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

M. CLAIRE COPPA	:	**CIVIL ACTION**
Plaintiff,	:	
	:	
vs.	:	
	:	**NO. 04-234**
AMERICAN SOCIETY FOR TESTING	:	
MATERIALS, t/a ASTM	:	
INTERNATIONAL	:	
Defendant.	:	

MEMORANDUM AND ORDER

O R D E R

AND NOW, this 11th day of May, 2005, upon consideration of Defendant's Motion for Reconsideration (Document No. 34, filed February, 24, 2005), plaintiff's Brief in Opposition to Motion for Reconsideration (Document No. 35, March 9, 2005), and Defendant's Reply Brief in Support of its Motion for Reconsideration (Document No. 36, filed March 28, 2005), **IT IS ORDERED** that Defendant's Motion for Reconsideration (Document No. 34) is **GRANTED** and defendant's Motion for Summary Judgment is **GRANTED** as to Count I of the Complaint. That part of the Order of February 14, 2005 in which the Summary Judgment Motion was denied as to Count I is **VACATED**. The case shall **PROCEED** on Count II of the Complaint in accordance with the Scheduling Order of April 19, 2005.

M E M O R A N D U M

I. BACKGROUND

This case arises out of defendant American Society for Testing Material's (ASTM) alleged violations of the Family and Medical Leave Act (Count I) and the Fair Labor Standard Act (Count II). By Order dated February 14, 2005 the Court denied plaintiff's Motion for Partial

Summary Judgment and defendant's Cross-Motion for Summary Judgment on the ground that the submissions of the parties presented genuine issues of material fact.

Presently before the Court is defendant's Motion for Reconsideration of the Court's February 14, 2005 Order. Defendant argues that this Court should reconsider its decision denying its Cross-Motion for Summary Judgment as to Count I of the Complaint because the Court denied the Motion in the absence of evidence sufficient to establish a prima facie case of retaliation and evidence that defendant's articulated reasons for terminating plaintiff were pretextual. Additionally, defendant argues that plaintiff failed to state an interference claim under the FMLA.

II. FACTS

Plaintiff, Clare Coppa ("Coppa"), was hired by defendant ASTM as a News Editor/Writer on August 5, 1998. In May 2003, Coppa was diagnosed with an [redacted]. On June 30, 2003, she submitted a request for medical leave from June 25, 2003 to August 17, 2003 to have surgery and attend to her medical needs. Defendant approved plaintiff's request for leave. During the time of plaintiff's leave, she received payment at 60% of her salary. On August 18, 2003, plaintiff returned to work and was restored to her former position until her termination on November 13, 2003.

Plaintiff claims that she requested "FMLA leave." (Pl. Opp. at 3). Defendant's position is that plaintiff applied for paid, short-term disability leave, as opposed to unpaid FMLA leave, and thus cannot avail herself of the protections of the FMLA. (Def. Cross-Mot. at 37-38).

II. STANDARD OF REVIEW

A district court has the power to reconsider interlocutory decisions, such as the grant or

denial or a motion for summary judgment "when it is 'consonant with justice to do so.'" Walker by Walker v. Pearl S. Buck Foundation, Inc., 1996 U.S. Dist. LEXIS 17927, at *6 (E.D. Pa. Dec. 3, 1996) (quoting United States v. Jerry, 487 F.2d 600, 605 (3d Cir. 1973)). A court should grant a motion for reconsideration only (1) there is an intervening change in controlling law, (2) newly available evidence emerges, or (3) there is a need to correct a clear error of law or to prevent a manifest injustice. General Instrument Corp of Delaware v. Nu-Tek Elecs. & Mfg., Inc., 3 F. Supp. 2d 602, 606 (E.D. Pa. 1998), aff'd., 197 F.3d 83 (3d Cir. 1999); see also Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985).

III. DISCUSSION

There are two types of claims an employee can bring against an employer under the FMLA: (1) interference claims, in which an employee asserts that her employer denied or otherwise interfered with his substantive rights under the FMLA, see 29 U.S.C. § 2615(a)(1); and (2) retaliation claims, in which an employee asserts that her employer discriminated against her because she engaged in activity protected by the FMLA, see 29 U.S.C. § 2615(a) (1) & (2). Count I of the Complaint alleges both retaliation and interference claims under the FMLA.

A. Retaliation Claim

Retaliation claims under the FMLA are analyzed under the burden shifting framework of McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); see also Lepore v. LanVision Sys., Inc., 113 Fed. Appx. 449 (3d Cir. 2004); Baltuskonis v. US Airways, Inc., 60 F. Supp. 2d 445, 448 (E.D. Pa. 1999). Under this framework, a plaintiff must first make out a prima facie case of retaliation, which is established by showing: (1) plaintiff availed herself of a protected right under the FMLA; (2) plaintiff suffered an adverse employment action; and (3) there was a causal

connection between the employee's protected activity and the employer's adverse employment action. Conoshenti v. Public Service Electric & Gas Co., 364 F. 3d 135, 146 (3d Cir. 2004). After the plaintiff establishes a prima facie case of retaliation, the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for its adverse employment action. If a legitimate, nondiscriminatory reason is provided, the burden shifts back to plaintiff to establish that the employer's reasons are pretextual. Id.; Baltuskonis, 60 F. Supp. 2d at 448.

1. *Causal Connection Analysis*

Defendant argues that plaintiff has failed to establish a prima facie case of retaliation because she has not demonstrated that her leave was protected by the FMLA and that there was a causal connection between the exercise of her FMLA rights and termination. The Court concludes that it need not decide the question of whether plaintiff engaged in protected activity under the FMLA because she has failed to establish the causation prong of her FMLA claim.

Third Circuit cases instruct the Court to focus on two main factors in determining whether there is a causal link in an FMLA retaliation claim – timing and evidence of ongoing antagonism. Abramson v. Wm. Patterson College of N.J., 260 F.3d 265, 288 (3d Cir. 2001) ("Temporal proximity ... is sufficient to establish the causal link. [A] plaintiff can [also] establish a link between his or her protected behavior and subsequent discharge if the employer engaged in a pattern of antagonism in the intervening period.").

The Third Circuit is "seemingly split" on the question of whether the timing of the allegedly retaliatory action can, by itself, support a finding of causation. Robinson v. City of Pittsburgh, 120 F.3d 1286 (3d Cir. 1997); Krouse v. American Sterilizer Co., 126 F.3d 494, 503 (3d Cir., 1997). However, where there are several months intervening between a plaintiff's leave

and her subsequent termination, as in this case, retaliation cannot be inferred from the timing of the adverse employment action. Keeshan v. Home Depot, 2001 U.S. Dist. LEXIS 3607 at *43 (E.D. Pa. Mar. 27, 2001).

Coppa's termination was approximately three months after her return from leave. The Court concludes that a three month time period, without more, is too long a period to establish a causal link. Compare Jalil v. Avdel Corp., 873 F.2d 701, 708 (3d Cir. 1989) (causal link established where plaintiff discharged two days after employer learned of plaintiff's EEOC claim); see Krouse, 126 F.3d at 503 (the timing of alleged retaliatory action must be "unusually suggestive" before a causal link will be inferred). Moreover, as discussed below, because Coppa had a history of performance and behavioral problems pre-dating her medical leave, the significance of any temporal proximity between her medical leave and termination is undercut. See Helfrich v. Lehigh Valley Hosp., 2005 U.S. Dist. LEXIS 4420 at *67 (E.D. Pa. Mar. 18, 2005); see also Coulter v. Deloitte, 2003 WL 2251434 at *4 (6th Cir. Nov. 4, 2003).

Timing, "in conjunction with other types of suggestive evidence," Sabbrese v. Lowe's Home Ctrs., Inc., 320 F. Supp. 2d 311, 323 (W.D. Pa. 2004), such as evidence of "ongoing antagonism," Abramson, 260 F.3d at 288, is sufficient to demonstrate a causal link. Farrell v. Planters Lifesavers Co., 206 F.3d 271, 280-81 (3d Cir. 2000). The Court next turns to the evidence presented on this issue.

To satisfy the causation prong, Coppa cites to the following remarks in her 2003 annual performance review: (1) "Contributing negatively to [Coppa's] ability to perform the basic functions of her responsibilities were a) deficient interpersonal skills and b) attendance issues;" (2) "As of September 25, 2003, [Coppa] had taken two days off without pay in addition to 37

excused days (10 without pay, 27 at 60% disability pay) for surgery;" (3) "Taking sick, employee and vacation time disproportionately throughout the year affects [Coppa's] ability to perform all of her duties and objected;" and (4) "The time during which [Coppa] would have called potential authors for the November issue [] was the time she was excused out for surgery and recovery." (Pl. Opp. at 15).[1]

In addition, Coppa alleges that Drew Azzara, the Vice President of Corporate Development, decided to terminate her after learning that she threatened to file a grievance for being criticized for taking FMLA leave. (Id. at 15-16). Plaintiff claims that "the precipitating event bringing about the decision to terminate her was [her] threat of the grievance on November 7, 2002, only minutes before Mr. Azzara decided to terminate her." (Id. at 15).

After carefully reviewing the evidence submitted by both parties, the Court concludes that the record does not support a causal connection between Coppa's medical leave and termination. A general reference to "attendance issues" in Coppa's performance review, three months after she returned from medical leave, fails to create a genuine issue of material fact. Moreover, the fact that Maryann Gorman, Coppa's supervisor, stated that Coppa's pattern of using all of her sick, employee, and vacation time in the first half of the year in 2002 and 2003 was problematic does not support an inference of causation. First, Coppa only submitted her request for FMLA

[1] The Court notes that plaintiff advanced a different theory in her deposition on December 2, 2004. There, she testified that the precipitating event that led to her termination was her 2003 performance review. (Coppa Dep. at 127). Plaintiff presents no evidence to support that claim. In fact, her performance review indicates that although Coppa needed improvement in certain areas, ASTM intended her employment to continue. (Coppa Exh. 16) ("we are looking forward to the coming year, believing that Clare's attention to the operational and developmental objectives below will provide her with opportunities to succeed in her position"). In short, the record does not support an inference that Coppa's termination was the result of her 2003 performance review.

leave on June 30, 2003, which is not within the period of time that Gorman found to be problematic. Second, the review criticizes Coppa's use of her *sick, employee*, and *vacation* leave, not her alleged FMLA leave, which occurred in the latter half of 2003.

Gorman's remark that plaintiff did not call potential authors because she was absent due to surgery and recovery, read in context of the entire performance review, implies only that Coppa did not meet that specific objective because she was out on excused medical leave. It cannot be inferred that this was a criticism of plaintiff for taking FMLA leave.

With respect to plaintiff's argument that defendant fired her because she threatened to file a grievance, plaintiff, in her deposition, specifically denied that she wanted to file a grievance.[2] The only reference in the record to a grievance is in a November 7, 2003 email from Maryann Gorman to Drew Azzara. In that email, Gorman states:

> "This is to inform you of another long conversation that Clare just engaged in with Barbara [Director of Corporate Communications] and I . . . Clare said that she is not clear on how to take her sick and vacation time next year and told me she needs guidance on this . . . Clare said that without a meeting to help her understand these things that she might have to file a grievance and asked who it would go to. Barbara told her to look at the handbook for grievance procedures."

The Court concludes that this email suggests that plaintiff was concerned as to how to use her sick and vacations days in the coming year. There is no evidence to support plaintiff's

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[2] In plaintiff's deposition testified as follows:

Question:	Did you tell them that you might file a grievance?
Answer:	No.
Question:	You never said that?
Answer:	Absolutely Not. I never said anything like that. I wasn't going to file a grievance. I had no plans to file a grievance. I just wanted to show my proof and get it over with.

(Coppa Dep. at 166-67)

contention that she threatened to file a grievance because of defendant's criticism of her FMLA leave or even that she was criticized for taking such leave. Furthermore, there is no evidence to support plaintiff's claim that Azzara terminated her based upon Gorman's email. To the contrary, Azzara stated that no one incident motived his decision to terminate plaintiff, but instead pointed to "the culmination of many, many incidents." (Azzara Dep. at 65-69, Azzara Memo dated Nov. 10, 2003).

Finally, Coppa presents no evidence of a pattern of antagonism against her. In fact, Coppa's deposition supports a finding to the contrary. Before Coppa took leave she said that "[e]verything was honky dory" and that no one questioned her need for medical leave. (Coppa Dep. at 127-30). Similarly, after Coppa returned from leave, she acknowledged that she was welcomed back. (Id.).

In sum, Coppa's allegations that she was terminated because she exercised her rights under the FMLA are purely speculative. Because the Court finds no evidence of temporal proximity or a pattern of antagonism in connection with plaintiff's medical leave, plaintiff has failed to establish the causal link necessary for a retaliation claim under the FMLA.

2. *Defendant's Legitimate, Nondiscriminatory Reasons for Terminating Plaintiff*

Assuming, *arguendo*, that plaintiff has established a prima facie case, the burden of production shifts to defendant to articulate a legitimate, nondiscriminatory reason for plaintiff's termination. McDonnell Douglas, 411 U.S. at 802.

Specifically, defendant asserts that Coppa's termination was the result of "numerous incidents during the week of November 3, and prior incidents dating back to the start of

plaintiff's employment." (Def. Cross Mot. at 45). Defendant provides significant evidence of inappropriate and insubordinate behavior *prior* to the time plaintiff took medical leave.

Within the first three months of employment, Coppa had interpersonal problems and difficulty meeting deadlines. (Coppa Exh. 32) ("Clare has demonstrated difficultly dealing cooperatively with a variety of personalities."). Barbara Schindler, director of corporate communications, documented these performance and behavioral issues and recommended training to improve these deficiencies. (Id.). The following year, on May 4, 2000, Maryann Gorman held a meeting with Coppa to discuss interpersonal problems again. (Coppa Exh. 36, Coppa Dep. at 213). Similar behavior continued, resulting in a written warning because of Coppa's "insubordinate behavior." (Id., Def. Cross-Mot. at 21-22). That year, plaintiff received a "needs improvement" performance review which stated:

> "This year [2000], Clare has had difficulty in dealing with me at times with regard to style points with which she disagrees, and other editorial and management matters, and has been insubordinate at these times. It is of especial importance that Clare understand that . . . editorial and management matters are the final decision of the editor in chief and that she must conform to ASTM style and . . . management decisions. There is a difference between professional discussion and insubordination and Clare needs to learn this distinction. I informed Clare of my expectations in this area earlier this year, and since that time her behavior has improved. It is vitally important that Clare continue to monitor this behavior to ensure smooth operations and positive professional relationships." (Coppa Exh. 37).

Performance and behavioral problems appeared again in 2003. In March 2003, plaintiff and another co-worker filed grievances against each other for a series of incidents in the lunchroom and defendant's commuter van. Tom O'Brien, general counsel for defendant, investigated the incidents and advised plaintiff that her behavior was unprofessional and disruptive to the ASTM work environment and that any further incidents would result in

termination of her employment. (O'Brien Verif. Stmt. at ¶ 10). In first six months of 2003, prior to the time plaintiff requested medical leave, at least six other incidents involving plaintiff were reported. (Def. Cross-Mot. at 25-26).

After her return from medical leave, Coppa demonstrated similar behavioral problems. (Coppa Exh. 24). On October 30, 2003, plaintiff received another "needs improvement" annual performance review. With respect to Coppa's interpersonal skills, the review stated:

> "Due to a number of incidents over the past year involving interpersonal problems with staff and ASTM members, Clare's interpersonal behavior caused concern. Incidents such as these show a deficiency in Clare's ability to carry out several requirements of her position: 1) effectively communicating with a variety of temperaments and personality styles among interview subjects, establishing trust and confidence to get interview subjects to talk openly and comfortably; 2) being flexible; 3) behaving professionally; and 4) accepting constructive criticism." (Coppa Exh. 16).

Azzara and Gorman met with Coppa to discuss her October 30, 2003 review. According to Azzara and Gorman, Coppa behaved in an unprofessional manner and repeatedly accused Gorman of being a liar. (Def. Cross-Mot. at 32). Coppa, later that day, met again with Azzara and went over the same issues. During that meeting she engaged in a "potent and virulent" attack on Gorman. (Id.) Coppa then sent numerous emails challenging her performance review. (Id. at 33). The following day Coppa sent another email to Gorman entitled "Ground Rules for the Coming Year." (Coppa Exh. 21). In that email, she set forth *her* "ground rules" for how management should conduct itself with respect to her in the future.

Based on the foregoing evidence, the Court concludes that defendant has articulated legitimate, nondiscriminatory reasons for terminating Coppa's employment such as poor performance, emotional behavior, and inappropriate conduct in the workplace. "The FMLA is not a shield to protect employees from legitimate disciplinary action by their employers if their

performance is lacking in some manner unrelated to their FMLA claim." Cohen v. Pitcairn Trust Co., 2001 WL 873050, *9 (E.D. Pa. June 20, 2001) (internal citations omitted).

3. *Pretext Analysis*

After the defendant articulates a legitimate, nondiscriminatory reason for an adverse employment action, the burden of persuasion shifts back to the plaintiff to prove "that the alleged reasons proffered by the defendant were pretextual and that the defendant intentionally discriminated against the plaintiff." Sabbrese, 320 F. Supp. 2d at 324 (quoting Jalil, 873 F.2d at 706). This requires the plaintiff to either discredit the defendant's proffered reasons or adduce evidence that discrimination was "more likely than not a motivating or determinative cause of the adverse employment action." Torre v. Casio, 42 F.3d 825, 830 (3d Cir. 1994); Fuentes v. Perskie, 32 F.3d 759, 762 (3d Cir. 1994). Plaintiff must point to evidence which demonstrates "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions" in defendant's reasons that one could reasonably conclude that the reasons are untrue. Fuentes, 32 F.3d at 765.

Coppa raises two issues to support her claim that defendant's reasons are pretextual. First, Coppa alleges that her 2003 performance review was "full of misstatements" and "placed [her] performance in a false negative light as a pretext to justify termination and to mask the retaliation against [her] for taking FMLA leave." (Pl. Opp. at 17).

The Court concludes that the record does not support this allegation. Coppa received a "needs improvement" review based on her supervisor's determination that she failed to meet her main operational objective, had deficient interpersonal skills, and had problems with attendance. Coppa's contention that her review portrayed her in a false negative light as a pretext to justify

termination is undercut by the fact that included in the review were objectives for the following year, which suggests that defendant had no intention, at that time, of terminating Coppa's employment. (Coppa Exh. 16). Furthermore, the record is replete with evidence that ASTM had been concerned about Coppa's behavior well before she took medical leave. See Helfrich v. Lehigh Valley Hosp., 2005 U.S. Dist. LEXIS 4420 (E.D. Pa. Mar. 18, 2005) ("when an employer expresses concern about an employee's performance deficiencies prior to the time the employee engages in allegedly protected activity, no retaliatory inference arises").

However, even assuming Coppa's contention that she met her main objectives is true, "[i]t is [defendant's] perceptions that count, and not what plaintiff claims is the objective truth." Cohen v. Pitcairn Trust Co., 2001 WL 873050, *8 (E.D. Pa. June 20, 2001); see Brewer v. Quaker State Oil Refining Corp., 72 F.3d 326, 332 (3d Cir.1995) ("[N]o matter how mistaken the firm's managers . . .our inquiry is limited to whether the employer gave an honest explanation of its behavior."). It is indisputable that defendant viewed Coppa's performance as inadequate. See id.

Next, Coppa contends that defendant's alleged "shifting reasons" for her termination give rise to an inference of pretext. (Pl. Opp. at 17-18). The Court disagrees. To the contrary, the record contains three pieces of evidence in which defendant provides its explanation for terminating Coppa.

First, Azzara wrote a memorandum on November 10, 2003 to Jim Thomas, President of ASTM, recommending Coppa's termination. That memorandum states:

> "At the review I observed first hand Clare's emotional outbursts. In these outbursts, Clare showed no judgment, was disparaging and mean spirited. I found these outbursts to be unacceptable in a professional environment . . . In reviewing Clare's conduct, there is a

> clear pattern of behavior that is detrimental for . . . ASTM []. Her inability to accept guidance and take corrective action, along with attacking co-workers, cannot continue. The first time this behavior occurred was in November 1998 . . . This action was repeated in November 2000. . . And now here we are in November 2003 and another incident of this type has taken place . . . I find this continued behavior to be unacceptable and detrimental for ASTM's working environment. . . . I recommended termination of Clare's employment." (Coppa Exh. 26).

Second, Azzara prepared another memorandum on November 13, 2003, the day plaintiff was terminated. It provides that the reasons for Coppa's termination "included lack of performance and unacceptable behavior over an extended period of time" and "that these factors were detrimental to ASTM's working environment and could no longer be tolerated." (Azzara Verif. Stmt. at ¶ 15). Finally, plaintiff's Employment Termination Report, prepared by Eileen Mullen, Director of Human Resources, states that plaintiff was terminated for "poor performance and emotional behavior." The Court concludes that these reasons are entirely consistent and do not give rise to an inference that the articulated reasons for plaintiff's termination were pretextual.

For all of the foregoing reasons, the Court concludes that Coppa has not raised a genuine issue of material fact as to whether defendant's asserted legitimate, non-discriminatory reasons for terminating her employment were a pretext. Having reviewed the evidence presented by both parties, a reasonable factfinder could not rationally find that defendant's articulated reasons for its actions were incredible. Because Coppa has failed to satisfy her burden, the Court grants defendant's summary judgment motion as to plaintiff's FMLA retaliation claim.

B. Interference Claim

The FMLA provides that, it is "unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise," any rights provided under the FMLA. 29 U.S.C.

§ 2916(a). The Department of Labor implementing regulations state that interference includes "not only refusing to authorize FMLA leave, but discouraging an employee from using such leave." 29 C.F.R. § 825.220(b). These regulations impose upon the employer the obligation to provide employees with individualized notice of their FMLA rights and obligations. 29 C.F.R. § 825.208(a). "[I]t is the employer's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, and to give notice of the designation to the employee." Id.

The record discloses that defendant provided Coppa with an employee handbook which detailed its leave policy. According to the handbook, employees may chose between reduced paid leave, which provides employees with reduced salary continuation payments at the rate of 60 percent of the employee's salary, or unpaid FMLA leave. (Coppa Exh. 13, Policy 209 and 210).

Coppa completed the leave application provided by defendant. Defendant approved Coppa's request for leave and, during the time of her absence of work, Coppa received payments at 60 percent of her salary. Coppa does not dispute that she accepted these payments or that the employee handbook outlined defendant's leave policy. Rather, her position is that defendant's practice of designating employee's leave as "reduced paid leave," as opposed to providing employees with a choice between FMLA leave, at no pay, or reduced paid leave, interfered with her rights under the FMLA. (Pl. Opp. at 14 & 23).

Defendant admits that it designated plaintiff's leave as reduced paid leave "because [they] think it's better for [employees] to get paid 60 percent rather than get paid nothing." (Mullen Dep. at 29). However, defendant argues that regardless of whether plaintiff's leave was covered by the FMLA, her interference claim fails as a matter of law because she has presented no

evidence that she suffered any type of injury or harm. The Court agrees with defendant's position.

The record supports Coppa's position that defendant automatically designated her leave as reduced pay leave and that its medical leave application did not, on its face, provide Coppa with the option to select unpaid FMLA leave. (Mullen Dep. at 27-30). Emails from Coppa to defendant also provide evidence that Coppa believed her leave was FMLA leave (Email from Coppa to Gorman dated June 2, 2003) ("I'll ask a doctor to fill out the FMLA sheet and will mail it to you") (Email from Coppa to Mullen dated June 13, 2003) ("Dr. Barsoum said she completed and mailed my FMLA paperwork so you should receive it soon"), and there is no evidence that defendant advised plaintiff to the contrary. Conoshenti v. Public Service Electric & Gas Co., 364 F. 3d 135, 142 (3d Cir. 2004) (employer must designate whether leave is FMLA-qualifying and give notice of the designation to the employee).

The Court concludes that an issue of fact exists as to whether defendant's leave application, which did not state that Coppa could chose between unpaid FMLA and reduced pay leave, provided plaintiff with proper notice of her rights under the FMLA. See Conoshenti, 64 F. 3d at 143; Voorhees v. Time Warner Cable Nat'l Div., 1999 U.S. Dist. LEXIS 13227, at *25 (E.D. Pa. Aug. 30, 1999) (finding genuine issues of material fact where defendant did not give plaintiff explicit notice that his leave was granted and would be counted against his FMLA leave "as opposed to some other type of leave" and the "Medical Leave of Absence Request Form" was unclear). The fact that defendant's employee handbook presented plaintiff with both leave options does not preclude a finding that defendant's leave application discouraged plaintiff's assertion of her FMLA rights.

However, notwithstanding this issue of fact regarding whether Coppa received adequate notice of her leave options, Coppa has presented no evidence that she suffered any injury from the alleged defective notice. Courts have refused to recognize an interference claim under the FMLA in the absence of any injury or harm. Conoshenti, 364 F. 3d at 143 (in order to state a cause of action for interference, plaintiff must show prejudice as a result of that violation); see also Alifano v. Merck & Co., 175 F. Supp. 2d 792, 794 (E.D. Pa. 2001); Voorhees, 1999 U.S. Dist. LEXIS 13227, at *25-26. In Voorhees, like this case, the court granted summary judgment on the interference claim notwithstanding the presence of genuine issues of material fact with respect to the notice of FMLA rights on the ground that the plaintiff presented no evidence of injury for the alleged defective notice. Id. This Court agrees with that line of authority.

In this case, Coppa failed to allege any forfeiture of her FMLA rights – she does not allege that defendant denied her leave, prevented her from taking leave, or failed to restore her to her previous position. The record establishes that plaintiff received all the benefits she would have been entitled to under the FMLA – she was granted the leave she requested and, upon returning to work, was restored to her former position. Because Coppa has presented no evidence that she suffered harm or prejudice as a result of defendant's actions, the court grants the summary judgment motion as to plaintiff's FMLA interference claim.

IV. CONCLUSION

For the foregoing reasons, the Court grants defendant's Motion for Reconsideration of the Order of February 14, 2005, on the ground that plaintiff failed to present evidence: (1) sufficient to establish a prima facie case of retaliation under the FMLA; (2) that defendant's articulated reasons for terminating plaintiff were pretextual; and (3) sufficient to state an interference claim

under the FMLA. Accordingly, defendant's Motion for Summary Judgment is granted as to Count I of the Complaint. That part of the Order of February 14, 2005 which denied the Motion for Summary Judgment as to Count I is vacated.

BY THE COURT:

/s/ Hon. Jan E. DuBois

JAN E. DUBOIS, J.