Appeals found that another Lincoln University professor's letters to the Middle States Association criticizing the university's academic standards dealt with a matter of public concern. Id. at 452. Plaintiff alleges she sent a letter to the Middle States Association of Schools and Colleges criticizing Lincoln's operation of the Act 101 program. (Compl. ¶ 65(e).) Assuming the truth of plaintiff's allegation, as we must at this point, no reasonable official could believe that Watford's speech was not a matter of public concern.

The government's concern with the effective and efficient fulfillment of its responsibilities to the public does not outweigh Watford's interest in speaking about a matter of public concern. Watford's speech alleged wrongdoing of concern to both

the public and the university itself. The university's interest in "efficiently fulfilling its responsibilities to the public" would be hampered, not enhanced, by terminating an employee attempting to ensure its compliance with state programs.

Ordinarily, the court addresses qualified immunity prior to discovery and trial. But under this set of facts, the court cannot decide at this stage whether the subjective elements of the First Amendment retaliation claim (that the speech caused the retaliation, and the adverse employment decision would not have occurred but for the speech) entitle Sudarkasa to qualified immunity. As the Court of Appeals has explained:

[A qualified immunity defense to a First Amendment retaliation claim requires] an inquiry that cannot be conducted without factual determinations as to the officials' subjective beliefs and motivations, and thus cannot properly be resolved on the face of the pleadings, but rather can be resolved only after the plaintiff has had an opportunity to adduce evidence in support of the allegations that the true motive for the conduct was retaliation rather than the legitimate reason proffered by the defendants . . .

Larsen v. Senate of the Commonwealth of Pennsylvania, 154 F.3d 82, 94-95 (3d Cir.1998) (citations and quotations omitted).

There is a factual dispute concerning whether Watford's speech caused retaliation and whether "but-for" causation exists; Sudarkasa's motion for qualified immunity will be denied without prejudice to a motion for summary judgment at the conclusion of discovery or a motion for judgment as a matter of law at trial.

C. Punitive Damages

Sudarkasa argues that there is no evidence in the record from which a reasonable jury could conclude Sudarakasa's misconduct was sufficiently intentional, willful or wanton to warrant an award of punitive damages. This summary judgment motion filed prior to discovery must be denied without prejudice to renew later.

CONCLUSION

Lincoln, an entity that is not a state agency but is state related, is not entitled to Eleventh Amendment immunity. Watford's action is timed-barred only to the extent she seeks damages under the Pennsylvania Whistleblower Law for retaliatory action more than 180 days before she filed her complaint. Her claim under 42 U.S.C. § 1983 is not time-barred. Watford concedes she does not seek punitive damages against Lincoln, and that all claims against Sudarkasa in her official capacity should be dismissed. Sudarkasa is not entitled to qualified immunity or summary judgment on Watford's punitive damages claim at this time.

An appropriate Order follows.

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

JOYCE WATFORD : CIVIL ACTION
:
:
v. :
:

LINCOLN UNIVERSITY OF THE :
COMMONWEALTH SYSTEM OF HIGHER :
EDUCATION, et al. : NO. 98-5252

ORDER

AND NOW, this ____ day of June, 2000, upon consideration of defendant Lincoln University of the Commonwealth System of Higher Education's ("Lincoln") motion for summary judgment based on the Eleventh Amendment, defendant Lincoln's motion for summary judgment based on the statute of limitations, defendant Lincoln's motion for summary judgment on punitive damages, defendant Niara Sudarkasa's ("Sudarkasa") motion for summary judgment, and all responses thereto, it is **ORDERED** that:

1. Defendant Lincoln's motion for summary judgment based on the Eleventh Amendment is **DENIED**.

2. Defendant Lincoln's motion for summary judgment based on the statute of limitations is **GRANTED IN PART** and **DENIED IN PART**.

a. This motion is **GRANTED** with respect to plaintiff's claims under the Pennsylvania Whistleblower Law to the extent plaintiff seeks to recover for acts of retaliation that took place 180 days before filing her claim on October 2, 1998.

b. This motion is otherwise **DENIED**.

3. Defendant Lincoln's motion for summary judgment on punitive damages is **GRANTED**.

4. Pursuant to this court's November 9, 1999 order, defendant Lincoln's 12th affirmative defense is **STRICKEN**.

5. Defendant Sudarkasa's motion for summary judgment is **DENIED** without prejudice to a motion for summary judgment at the conclusion of discovery or a motion for judgment as a matter of law at trial.

6. Pursuant to this court's November 9, 1999 order, defendant Sudarkasa's 7th and 11th affirmative defenses are **STRICKEN**.

7. All plaintiff's claims against defendant Sudarkasa in her official capacity are **DISMISSED**. Sudarkasa remains a defendant in her individual capacity.

