

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

DENISE SZUSTOWICZ,	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 02-2054
v.	:	
	:	
CITY OF PHILADELPHIA, et al.,	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J.

March 26, 2003

Presently before this Court are Defendants City of Philadelphia’s, John Gallagher’s, Melvin Williams’s, William Colarulo’s, and Debra Martinez’s Motion for Summary Judgment and Plaintiff Denise Szustowicz’s Response thereto. For the reasons set forth below, Defendants’ Motion is granted in part and denied in part.

I. BACKGROUND

Plaintiff, Denise Szustowicz (“Szustowicz” or “Plaintiff”), began working for the Philadelphia Police Department on September 18, 1995. She was promoted to the rank of detective, a rank which she currently maintains, on December 16, 1998. Beginning in August of 1999, Szustowicz alleges that she was discriminated against by Defendants William Colarulo (“Colarulo”), John Gallagher (“Gallagher”), Debra Martinez (“Martinez”) and Melvin Williams (“Williams”) (along with the City of Philadelphia, collectively “Defendants”) for her gender, and she was subsequently retaliated against by each of these individual Defendants for complaining of this gender discrimination.

Plaintiff alleges that Gallagher, who served as Plaintiff's supervisor for a period of time, was the first to discriminate against her in the workplace. Plaintiff claims that Gallagher filed numerous disciplinary memorandums against her and assigned her to desk duty more often than Plaintiff's male co-workers. As a result of the first memorandum Gallagher filed against Szustowicz on August 10, 1999, Szustowicz complained to Colarulo, another supervisor of Plaintiff's who was also ranked above Gallagher, about the manner in which Gallagher was treating her. Plaintiff contends that, as a result of her complaints, Gallagher began filing memorandums against her on a regular basis for insignificant reasons. She claims that he even filed memorandums against her for failure to dot "i's" on her police reports. Pl.'s Dep. at 44.

After receiving many alleged frivolous memorandums, Szustowicz complained about Gallagher's treatment of her to Colarulo several more times. Eventually, Colarulo transferred Plaintiff to a different squad so that she would no longer have to deal with Gallagher. Pl.'s Dep. at 46-47. However, in February of 2000, Gallagher transferred into Szustowicz's new squad and, once again, Plaintiff began getting memorandums and desk assignments from him. Pl.'s Dep. at 52. In July of 2000, Gallagher questioned Szustowicz on two separate occasions about overtime that she had worked. Pl.'s Dep. at 64-68. Plaintiff perceived his questioning as harassment against her. Although Szustowicz alleges that Gallagher filed several disciplinary memorandums against her, gave her difficulty about her overtime hours, and often assigned her to desk duty, she admits Gallagher never filed formal disciplinary charges against her. Pl.'s Dep. at 75.

Beginning sometime around August 1, 2000, Szustowicz came under the supervision of Williams. Plaintiff alleges that, during the time Williams supervised her, he assigned her to desk duty more often than her male co-workers, he denied her overtime work and he issued her a negative performance evaluation. When Plaintiff questioned Williams about why he assigned her to desk duty so often, he responded that she was good at it. Pl.'s Dep. at 91. According to Szustowicz, she often complained about his assigning her to desk duty, and Williams always responded that he would try to change the amount of time she worked on the desk to make it fairer. Pl.'s Dep. at 96.

In July of 2000, Szustowicz requested one hour of overtime to work on a particular case. According to Plaintiff, Williams denied her permission to work this overtime, even though he often permitted male co-workers to work overtime when they requested to do so. Pl.'s Dep. at 123. In February of 2001, Szustowicz and Williams engaged in a heated discussion over whether Plaintiff deserved overtime that she was claiming she had already served. Despite their disagreement over the issue, Williams eventually agreed that Plaintiff deserved the overtime, and she was paid for her work. Pl.'s Dep. at 93-5. Plaintiff also complained about Williams's treatment of her because she alleges that he yelled at her on one occasion because she cried when a victim with whom she had become close passed away. Plaintiff believed it was unfair for Williams to berate her in this way. Pl.'s Dep. 79-80.

Plaintiff also makes claims against Williams because he noted on a performance evaluation that her remarks to co-workers, patrol personnel, complainants and defendants were inappropriate on several occasions. Despite this notation, Plaintiff's overall rating on this alleged negative performance report was "satisfactory." Pl.'s Dep. at 81-83. Szustowicz felt it was

unfair for Williams to comment on her behavior when her male co-workers acted much more inappropriately than Plaintiff, and they did so much more often than Plaintiff, yet they were never reprimanded or disciplined for their conduct. Pl.'s Dep. at 88. Despite all this, Szustowicz admits that Williams never brought formal disciplinary charges against her. Pl.'s Dep. at 99-100.

Although Plaintiff alleges discriminatory conduct by Williams, she also notes instances when he helped her with her discrimination claims against other Defendants. In July of 2000, Plaintiff complained to Williams about Gallagher's behavior toward her. Williams told Szustowicz to write up a memorandum indicating everything that Gallagher had done to her. Pl.'s Dep. at 64. Furthermore, on August 1, 2000, Gallagher told Plaintiff that she was to report to a meeting with the Captain and her union representative, because she was going to be disciplined. Williams, being Szustowicz's supervisor at this time, was upset with Gallagher for calling the meeting. Williams cancelled the meeting, and Plaintiff was not disciplined on this occasion. Pl.'s Dep. at 74-5.

Szustowicz also accuses Martinez of discriminating and retaliating against her. Martinez is a female supervisor in the Philadelphia Police Department. Martinez became Plaintiff's Lieutenant in January of 2001. Pl.'s Dep. at 143. Szustowicz accuses Martinez of assigning Plaintiff to desk duty more often than her male co-workers, denying Plaintiff compensation, bringing formal disciplinary charges against Plaintiff and causing the issuance of a negative special performance evaluation against Plaintiff. Pl.'s Response to Defs.' Mot. Summ. J. at 11. Szustowicz alleges that Martinez assigned her to desk duty because Plaintiff is a woman and to retaliate against Plaintiff for telling Martinez that she was going to file a grievance against

Williams if he did not give her the overtime she requested of him during the heated discussion between Williams and Szustowicz in February of 2001. See *infra*.

On March 30, 2001, Szustowicz and Martinez engaged in a dispute over the arrest of a criminal assailant whom Szustowicz was planning to arrest. Plaintiff alleges that it was customary for her male co-workers to speak with attorneys of criminal assailants and agree upon these assailants turning themselves in at the police station peacefully, rather than the detectives having to pick them up by force on the streets. Szustowicz had arranged for such a peaceful arrest with one of her assailants for early April of 2001. However, on March 30, 2001, Plaintiff claims that Martinez told her to forget about the arrangement she had made with the assailant's attorney, and to go arrest the assailant. Szustowicz claims that, when she called the assailant he did not answer, but she decided to go to his home to arrest him anyway. However, Plaintiff decided to wait for a co-worker of hers to become available so this co-worker could come with her. Before Plaintiff and her co-worker left to make the arrest, Martinez questioned Szustowicz about why she had not yet gone to make the arrest. Plaintiff claims that she explained the situation and Martinez seemed satisfied with her explanation. However, on April 12, 2001, Plaintiff received a formal disciplinary charge for her failure to make the arrest on March 30, 2001. Pl.'s Dep. at 134-141.

Furthermore, on April 11, 2001, Martinez informed Szustowicz that she was being assigned to desk duty for making a mistake on a job on which she had worked. Plaintiff believes that Martinez put her on the desk because she is a woman, not because she made a mistake on a job. If Martinez offered a desk job to any males, and they refused, Martinez simply asked another person to work the desk. However, Plaintiff claims that Martinez would not let her

refuse the position. Pl.'s Dep. at 145. In response to being assigned to desk duty, Szustowicz remarked, "if I knew I was going to be a secretary, I would have stayed doing hair."¹ Pl.'s Dep. at 146.

The following day, April 12, 2001, after having been assigned to desk duty by Martinez, Szustowicz met with Colarulo to complain about this assignment, and to tell him that she would be filing a charge with the Equal Employment Opportunity Commission ("EEOC") for the discriminatory treatment against her. On that same day, Colarulo filed formal disciplinary charges against Plaintiff. Szustowicz claims that it is office policy to hold a hearing once an individual has been served with formal disciplinary charges, so that the Police Board of Inquiry can determine whether the charges have merit. Pl.'s Dep. at 265-66. Plaintiff alleges that she was never given such a hearing. Pl.'s Dep. at 143, 269. Without any opportunity to explain her actions, Szustowicz was suspended without pay as a result of these formal disciplinary charges she received on April 12, 2001.²

Plaintiff accuses Colarulo of discriminatory and retaliatory behavior based upon these formal disciplinary charges he issued on April 12, 2001, and also because he denied her overtime and cancelled a court notice for her. On July 18, 2000, Szustowicz requested overtime so that she could serve a search warrant. According to Plaintiff, Colarulo denied her this overtime, yet he granted overtime on several occasions to male detectives in the department who needed to serve search warrants. Pl.'s Dep. at 148-49. In June of 2001, Colarulo similarly

1. Plaintiff worked as a hairdresser prior to becoming a police officer.

2. Although Plaintiff is unclear about exactly what conduct the formal disciplinary charges of April 12, 2001 were based upon, it appears that they were given for her conduct on March 30, 2001 and her comment to Martinez on April 11, 2001.

denied Plaintiff the opportunity to work overtime by staying after at an event where she and many male co-workers were working. Szustowicz claims that Colarulo insisted that she leave the event, but he allowed her male co-workers to stay and work overtime. Pl.'s Dep. at 151-52, 158.

Plaintiff also accuses Colarulo of denying her overtime in relation to a court appearance she was to make during a day she had off on July 23, 2000. Szustowicz claims her presence in court was necessary, but she would have to put in overtime because the court date was scheduled for a day she was not assigned to work. According to Szustowicz, Colarulo cancelled this court appearance so that Plaintiff was denied the four hours of overtime she would have received that day had she appeared in court. Pl.'s Dep. at 149-50, 159-60.

As a result of the alleged acts of discrimination and retaliation against Plaintiff by Gallagher, Williams, Martinez and Colarulo, Szustowicz has filed claims against the City of Philadelphia and these individual Defendants for First Amendment retaliation claims, discrimination and retaliation in violation of Title VII, violations of the Pennsylvania Human Relations Act ("PHRA"), intentional infliction of emotional distress and presentation in false light.

II. STANDARD OF REVIEW

A motion for summary judgment will be granted where all of the evidence demonstrates "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 dispute about a material fact is genuine "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). Since a grant of summary

judgment will deny a party its chance in court, all inferences must be drawn in the light most favorable to the party opposing the motion. U.S. v. Diebold, Inc., 369 U.S. 654, 655 (1962).

The ultimate question in determining whether a motion for summary judgment should be granted, is “whether reasonable minds may differ as to the verdict.” Schoonejongen v. Curtiss-Wright Corp., 143 F.3d 120, 129 (3d Cir. 1998). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” Anderson, 477 U.S. at 248.

III. DISCUSSION

Plaintiff has willfully withdrawn Count I of her Complaint, which includes § 1983 claims and Title VII claims against the City of Philadelphia. Plaintiff has also willfully withdrawn her § 1983 claims against Williams and Martinez. As such, Plaintiff’s remaining claims that this Court will address include her § 1983 claims against Gallagher and Colarulo, Title VII discrimination and retaliation claims against all individual Defendants, violations of the PHRA against all Defendants, intentional infliction of emotional distress against all Defendants and presentation in false light against Colarulo.

A. First Amendment Retaliation - 42 U.S.C. § 1983

An employee’s First Amendment retaliation claim in which she alleges that she was retaliated against based upon her speech is subject to a three-step analysis. Swineford v. Snyder County, 15 F.3d 1258, 1270 (3d Cir. 1994). First, the plaintiff must prove that she engaged in protected speech under the First Amendment. Id. Second, the plaintiff must show the alleged speech was “a substantial or motivating factor” in the alleged retaliatory conduct. Id.

Third, if a plaintiff can meet these first two burdens, a defendant can defeat the claim by showing that he would have taken the same action even in the absence of the protected speech. Id.

In order to qualify as protected speech under the First Amendment, the alleged speech must satisfy the Pickering balancing test. Green v. Philadelphia Housing Auth., 105 F.3d 882, 885 (3d Cir. 1997), *citing* Pickering v. Board of Educ. of Twp. High Sch. Dist. 205 Will County, 391 U.S. 563 (1968). First, the speech must be “on a matter of public concern.” Green, 105 F.3d at 885, *citing* Watters v. City of Philadelphia, 55 F.3d 886, 892 (3d Cir. 1995). Second, “the public interest favoring [the plaintiff]’s expression ‘must be outweighed by any injury the speech could cause to the interest of the state as an employer in promoting the efficiency of the public services it performs through its employees.’” Green, 105 F.3d at 885, *quoting* Watters, 55 F.3d at 892.

The question of whether speech is protected is a question of law to be decided by the court. Versarge v. Twp. of Clinton, 984 F.2d 1359, 1364 (3d Cir. 1993); Zamboni v. Stamler, 847 F.2d 73, 77 (3d Cir. 1988). A public employee’s speech qualifies as a “matter of public concern” if it can be “fairly considered as relating to any matter of political, social, or other concern to the community.” Green, 105 F.3d at 885-6. Principle in this determination is whether the speech relates to the process of self-governance. Azzaro v. County of Allegheny, 110 F.3d 968, 977 (3d Cir. 1997). The court is to look at the content, form and context of a statement to determine whether it is of public concern. Id. at 976.

In the instant matter, Szustowicz’s complaints to her supervisors were not a matter of public concern. Plaintiff complained to Williams and Colarulo because she believed that she was being discriminated against based upon her gender, and then retaliated against based on her

previous complaints about this discrimination. Plaintiff's speech was devoted entirely to personal matters and had no relationship to the process of self-governance. Her complaints did not involve subject matter which would interest the public at large. Rather, her speech was important to her and the employees about whom she was complaining. Since Plaintiff's speech does not qualify as protected speech under the First Amendment, her First Amendment retaliation claims are dismissed.

B. Title VII Gender Discrimination - 42 U.S.C. § 2000(e)-2

In evaluating a discrimination claim pursuant to Title VII, a court must apply the burden of proof framework set forth in McDonnell Douglas Corp. v. Green. 411 U.S. 792, 802 (1973). Under this framework, a plaintiff must show, by a preponderance of the evidence, a prima facie case of discrimination. If the plaintiff is able to do this, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for its actions against the employee. Id. at 802. If the defendant can meet this burden, then the burden shifts back to the plaintiff to prove, by a preponderance of the evidence, that the reasons articulated by the defendant were actually a pretext for discriminatory practices. Id. at 804.

In order to establish a prima facie case of gender discrimination in employment under Title VII, § 2000(e)-2, a plaintiff must show that (1) she is a member of a protected class, and (2) she has suffered an adverse employment action (3) under circumstances that give rise to an inference of unlawful discrimination. Boykins v. Lucent Techs., Inc., 78 F. Supp. 2d 402, 409 (E.D. Pa. 2000). "The Supreme Court has defined a tangible, adverse employment action as a 'significant change in employment status, such as hiring, firing, failing to promote, reassignment,

or a decision causing a significant change in benefits.’” Weston v. Pennsylvania, 251 F.3d 420, 430-31 (3d Cir. 2001), *quoting* Burlington Indus. Inc. v. Ellerth, 524 U.S. 742, 749 (1998).

In this case, Defendants do not dispute that Plaintiff is a member of a protected class. However, they do contend that she has not suffered any adverse employment action. Defendants are correct in believing that many of the actions Szustowicz alleges were taken against her do not qualify as significant enough to constitute adverse employment actions. Plaintiff complains of several occasions where she was written up on informal disciplinary charges. These charges merely resulted in memorandums which were issued to Plaintiff discussing errors by her in the course of her employment. These informal charges did not result in any disciplinary action being taken against Plaintiff, and do not qualify as adverse employment actions.

However, Szustowicz has alleged that Defendants took some actions against her which may qualify as significantly adverse to sustain a Title VII discrimination claim. On April 12, 2001, Colarulo served Szustowicz with formal disciplinary charges which resulted in her suspension. Plaintiff contends that police directives entitled her to a hearing with the Police Board of Inquiry before this suspension was issued.³ At this hearing, Plaintiff believes she would have had an opportunity to explain her actions which gave rise to the charges against her, and the Board would determine there was no merit to these charges. Szustowicz alleges that she was denied this hearing, and she was suspended without pay as a result of the formal disciplinary

3. Defendants deny that police directives require an individual to a hearing before the Police Board of Inquiry. Rather, they claim that a hearing may be afforded if the issue upon which an individual has been charged needs clarification. Regardless, Defendants claim that Plaintiff was afforded a hearing before the Police Board of Inquiry where she was represented by counsel. Colarulo’s Dep. at 101-02.

charges filed against her. Pl.'s Dep. at 268-69. Plaintiff's suspension without pay is a significant enough deprivation of benefits so as to constitute an adverse employment action. It is yet unknown whether Colarulo had a discriminatory motive for issuing the formal disciplinary charges against Plaintiff. However, Plaintiff has provided a sufficient amount of evidence to establish an inference of unlawful discrimination. Accordingly, Plaintiff has met her burden of proof for a prima facie case of discrimination and is entitled to maintain her Title VII claim of discrimination against Colarulo.

Plaintiff has also established a prima facie case of discrimination against the other individual Defendants by demonstrating that they may have also taken adverse employment actions against her. Plaintiff alleges that each of the individual Defendants denied her overtime and assigned her to desk duty in a disproportionate amount. Plaintiff claims that she was denied overtime when she was assigned to the desk, because there is no opportunity to work overtime with this position, whereas opportunities to work overtime often arise when detectives work in the field. Currently, Szustowicz has not demonstrated that detectives in the field earn an average number of overtime hours per week which she was denied as a result of serving desk duty more often than her male co-workers. However, she may be able to provide such evidence in the future, if given the opportunity. If Szustowicz can show that Defendants' assignment of desk duty to her in disproportionate amounts compared to her male co-workers resulted in a loss of significant overtime work, and therefore loss of a significant benefit to her, she can establish that

Defendants took adverse employment actions against her.⁴ Therefore, it is inappropriate to dismiss Plaintiff's claim of gender discrimination against the individual Defendants at this time.

4. Although Martinez is a woman, Plaintiff is still able to make gender discrimination claims against her. “[T]here can be no absolute presumption that a person of one gender would not discriminate against another person of the same gender.” Bibby v. Philadelphia Coca Cola Bottling Co., 260 F.3d 257, 262 (3d Cir. 2001), *citing* Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 78-79 (1998).

C. Title VII Retaliation - 42 U.S.C. § 2000(e)-3

A Title VII retaliation claim is subject to the McDonnell-Douglas burden of proof framework, just as is a Title VII discrimination claim. 411 U.S. at 802. For a plaintiff to establish a prima facie case of retaliation pursuant to this framework, she must show that (1) she was engaged in a protected activity, (2) her employer took an adverse employment action after or contemporaneous with the protected activity, and (3) a causal link exists between the protected activity and the adverse action. Weston v. Pennsylvania, 251 F.3d 420, 430 (3d Cir. 2001).

Defendants do not dispute that Plaintiff engaged in a protected activity when she filed a charge with the EEOC. Once again, however, Defendants contend that Szustowicz was not subjected to any adverse employment actions. Defendants also claim that, even if there was an adverse employment action, there is not a causal link between Plaintiff's protected activity and this adverse action. For the reasons set forth above, Plaintiff has provided sufficient evidence of adverse employment actions to satisfy this requirement for a prima facie case.

Szustowicz has also established that a causal link exists between her filing of an EEOC charge and the alleged retaliatory treatment against her. "[T]emporal proximity between the protected activity and the [adverse action] is sufficient to establish a causal link." Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997). On April 11, 2001, Szustowicz complained to Colarulo about the way she was being treated and informed him that she would be filing a charge with the EEOC. The following day, on April 12, 2001, Plaintiff was served with formal disciplinary charges. Although Defendants contend that Szustowicz's complaints are unrelated to the discipline she received the following day, the timing of these disciplinary charges, alone, is sufficient to establish the causal link necessary for Plaintiff's prima facie case

of retaliation. Accordingly, Szustowicz has established a prima facie case and her claim of Title VII retaliation is not dismissed against the individual Defendants.

D. Statute of Limitations - § 1983 and Title VII

Defendants contend that Plaintiff's § 1983 and Title VII claims for actions prior to April 11, 2000 are barred by the Statute of Limitations, because these actions did not occur within two years from the time Plaintiff filed her charge with the EEOC. Since Plaintiff's § 1983 claims have been dismissed, this Court need only address Defendants' Statute of Limitations argument with respect to Plaintiff's Title VII claims. It is unclear from the record whether any incidents which relate to Plaintiff's Title VII claims occurred before April 11, 2000. If there were any, they relate to Szustowicz's assignment of desk duty by Gallagher. However, even if these desk assignments did occur before April 11, 2000, they are not time barred pursuant to the continuing violation theory. This theory "allows a 'plaintiff [to] pursue a Title VII claim for discriminatory conduct that began prior to the filing period if he can demonstrate that the act is part of an ongoing practice or pattern of discrimination by the defendant.'" Rush v. Scott Specialty Gases, 113 F.3d 476, 481 (3d Cir. 1997), *quoting* West v. Philadelphia Elec. Co., 45 F.3d 744, 754 (3d Cir. 1995). To establish that a continuing violation exists, a plaintiff must (1) show that at least one discriminatory act occurred within the filing period, and (2) that the conduct is "more than the occurrence of isolated or sporadic acts of intentional discrimination." Rush, 113 F.3d at 481.

Plaintiff has demonstrated that the alleged acts of discrimination and retaliation giving rise to her claims are part of a continuing pattern rather than isolated incidents. Her claims are all based on similar behavior by Defendants and allegedly occurred to her on

numerous occasions throughout the two and a half years prior to her filing a charge with the EEOC. As such, Plaintiff's Title VII claims are not barred by the Statute of Limitations.

E. PHRA - 43 P.S. § 951, et seq.

Pennsylvania courts have adopted identical standards for proof of discrimination and retaliation under the PHRA as those for proof of discrimination and retaliation under Title VII. United Bhd. of Carpenters & Joiners v. Pennsylvania Human Relations Comm'n, 693 A.2d 1379, 1383 (Pa. Commw. 1997). Accordingly, for the reasons set forth for above, Plaintiff's claims for violations of the PHRA are not dismissed. See III.B, C., *infra*.

F. Intentional Infliction of Emotional Distress

“The gravamen of the tort of intentional infliction of emotional distress is that the conduct complained of must be of an extreme or outrageous type.” Van Cleve v. Nordstrom, Inc., 64 F. Supp. 2d 459, 464 (E.D. Pa. 1999). For a plaintiff to maintain a claim of intentional infliction of emotional distress, “the conduct must be so outrageous in character, and so extreme in degree, as to go beyond all bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society.” Cox v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988), *quoting* Buczek v. First Nat'l Bank of Mifflintown, 366 Pa. Super. 551, 558 (1987). Only in rare circumstances will conduct within the employment context rise to the necessary level of outrageousness to allow a plaintiff to recover for this tort. Cox, 861 F.2d at 395. The determination of whether a defendant's conduct meets the requisite level of extreme behavior is a preliminary determination for the court. Van Cleve, 64 F. Supp. 2d at 464.

In this case, Szustowicz has failed to allege any conduct by any of the Defendants which is so extreme or outrageous as to be utterly intolerable in a civilized society. For conduct

to meet the level of egregiousness necessary for this tort, there would be no reasonable explanation available for Defendants' alleged behavior. Plaintiff has alleged possible discriminatory and retaliatory conduct by Defendants, but she has not shown their conduct to be so disgraceful and offensive that there is no explanation for what they have done. If the explanation provided by Defendants is proven to be true, Defendants have not acted inappropriately. Accordingly, Plaintiff's claim for the intentional infliction of emotional distress is dismissed.

G. Presentation in False Light

“The tort of placing the plaintiff in a false light consists of publication of facts about plaintiff by defendant which places plaintiff in a false light, the false light is objectionable to reasonable people, and malice on the part of the defendant where the published matter is in the public interest.” Commonwealth v. Hayes, 489 Pa. 419, 433 n.18 (1980). Under Pennsylvania statute, governmental employees are entitled to immunity from tort liability unless their actions constitute “a crime, actual fraud, actual malice or willful misconduct.” 42 P.S. §§ 8545, 8550.

In the instant matter, the conduct upon which Plaintiff bases her claim of Colarulo placing her in a false light is primarily based upon reports submitted by Colarulo accusing Szustowicz of failure to properly perform her duties or improperly performing her duties as a detective.⁵ Plaintiff also indicates that Colarulo represented to one individual that she was “crazy.” Most of the information reported by Colarulo that Szustowicz claims to be false is

5. Plaintiff alleges that Colarulo submitted a misconduct report dated April 12, 2001 accusing her of insubordination for failure to execute an arrest warrant. Plaintiff also alleges that, on June 11, 2001, Colarulo submitted two misconduct reports. The first accused her of neglecting her duties for failing to conduct a proper investigation, and the second accused her of conduct unbecoming an officer in that same investigation. Finally, Plaintiff claims that Colarulo submitted complaints in which he accused her of disparaging Martinez because she is African American, and threatening Colarulo to the point where he feared for his safety.

information which he reported in the course of Plaintiff's employment with the Philadelphia Police Department. As Szustowicz's supervisor, it was Colarulo's responsibility to evaluate her performance and criticize her inadequacies in the performance of her job. Although it is yet unknown whether Colarulo's actions were done in retaliation, they were done as part of his job duties. His reports were not submitted in a malicious manner, they do not constitute a crime, and they were not fraudulent. As such, Colarulo is entitled to immunity under the circumstances. Plaintiff's claim against Colarulo for placing her in a false light is dismissed.

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion is granted in part and denied in part. An appropriate Order follows.

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

DENISE SZUSTOWICZ,	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 02-2054
v.	:	
	:	
CITY OF PHILADELPHIA, et al.,	:	
Defendant.	:	

ORDER

AND NOW, this 26th day of March, 2003, upon consideration of Defendants City of Philadelphia's, John Gallagher's, Melvin Williams's, William Colarulo's and Debra Martinez's Motion for Summary Judgment (Docket No. 13) and Plaintiff Denise Szustowicz's Response thereto (Docket No. 14), it is hereby **ORDERED** that Defendants' Motion is **GRANTED** in part and **DENIED** in part.

More specifically:

1. Count I is **DISMISSED** by agreement of the parties;
2. Counts III and V are **DISMISSED** by agreement of the parties to the extent of the § 1983 claims included therein;
3. Defendants' Motion is **GRANTED** with respect to Plaintiff's § 1983 claims of Counts II and IV,
4. Defendants' Motion is **DENIED** with respect to Plaintiff's Title VII claims of Counts II, III, IV and V;
5. Defendants' Motion is **DENIED** as to Count VI;

6. Defendants' Motion is **GRANTED** as to Count VII; and
7. Defendants' Motion is **GRANTED** as to Count VIII.

BY THE COURT:

RONALD L. BUCKWALTER, J.