

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

MANON R. MATTHEWS,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	No. 00-CV-6459
INDEPENDENCE BLUE CROSS,	:	
Defendant.	:	

MEMORANDUM-ORDER

GREEN, S.J.

DECEMBER _____, 2001

Presently before the Court are Defendant's Motion for Summary Judgment, Plaintiff's Response, Defendant's Reply, and a Joint Motion for Extension of Deadline for Trial. For the reasons that follow, Defendant's motion for summary judgment will be granted, and the parties' joint motion will be dismissed as moot.

I. Factual and Procedural Background

Plaintiff began working for Independence Blue Cross ("IBC") in September 1995, and rose to the level of Technical Adviser in the General Correspondence department. This department is responsible for responding to the written and oral inquiries received from members, subscribers, providers, groups and other plans. As Technical Adviser, Plaintiff assisted the General Correspondence Supervisor and acted in a supervisory capacity in the Supervisor's absence. As part of her duties, she was responsible for removing correspondence from the General Correspondence In box and assigning it to individual Correspondence Representatives for reply by 3 p.m. daily. In addition to these duties, she was required to assess the training needs of representatives, conduct desk audits, and provide the Supervisor with weekly and monthly reports.

Ms. Matthews became pregnant in 1998, while she was still under the supervision of Ms. Carolyn Hilton-Finney. In or around September 1998, Ms. Finney decided to leave her position, and Plaintiff expressed an interest in being promoted to take her place. Ms. Barbara Gaither, the Manager of Executive/Associate Inquiries and General Correspondence, asked Ms. Finney whether Plaintiff should replace her; Ms. Finney told Ms. Gaither that Plaintiff “did not have the interpersonal skills that she needed to perform that duty.” Plaintiff testified at her deposition that, when Plaintiff directly asked Ms. Finney why Plaintiff was not promoted, Ms. Finney allegedly said that “she made a judgment call for me; and she apologized, and that she thought that I would not be interested in the position because of school and stuff. And the ‘and stuff’ was referencing my pregnancy.” Plaintiff specifically states that she “offers this evidence not to seek separate relief for being turned down for the position, but as evidence of IBC and its agents taking her pregnancy into account in making personnel decisions.” Plaintiff has not, to this Court’s knowledge, ever brought a claim against Defendant alleging that she was discriminated against when she was not promoted.

In October of 1998, Ms. Finney left the position and was replaced by Mr. Joseph Finnochio. Now under the supervision of Mr. Finnochio, Plaintiff’s work product and attitude allegedly deteriorated. Defendants allege that Plaintiff was chronically insubordinate, late, and insolent, and that there was a marked decline in the level of her substantive performance. Plaintiff and Mr. Finnochio had several discussions regarding Plaintiff’s performance between October 1998 and February 1999. Defendant submits Mr. Finnochio’s records as evidence of his efforts to counsel Plaintiff.

On February 27, 1999, Plaintiff left work feeling sick, and later called Mr. Finnochio to

inform him that her physician had ordered bed rest, necessitating her placement on leave. Due to the sudden seriousness of her condition, Plaintiff did not return to work after February 27, 1999. In considering the length of Plaintiff's service, the Defendant determined that Plaintiff was eligible for 55 days of short-term disability leave through May 23, 1999. Defendant also concluded that Plaintiff was eligible for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, et seq. ("FMLA"), and approved Plaintiff for twelve (12) weeks of FMLA leave through June 1, 1999.

Because Plaintiff had to leave so abruptly, Mr. Finnochio, as her supervisor, checked her work area for work that needed to be done, so that he could assign it to someone in Plaintiff's absence. Upon inspection, Defendant alleges that it found approximately two large boxes of correspondence that Plaintiff had failed to handle. Many of the documents were several months old. The age and volume of the documents greatly surprised Defendant. After making this discovery, Defendant began internal discussions concerning Plaintiff, and ultimately decided that Plaintiff should be terminated because of the amount of work she had left undone over the span of several months.

When Plaintiff returned to work on June 2, 1999, she was terminated.¹ She filed a complaint with the EEOC on or about February 11, 2000, alleging discrimination based on her sex. The EEOC issued a Determination Letter in which the Investigator concluded that Plaintiff

¹ Plaintiff contends that, since she was not permitted to return to work in the same position that she had prior to her departure on medical leave, Defendant violated the FMLA and is liable for damages. See Pltf.'s Resp. at 11. For purposes of summary judgment, I will assume that Plaintiff can make out a prima facie case showing that Defendant violated the FMLA. However, as will be discussed in greater detail later, Plaintiff has failed to produce any evidence that would permit a reasonable fact-finder to conclude that Defendant's reason for terminating her was pretextual. Therefore, her FMLA claim will be dismissed.

was not discriminated against, that Defendant had not fired other pregnant females, and that Plaintiff was terminated due to her poor work performance. The EEOC Investigator also found that Plaintiff admitted that “a lot” of women at Defendant had taken and returned from pregnancy leave without recrimination.

In December, 2000, Plaintiff filed the instant action, setting forth claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. (“Title VII”), based on her sex, and under the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, et seq. (“FMLA”), alleging that Defendant’s decision to terminate her was in retaliation for taking FMLA time. After discovery closed, Defendant filed the instant motion, and the Court held oral argument on December 11, 2001 to examine the various issues involved.

II. Discussion

Defendants move pursuant to Rule 56 of the Federal Rules of Civil Procedure. To be successful, Defendants must prove that, in considering the “pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, . . . there is no genuine issue as to any material fact and that the [Defendants are] entitled to a judgment as a matter of law.” See Fed. R. Civ. P. 56(c). In deciding this motion, I must draw all reasonable inferences in favor of the party against whom judgment is sought. See American Flint Glass Workers, AFL-CIO v. Beaumont Glass Company, 62 F.3d 574, 578 (3d Cir. 1995). The substantive law controlling the case will determine those facts that are material for the purpose of summary judgment. See Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986).

A. Plaintiff’s Title VII Claim

Of assistance to the matter sub judice is the Supreme Court’s line of cases beginning with

McDonnell Douglas, which “established an allocation of the burden of production and an order for the presentation of proof in . . . discriminatory-treatment cases.” St. Mary’s Honor Center v. Hicks, 509 U.S. 502, 506 (1993). Plaintiff must first establish a prima facie case of discrimination. In considering whether the Plaintiff has made out a prima facie case of discrimination, a court will consider several factors, including whether the Plaintiff was a member of a protected class, was qualified for the position, suffered an adverse employment decision, or was replaced by a sufficiently younger person to create an inference of age discrimination. If the Plaintiff offers sufficient proof, the burden of production then shifts to the Defendant, who must then offer evidence that Plaintiff’s termination was for a legitimate, nondiscriminatory reason. If the Defendant carries this burden, the Plaintiff then must submit evidence from which a fact-finder could reasonable conclude that Defendant’s reason was pretextual, and that the Plaintiff’s termination was motivated by a discriminatory reason. Of course, the Plaintiff bears the ultimate burden of persuading the finder of fact.

As this matter comes before me on summary judgment, I will assume that Plaintiff can make out her prima facie case. It is now necessary to determine whether Defendant has offered a legitimate nondiscriminatory reason for Plaintiff’s termination, and, if Defendant has, whether Plaintiff has produced evidence to show that this reason is not actually why she was fired.

1. “Legitimate Nondiscriminatory Reason”

Defendant submits that Plaintiff was discharged because she had failed to perform her job objectives for over six months, was insubordinate, chronically tardy and absent, and socialized excessively. Defendant also defends Plaintiff’s termination based on the discovery of hundreds of unprocessed documents found at Plaintiff’s desk after she went on leave.

In reviewing Defendant's proffered reasons, the Court must not make any credibility assessments. Taking the Defendant's evidence at face-value, it is clear that Defendant have met their burden of production.

2. "Pre-text" Analysis

The Plaintiff must now be given the chance to identify some evidence that would permit a fact-finder to conclude that Defendant's reasons for her termination are not legitimate, but, rather, a pre-text for discrimination. If proven by Plaintiff, the falsity of the Defendants' explanation could let the fact-finder decide that the Plaintiff carried her ultimate burden of persuasion.

While it is clear that Plaintiff's performance deficiencies were troubling to Defendant, there is no evidence that Defendant planned on terminating Plaintiff before the discovery of documents in her work area after she went on leave. Ignoring the other reasons Defendant gives for her termination, Plaintiff focuses solely on Defendant's allegation that she was fired for leaving hundreds of unprocessed documents at her work station. However, Plaintiff's attempt to discredit Defendant's reason is conjectural, and, more importantly, unsupported by any evidence.

Plaintiff argues that Defendant's reliance on the discovery of hundreds of documents should be ignored, for several reasons. First, Plaintiff argues that Defendant initially told her that they did not have the documents on which they were relying. Only after the deposition of one of Defendant's representatives did Defendant inform Plaintiff that Defendant had found the documents. And, only after another deposition of another representative did Defendant ultimately give the documents to Plaintiff. Plaintiff argues that, due to this delay in the production of these documents, she has not been able to review them and determine how many of

the documents were, in fact, her responsibility at the time she took her leave. When the Court held oral argument on the instant motion, Plaintiff's counsel informed the Court that neither he nor the Plaintiff have had an opportunity to review the hundreds of documents which Defendant alleges were Plaintiff's responsibility.

Plaintiff next argues that, of the few documents she has been able to review, several could not have been in her work area when she left because the dates on the correspondence post-date her departure. Finally, combining her two previous arguments, Plaintiff believes that it is possible that, after review of the remaining documents, sufficient doubt could be raised regarding their authenticity and relevancy to undermine Defendant's entire reason for terminating her, and, as a result, could allow a fact-finder to conclude that Defendant's reason was actually a pretext for its true discriminatory reason.

Plaintiff has never denied that she left work at her desk when she was abruptly forced to depart on medical leave. Plaintiff merely offers some evidence that several of the items found at her desk post-dated her departure. However, she offers no evidence that the other documents, said to number in the hundreds, were not her work. Nor does she dispute the fact that these documents were unprocessed and several months old. Plaintiff doesn't even deny that the documents found were her documents. In addition, while Plaintiff has had adequate opportunity to examine all of the documents, she has made no request to enlarge time and states that she has not yet reviewed the documents. At oral argument, the Court presented both parties with the chance to enter any additional evidence not already before it, and neither party availed themselves of this opportunity. Also at oral argument, Plaintiff's counsel admitted that, if Defendant was incorrect about the documents, and had, in good faith, terminated Plaintiff

because it believed at the time of Plaintiff's termination that the documents were inappropriately accumulated by Plaintiff, the termination would not be actionable.

I conclude that Plaintiff has failed to produce evidence that Defendant was motivated by any discriminatory animus, and has failed to undermine, overcome, negate or discredit Defendant's legitimate nondiscriminatory reason for terminating her. Therefore, Defendant's motion will be granted.

B. Plaintiff's FMLA Claim

Plaintiff's FMLA claim is based on her argument that she was terminated by Defendant in retaliation for her use of her legal use of FMLA leave. Assuming, arguendo, that Plaintiff can state a *prima facie* case of retaliation under the FMLA, Defendant's legitimate nondiscriminatory reason for termination Plaintiff is the same for this claim as it was for her Title VII claim. I conclude that, for the same reasons stated in the Title VII analysis, Plaintiff has not sustained her burden of producing evidence which would lead a reasonable fact-finder to conclude that Defendant's reason was a pre-text for retaliation. Therefore, Defendant's motion must be granted.

C. Joint Motion for Extension of Deadline for Trial

Because Defendant's motion for summary judgment is being granted, the parties' Joint Motion for Extension of Deadline for Trial is moot, and will be dismissed.

III. Conclusion

For the reasons stated above, Defendant's motion for summary judgment will be granted, and Plaintiff's entire action will be dismissed, with prejudice. An appropriate order follows.

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MANON R. MATTHEWS,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	No. 00-CV-6459
INDEPENDENCE BLUE CROSS,	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of December, 2001, upon consideration of Defendant's Motion for Summary Judgment, Plaintiff's Response, Defendant's Reply, and a Joint Motion for Extension of Deadline for Trial, **IT IS HEREBY ORDERED** that:

- 1) Defendant's motion for summary judgment is **GRANTED**, Judgment will be entered in favor of Defendant and against Plaintiff;
- 2) The parties' Joint Motion for Extension of Deadline for Trial is **DISMISSED AS MOOT**.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.

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Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	No. 00-CV-6459
INDEPENDENCE BLUE CROSS,	:	
Defendant.	:	

JUDGMENT

AND NOW, this _____ day of December, 2001 **IT IS HEREBY ORDERED**
that **JUDGMENT IS ENTERED** in favor of Defendant Independence Blue Cross and against
Plaintiff Manon R. Matthews.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.