

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

LAVERNE M. HAY,)
DAVID COPLING and) Civil Action
DUSTIN QUEENAN,) No. 2001-CV-1030
)
v.)
)
GMAC MORTGAGE CORPORATION)

* * *

APPEARANCES:

MARC H. PACHTMAN, ESQUIRE
On behalf of Plaintiffs

MICHAEL L. BANKS, ESQUIRE
SARAH E. BOUCHARD, ESQUIRE
PAUL C. EVANS, ESQUIRE
On behalf of Defendant

* * *

O P I N I O N

JAMES KNOLL GARDNER
United States District Judge

This matter is before the court on Defendant's Motion for Summary Judgment of Claims of Plaintiff Laverne M. Hay filed June 19, 2002, which motion is unopposed.¹ For the reasons set forth below, we grant defendant's motion for summary judgment

¹ This matter was originally assigned to our former colleague District Judge Jay C. Waldman. By Order dated September 9, 2002, Judge Waldman granted plaintiffs a final extension of time until October 18, 2002 to respond to defendant's motion for summary judgment. As of the date of this Memorandum and accompanying Order, plaintiff Laverne M. Hay has not filed a response to defendant's motion for summary judgment. Accordingly, we consider defendant's motion for summary judgment in conjunction with Federal Rule of Civil Procedure 56 which permits the grant of summary judgment only where there are no genuine issues for trial and judgment as a matter of law is appropriate.

regarding plaintiff Laverne M. Hay and dismiss Counts I and II of the Amended and Restated Complaint filed June 11, 2001.

Complaint

Plaintiff Laverne M. Hay has asserted claims for racial discrimination under Title VII of the Civil Rights Act of 1964 and 1991² and the Pennsylvania Human Relations Act ("PHRA")³ against defendant (Counts I and II).⁴ The claims asserted by plaintiff⁵ include disparate treatment, retaliation for complaining about racial discrimination, and constructive discharge.⁶

Facts

Based upon the pleadings, record papers, depositions, affidavits, defendant's motion and brief and the exhibits submitted by defendant, as uncontroverted, or otherwise taken in

² 42 U.S.C. §§ 2000(e) to 2000(e)-17; 42 U.S.C. § 1981.

³ Act of October 27, 1955, P.L. 744, No. 222, §§ 1-13, as amended, 43 P.S. §§ 951-963.

⁴ The Complaint contains five counts. Plaintiff Laverne M. Hay ("Hay") brings two charges against defendant (Counts I and II), plaintiff David Copling ("Copling") brings one count against defendant (Count III), and plaintiff Dustin Queenan ("Queenan") brings two counts against defendant (Counts IV and V).

⁵ Throughout this Opinion, all references to "plaintiff" in the singular refer to plaintiff Laverne M. Hay.

⁶ On June 20, 2000 plaintiff cross-filed an administrative complaint alleging race discrimination, a hostile work environment and constructive discharge with the Equal Employment Opportunity Commission (docketed at 170A01426) and the Pennsylvania Human Relations Commission (docketed at L07416). Each agency denied plaintiff's claims and she received a right to sue letter on December 5, 2000.

the light most favorable to the plaintiff, the pertinent facts are as follow.

Plaintiff Laverne M. Hay began working at defendant GMAC Mortgage Corporation ("GMACMC") on January 28, 1998 in the company's consumer loan department. One of her functions was to evaluate productivity in the Collection Department by creating statistical reports showing the productivity of individual collectors. On May 11, 1998 plaintiff became an administrative assistant.

On July 30, 1999 plaintiff was transferred into another department and became a Document Customer Service Specialist. She held that position until defendant promoted her to the position of Training Specialist in February 1999.

As a Training Specialist, plaintiff designed and presented training courses about defendant's customer service products and computer system applications to employees in defendant's Client Branded Solutions Group ("CBSG"). She worked closely with managers and the Human Resources Department to ensure that the training aligned with defendant's needs. Plaintiff attended several training seminars funded by the defendant. Plaintiff received positive performance evaluations from defendant. She was never given any written warnings, nor were any formal disciplinary actions ever taken against her.

In Spring 1999 GMACMC considered creating a Training

Manager position within CBSG. Plaintiff became concerned when she learned that a candidate for the position had been interviewed, although an opening for the new position was never advertised within the company. This position was never created, but plaintiff was concerned because defendant never formally advised her that defendant contemplated creating such a position.

Plaintiff met with Anthony Renzi, Senior Vice President of CBSG, to discuss her concerns. Mr. Renzi told her he would look into the situation and that if the position were to be created, she "would definitely be the choice."⁷ Because of cost concerns, defendant never created the position. Despite Mr. Renzi's assurances, plaintiff became suspicious because she believed he lied about his knowledge of this new position.

In Fall 1999 Mr. Renzi decided to revise the CBSG training program for which plaintiff was responsible. He wanted to create a complete, integrated training curriculum that would be required of all CBSG associates. It required training throughout employment and testing employees afterward to gauge their understanding.

To implement his proposed curriculum, Mr. Renzi assigned plaintiff to work with Julie Frank, the CBSG Human Resources Coordinator. Mr. Renzi remained involved in the

⁷ Plaintiff ended up writing a college paper about her interactions with Mr. Renzi in which she lauded her positive experience. She shared the paper with Susan Fratoni, Vice President of Voice of the Associate and Voice of Customer Service, defendant's internal grievance programs.

project and frequently complimented the pair on their work product. Both employees were instructed to report directly to him, but primarily by electronic mail ("e-mail"). Plaintiff was directed to focus on the technical aspects of the training, while Miss Frank worked on the human resource aspects.

On October 19, 1999 plaintiff asked Mr. Renzi in an e-mail whether she should move forward with New Hiring Training Classes. He responded by telling her to cancel the classes and to focus on the new training curriculum project.

On October 25, 1999 plaintiff told one of her managers, Joan Duxbury, Vice President of Customer Care Projects, that plaintiff lacked direction and was confused about her job responsibilities. Plaintiff also stated that she was frustrated because Mr. Renzi did not respond to her e-mails or her request to attend a training seminar in Toronto. Miss Duxbury scheduled a meeting for October 28, 1999, between Mr. Renzi and the plaintiff to address the issue.

A day after approaching Miss Duxbury and before her meeting, plaintiff went to the Voice of the Associate ("VOA") program, an internal grievance program through which employees can lodge formal grievances. Plaintiff spoke with Lidia Downie, a VOA representative, about her unhappiness with the restructuring of the training program and her concerns about working with Miss Franks.

Plaintiff complained that Mr. Renzi sent Miss Frank copies of the e-mail which he sent to the plaintiff. She also complained that Mr. Renzi had suggested that plaintiff use Miss Frank as a sounding board for plaintiff's ideas about the project. She also complained that Mr. Renzi had approved the request of Miss Frank to attend an outside conference but had not yet approved plaintiff's request to attend the same conference. Plaintiff admits that she did not complain about racial discrimination at this meeting but contends that she did refer to "unfair" and "unequal" treatment.

On October 28, 1999 plaintiff met with Mr. Renzi and Miss Duxbury. Mr. Renzi applauded plaintiff's work and told her that he appreciated her work. He also approved her request to attend a training session, in Pittsburgh, Pennsylvania, rather than Toronto, Ontario, Canada.

On October 28, 1999, after the meeting, Miss Downie from VOA called plaintiff regarding the meeting. Plaintiff returned Miss Downie's call and left a message stating that the meeting had been "positive". The following day plaintiff spoke with Miss Downie, and plaintiff reported that the meeting had gone well. On November 12, 1999 Miss Downie sent plaintiff an e-mail asking if everything was going well. Plaintiff responded three days later stating that "things are going well" and thanked her for asking. In her deposition, plaintiff testified that she

was not being truthful in her response to Miss Downie's inquiry.⁸

On January 28, 2000 plaintiff received her 1999 performance review. Defendant rated her "solid" overall, which meant that her "[p]erformance meets and sometimes may exceed" the job requirements. Plaintiff received "outstanding" ratings in three areas and a "solid" rating in all seven categories on the review related to leadership abilities. Additionally, she received a "solid" rating for eight of the ten categories reflecting her job performance. As a result, defendant increased plaintiff's compensation for the year 2000.

Despite the largely positive performance review, plaintiff was unhappy because of two "less than desirable" ratings. In response, she submitted a six-page letter to Diane Bowser, Vice President-Managing Director of Customer Care Operations, indicating that she believed the two lower rating were undeserved because she was allegedly being held accountable for work that was the responsibility of Miss Frank. Moreover, plaintiff did not feel that she should have been "surprised" by a negative rating in her performance evaluation. Rather, plaintiff contends her shortcomings should have been discussed with her prior to the performance review.

After receiving plaintiff's letter, Miss Bowser met with plaintiff who once again indicated that she believed that

⁸ Deposition of plaintiff Laverne M. Hay, March 29, 2002, page 95.

defendant held her accountable for Miss Frank's mistakes. Miss Bowser then scheduled a meeting between plaintiff and Miss Duxbury, who had written the performance review.

At that meeting, Miss Duxbury informed plaintiff that she and others believed that plaintiff required too much oversight from management. Plaintiff contends that Miss Duxbury pointed out that those were minor concerns and that every employee has some room for improvement. Plaintiff then prepared a document stating that she did not "dispute the fact that there are areas that I need to improve in", but still disputed the unfavorable performance review in these two areas.

On March 13, 2000 plaintiff called Susan Fratoni, Vice President of Voice of the Associate and Voice of the Customer, to state, for the first time, that she felt that defendant discriminated against her on the basis of her race. She expressed concerns similar to those previously expressed, but now stated that she believed that she was treated poorly because of her race.

Plaintiff complained about defendant not making her aware of the possibility of creating a Training Manager position, Mr. Renzi's better treatment of Miss Frank, and plaintiff's 1999 performance review. In addition, she claimed that several of defendant's other minority employees also believed defendant discriminated against them.

Miss Fratoni was receptive to plaintiff's comments, and plaintiff hoped that the culture of CBSG would change.

Miss Fratoni told plaintiff that "she [could not] cure the sins of the past, but let's look to the future."

Miss Fratoni relayed plaintiff's complaints to Anne Janiczek, defendant's Employee Relations Manager. Miss Janiczek spoke with plaintiff on March 20, 2000. Plaintiff told her that Mr. Renzi treated her unfairly, and plaintiff threatened to resign at the end of March 2000. Miss Janiczek advised Miss Bowser of plaintiff's concerns. She also spoke with Mr. Renzi. Mr. Renzi told her that he considered plaintiff to be a valuable asset and wanted her to remain employed by defendant.

On March 22, 2000 plaintiff met with Miss Janiczek and Miss Bowser. They advised her that the Human Resources Department would investigate her allegations of race discrimination. Despite attempts to encourage plaintiff to stay, plaintiff verbally announced that she was resigning, effective that day. She did not return to work again.

Miss Bowser completed a company form indicating that plaintiff had resigned. She indicated on the form that she would rehire plaintiff if given the opportunity. Defendant also investigated plaintiff's allegations of discrimination and found no evidence to substantiate her claims.

Plaintiff filed a complaint with the federal Equal

Employment Opportunity Commission ("EEOC") on June 20, 2000. In her complaint, plaintiff alleged that defendant had discriminated against her because of her race.

Standard of Review

In considering a motion for summary judgment, the court must determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Federal Home Loan Mortgage Corporation v. Scottsdale Insurance Company, 316 F.3d 431, 433 (3d Cir. 2003). Only facts that may affect the outcome of a case are "material". Moreover, all reasonable inferences from the record are drawn in favor of the non-movant. Anderson, supra.

Although the movant has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. See Watson v. Eastman Kodak Company, 235 F.3d 851, 858 (3d Cir. 2000). A plaintiff cannot avert summary judgment with speculation or by resting on the allegations in her pleadings, but rather must present competent evidence from which a jury could reasonably find in her favor.

Ridgewood Board of Education v. N.E. for M.E., 172 F.3d 238, 252 (3d Cir. 1999); Woods v. Bentsen, 889 F. Supp. 179, 184 (E.D. Pa. 1995).

Discussion

Race Discrimination Claim

The same general standards and analyses are applicable to plaintiff's Title VII and PHRA claims. See Jones v. School District of Philadelphia, 198 F.3d 403, 410-411 (3d Cir. 1999); Gomez v. Allegheny Health Services, Inc., 71 F.3d 1079, 1083-1084 (3d Cir. 1995).

A plaintiff has the initial burden of establishing a prima facie case of employment discrimination by showing she was a member of a protected class, she was qualified for the job she held, she suffered an adverse employment action, and the surrounding circumstances give rise to an inference of discrimination. See Pivirotto v. Innovative Systems, Inc., 191 F.3d 344, 353-354 (3d Cir. 1999); Fuentes v. Perksie, 32 F.3d 759, 763 (3d Cir. 1994).

Once a plaintiff does so, the burden then shifts to the defendant employer to articulate a legitimate, nondiscriminatory reason for the adverse employment decision. See St. Mary's Honor Center v. Hicks, 509 U.S. 502, 506-507, 113 S.Ct. 2742, 2747, 125 L.Ed.2d 407, 416 (1993); McDonnell Douglas v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973); Goosby v.

Johnson & Johnson Medical, Inc., 228 F.3d 313, 319 (3d Cir. 2000). If the defendant articulates such a reason, the plaintiff could still prevail by demonstrating that the employer's proffered reasons were not its true reasons but rather a pretext for unlawful discrimination. See Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 143, 120 S.Ct. 2097, 2106, 147 L.Ed.2d 105, 117 (2000); Goosby, 228 F.3d at 319.

The plaintiff must present evidence from which a factfinder could reasonably disbelieve the employer's proffered reasons, from which it may then be inferred that the real reason for the adverse action was discriminatory, or otherwise present evidence from which one could reasonably find that unlawful discrimination was more likely than not a determinative cause of the employer's action. Hicks, supra; Keller v. Orix Credit Alliance, Inc., 130 F.3d 1101, 1108 (3d Cir. 1997).

To discredit a legitimate reason proffered by the employer, a plaintiff must present evidence demonstrating "such weakness, implausibilities, inconsistencies, incoherencies, or contradictions" for the proffered explanation that one could reasonably conclude it is incredible and unworthy of credence, and ultimately infer that the employer did not act for the asserted non-discriminatory reasons. Fuentes, 32 F.3d at 765. The ultimate burden of proving that a defendant engaged in intentional discrimination remains at all times on the plaintiff.

Hicks, supra.

As an African-American, plaintiff is a member of a protected class. She contends that she was discriminated against on the basis of her race. There appears to be little dispute that she was qualified to perform her job.⁹

However, plaintiff cannot make out a prima facie case of employment discrimination or retaliation because she cannot demonstrate that defendant took any adverse employment action against her. Only conduct which "alters the employee's 'compensation, terms, conditions, or privileges of employment,' 'deprives him or her of 'employment opportunities,' or 'adversely affects his or her status as an employee'" is proscribed by Title VII. Robinson v. City of Pittsburgh, 120 F.3d 1286, 1300 (3d Cir. 1997).

Plaintiff asserts that the following three incidents constitute adverse employment actions: 1) defendant considered creating a Training Manager position that would have overseen plaintiff's Training Specialist position, but the new position was never actually created; 2) Mr. Renzi, her boss, acted differently toward her than he acted toward Miss Franks, although no specific examples are provided by plaintiff; and 3) defendant rated plaintiff's performance in two categories as "less than

⁹ When completing post-separation paperwork, defendant wrote that it would consider rehiring the plaintiff if she wanted to return. In addition, plaintiff's performance evaluations were largely positive throughout her tenure with the company.

desirable". However, her overall performance was rated as "solid" in her 1999 performance evaluation, and she received an increase in salary as a result.

Defendant's consideration of establishing a Training Manager position did not alter the terms and conditions of plaintiff's employment. While plaintiff believed that she should have been interviewed for such a position, defendant did not actually hire a training manager or create such a position. Accordingly, even if defendant considered creating such a position, it could not have affected defendant's terms and conditions of employment.

Plaintiff failed to present any evidence indicating that Mr. Renzi's conduct had an impact on plaintiff's terms and conditions of employment. She contends that he delayed approving her attendance at a training meeting in Toronto and also blamed her for shortcomings in work that was the responsibility of a co-worker, Miss Franks. However, Mr. Renzi merely delayed approval of plaintiff's request to attend a training meeting, ultimately authorizing her to attend a conference in Pittsburgh rather than Toronto.

Plaintiff acknowledged that there was no difference between the two conferences and that she was satisfied by the conference which she did attend in Pittsburgh. Moreover, plaintiff cannot point to any other evidence indicating that Mr.

Renzi treated plaintiff differently in a way that affected the terms and conditions of her employment.

Plaintiff's performance review also fails to rise to the level of an adverse employment action. Even a poor performance rating does not give rise to an adverse employment action unless it has a tangible effect on recipient's employment. See Williams v. Pennsylvania State Police-Bureau of Liquor Control Enforcement, 108 F. Supp. 2d 460, 467, n.5 (E.D. Pa. 2000) citing Spears v. Missouri Department of Corrections & Human Resources, 210 F.3d 850, 854 (8th Cir. 2000). A poor performance evaluation alone does not give rise to a case of discrimination, but must be accompanied by a clear inference or connection to discriminatory animus. See Shaner v. Synthes, 204 F.3d 494, 505 (3d Cir. 2000).

In this case, defendant gave plaintiff an overall "solid" rating on her 1999 performance evaluation, and even awarded her its highest rating in several categories. In fact, as a result of the review defendant gave plaintiff a raise. Accordingly, plaintiff's performance review does not give rise to an adverse employment action.

We find this situation analogous to the case of Elwell v. PP & L, 2001 WL 1529063, at *9-10 (E.D. Pa. Nov. 28, 2001) wherein United States Magistrate Judge Thomas J. Reuter rejected plaintiff's claim that a performance review rating of "good" was

an adverse employment action absent evidence that the review had an actual impact on promotional opportunities or a reduction in salary. Accordingly, we conclude that in this case plaintiff's performance review does not give rise to an adverse employment action.

Finally, plaintiff asserts that she was constructively discharged and that this constitutes an adverse employment action by defendant. In order to establish a constructive discharge claim, a plaintiff must show that her employer knowingly engaged in conduct so intolerable that a reasonable person in the employee's shoes subject to them would resign. See Durham Life Insurance Company v. Evans, 166 F.3d 139, 155 (3d Cir. 1999); Konstantopoulos v. Westvaco Corporation, 112 F.3d 710, 718 (3d Cir. 1997); Connors v. Chrysler Financial Corporation, 160 F.3d 971, 975 (3d Cir. 1988).

A reasonable employee would usually explore alternatives such as requesting a transfer to another position, advising her employer that she would feel compelled to leave if improvements in working conditions were not made, or filing a grievance before leaving work, unless she is able to show that the conditions were so intolerable that a reasonable employee would be forced to resign without remaining on the job for a period necessary to take those steps. See Clowes v. Allegheny Valley Hospital, 991 F.2d 1159, 1161 (3d Cir. 1993). For the

following reasons, we conclude that the evidence, viewed in the light most favorable to plaintiff, does not support a claim for constructive discharge.

Based on the available evidence, plaintiff cannot support a claim for constructive discharge because a reasonable jury could not conclude that plaintiff faced a situation so intolerable as to be constructively discharged. Plaintiff contends that defendant did not adequately address her workplace concerns. However, at the various times plaintiff expressed concerns with an aspect of her employment, she expressed satisfaction with how defendant resolved each situation.

Specifically, after plaintiff discussed her concerns about the possible creation of a Training Manager position with Mr. Renzi in Spring 1999, plaintiff wrote a paper for college lauding her satisfaction with Mr. Renzi's response to her concerns. Moreover, during Fall 1999, when plaintiff expressed dissatisfaction to Voice of the Associate regarding the conduct of Mr. Renzi, VOA members contacted her several times to ensure that the situation had been addressed satisfactorily and plaintiff responded that "things [were] going well."

Finally, because plaintiff fails to show that any of the allegedly discriminatory conduct had any adverse effect on her employment, we conclude that plaintiff was not constructively discharged.

Retaliation Claim

Plaintiff also alleges that defendant retaliated against her for complaining of discrimination. Title VII prohibits an employer from discriminating against an employee because she opposed any unlawful employment practice.

42 U.S.C. § 2000e-3(a); Durham, 166 F.3d at 157.

To establish a prima facie case for retaliation, plaintiff must demonstrate that: (1) she engaged in activity protected by Title VII; (2) she suffered an adverse employment action after, or contemporaneous with, the protected activity; and (3) a causal link existed between the protected activity and the adverse action. See Weston v. Pennsylvania, 251 F.3d 420, 430 (3d Cir. 2001).

The burden then shifts to the defendant to offer a legitimate non-retaliatory reason for the adverse action. Woodson v. Scott Paper Company, 109 F.3d 913, 920 (3d Cir. 1997). Informal protests of discrimination, such as complaints to management, rise to the level of protected activity. Abramson v. William Patterson College, 260 F.3d 265, 288 (3d Cir. 1997). However, only grievances actionable under Title VII are considered a protected activity. See Walden v. Georgia Pacific Corporation, 126 F.3d 506, 513 n.4 (3d Cir. 1997).

In this case, plaintiff engaged in a protected activity when she complained to Voice of the Associate on March 13, 2000,

that she had been treated differently by defendant because of her race. Although she had complained about unfair treatment on at least one other occasion, plaintiff never mentioned race or discrimination in any of these other discussions, and those complaints did not constitute a protected activity for Title VII purposes. See McBride v. Hospital of the University of Pennsylvania, 2001 WL 1132404, at *7 (E.D. Pa. September 21, 2001).

Plaintiff fails to prove a sufficient causal connection to establish retaliation because she resigned from her employment with defendant on the day she first engaged in a protected activity. The conduct which plaintiff characterizes as discriminatory occurred before she first complained to management and cannot be actionable retaliation. See Robinson, 120 F.3d at 1301. In addition, while constructive discharge may constitute an adverse employment action, this claim must fail because plaintiff cannot establish that she was constructively discharged.

Hostile Work Environment

Plaintiff asserts that defendant created a hostile work environment in violation of Title VII and the PHRA. A hostile work environment exists when a workplace is permeated with discriminatory intimidation, ridicule, and insult so severe or pervasive as to alter the conditions of the victim's

employment and create an abusive working environment. See Harris v. Forklift Systems, Inc., 510 U.S. 17, 114 S.Ct. 367, 126 L.Ed.2d 295 (1993). Incidents of harassment are pervasive if they occur in concert or with regularity. Andrews v. City of Philadelphia, 895 F.2d 1469, 1484 (3d Cir. 1990).

To state a hostile work environment claim premised on racial animus, an employee must establish that: (1) she suffered intentional discrimination because of her race; (2) the discrimination was "pervasive and regular"; (3) she was adversely affected by the discrimination; (4) the discrimination would adversely affect a reasonable person of the same race; and (5) respondeat superior liability applies. Cardenas v. Massey, 269 F.3d 251, 260 (3d Cir. 2001); Weston, 251 F.3d at 426; Kunin v. Sears, Roebuck & Co., 175 F.3d 289, 293 (3d Cir. 1999).

Although overt racial harassment is not necessary, the plaintiff must be able to show that race is a substantial factor in the harassment. Aman v. Cort Furniture Rental Corporation, 85 F.3d 1074, 1083 (3d Cir. 1996); Andrews, 895 F.2d at 1482.

Plaintiff has failed to adduce evidence showing that what she characterized as poor treatment was at all motivated by her race. Moreover, we conclude that plaintiff has not presented sufficient evidence to show that the alleged discrimination she faced was severe and pervasive. In Williams v. Pennsylvania State Police-Bureau of Liquor Control Enforcement,

108 F. Supp. 2d 460, 468 (E.D. Pa. 2000), evidence that over the course of five years an employee received poor performance evaluations, was the subject of three disciplinary complaints, and had interpersonal conflicts with her supervisors and co-workers was insufficient to support employee's claim of a hostile work environment. Accordingly, we conclude that because plaintiff's claims do not even rise to the level of those in Williams, plaintiff fails to set forth a claim for hostile work environment as a matter of law.

Conclusion

If there is evidence to support plaintiff's claims, she has not produced it. Speculation and subjective opinions are not competent evidence. Plaintiff speculated that she was unfairly blamed for a co-worker's shortcomings. However, one cannot reasonably conclude from the competent evidence of record that defendant discriminated against plaintiff on the basis of her race or retaliated against her. Nor can one reasonably conclude from the competent evidence that plaintiff was a victim of a hostile work environment.

Accordingly, for all the foregoing reasons, defendant is entitled to summary judgment as a matter of law. Therefore, we grant its motion and dismiss plaintiff Laverne M. Hay's claims contained in Counts I and II of her Amended and Restated Complaint.

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

LAVERNE M. HAY,)
DAVID COPLING and) Civil Action
DUSTIN QUEENAN,) No. 2001-CV-1030
)
v.)
)
GMAC MORTGAGE CORPORATION)

O R D E R

NOW, this 11th day of September, 2003, upon consideration of Defendant's Motion for Summary Judgment of Claims of Plaintiff Laverne Hay filed June 19, 2002, which motion is unopposed; upon consideration of defendant's brief in support of its motion; and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that defendant's motion for summary judgment is granted.

IT IS FURTHER ORDERED that Counts I and II of the Amended and Restated Complaint filed June 11, 2001 on behalf of plaintiff Laverne M. Hay are dismissed.

IT IS FURTHER ORDERED that judgment is entered in favor of defendant GMAC Mortgage Corporation and against plaintiff Laverne M. Hay.

BY THE COURT:

James Knoll Gardner
United States District Judge