

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

VIRGIL ADDISON-EADY,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
PHILADELPHIA PARKING AUTHORITY,	:	
	:	
Defendant.	:	No. 04-4392

MEMORANDUM

Virgil Addison-Eady raises claims of race discrimination and retaliation against his former employer, the Philadelphia Parking Authority. The Parking Authority has filed a motion for summary judgment against Mr. Addison-Eady, arguing that his claims should be dismissed because he cannot establish a prima facie case of discrimination or retaliation. This court will grant the Parking Authority’s motion in part and deny it in part.

I. BACKGROUND

Virgil Addison-Eady filed this action on September 17, 2004 against the Philadelphia Parking Authority, presenting claims of race discrimination under 42 U.S.C. § 1981 and retaliation under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq., and the Pennsylvania Human Relations Act (“PHRA”), 43 Pa.C.S. § 951, et seq.¹ In his complaint, Addison-Eady states that he was employed by the Philadelphia Parking Authority from approximately 1991 until 2003 as a parking enforcement officer. The Parking Authority is an agency of the Commonwealth of Pennsylvania charged with administering the parking

¹ In his complaint, Addison-Eady notes that he timely filed a charge of discrimination with the Pennsylvania Human Relations Commission (“PHRC”) and the Equal Employment Opportunity Commission (“EEOC”). Addison-Eady states that the PHRC and the EEOC sent him notices of his right to sue.

regulations of the City of Philadelphia and maintaining various parking lots and garages.

According to Addison-Eady, on or about May 30, 2001, his driver's license was suspended. Pl.'s Compl., at 2. Addison-Eady states that the circumstances surrounding the suspension of his license were not work-related and had no impact upon his ability to perform his duties. Id. at 2-3. Addison-Eady further alleges that he notified his supervisor that his driving privileges had been suspended. Id. at 3. Addison-Eady does not reference the date of the notification or the name of the supervisor.

On or about September 16, 2002, Addison-Eady, an African-American, filed a charge with the Pennsylvania Human Relations Commission ("PHRC") alleging that the Parking Authority engaged in race discrimination against him by changing his shift assignment. Id. Addison-Eady does not specify his prior shift assignment, the new shift assignment, when the Parking Authority changed his assignment, or why it was racially discriminatory. On December 19, 2002, the PHRC conducted a "fact-finding conference," which was attended by Richard D. Dickson, the Parking Authority's director of on-street parking. Id. The charge was later dismissed. Id.

On or about February 26, 2003, the Parking Authority notified Addison-Eady that he was being suspended "with intent to dismiss" because of his failure to maintain a valid driver's license and his failure to notify the Parking Authority that his license had been suspended. Id. On or about March 12, 2003, the Parking Authority formally terminated Addison-Eady. Id. Addison-Eady believes that Dickson, who is white, made the decision to terminate him. Id. Addison-Eady contends that his termination was based on his race and was in retaliation for filing the claim of race discrimination in September 2002 with the PHRC. Id. at 5-6.

According to Addison-Eady, the Parking Authority “has not terminated Caucasian employees who failed to maintain a valid driver’s license, or who engaged in more serious driving-relat[ed] offenses.” Id. at 3-4. Specifically, Addison-Eady states that Dickson “has not been terminated by the Authority despite his having driven an Authority-owned vehicle while intoxicated, which resulted in damage to the Authority’s vehicle as well as vehicles owned by others, and which further resulted in the suspension of Mr. Dickson’s license.” Id. at 4.

Addison-Eady contends that the Dickson incident was “widely publicized” and “is known [by] the Authority.” Id. Addison-Eady further asserts that the contention that he failed to notify the Parking Authority about his driver’s license suspension is “false and pretextual.” Id.

Because of the termination, Addison-Eady states that he has suffered economic harm, that his reputation has been damaged, and that he has not been able to obtain subsequent employment. Id. Addison-Eady contends that he has also suffered “humiliation, embarrassment and emotional suffering.” Id. Addison-Eady seeks reinstatement to his former position, back pay, compensatory and punitive damages, reimbursement for the costs of this action, and attorney’s fees.

On April 6, 2005, the Parking Authority filed a motion for summary judgment against Addison-Eady, arguing that he cannot establish a prima facie case of race discrimination because there is no evidence that he was treated differently than similarly situated white Parking Authority employees. The Parking Authority further argues that Addison-Eady cannot establish a prima facie case of retaliation because there is no evidence of a causal relationship between the claim of race discrimination filed with the PHRC and the termination.

II. STANDARD OF REVIEW

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” F.R.C.P. 56(c). The moving party bears the initial burden of showing that there is no genuine issue of material fact. Highlands Ins. Co. v. Hobbs Group LLC, 373 F.3d 347, 350-51 (3d Cir. 2004). Once the moving party has carried its burden, the nonmoving party must come forward with specific facts to show that there is a genuine issue for trial. Williams v. West Chester, 891 F.2d 458, 464 (3d Cir. 1989). A fact is “material” if its resolution will affect the outcome under the applicable law, and an issue 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). The court must draw all justifiable inferences in favor of the nonmoving party. Highlands Ins. Co., 373 F.3d at 351.

III. DISCUSSION

Mr. Addison-Eady raises his claim of race discrimination under Section 1981 and his claim of retaliation under Title VII and the PHRA. Claims raised under Section 1981 are analyzed in accordance with the same framework as those raised under Title VII. Pamintuan v. Nanticoke Memorial Hospital, 192 F.3d 378, 385 (3d Cir. 1999). Moreover, employer liability under the PHRA follows the standards for employer liability under Title VII. Knabe v. Boury Corp., 114 F.3d 407, 410 n.5 (3d Cir. 1997). The analysis of Addison-Eady’s claims under Title VII apply to his Section 1981 and PHRA claims.

A. Race Discrimination Claim

In order to establish a prima facie case of discrimination, a plaintiff must demonstrate that: (1) he is a member of a protected class; (2) he was qualified for the position; (3) he suffered an adverse employment action; and (4) the circumstances of the adverse employment action raise an inference of discrimination. Sarullo v. United States Postal Service, 352 F.3d 789, 797 (3d Cir. 2003). The Parking Authority's motion is not concerned with the first three elements of a prima facie case. Instead, the Parking Authority contends that Addison-Eady cannot establish the fourth element of a prima facie case, i.e., that Addison-Eady cannot show that the circumstances of his termination raise an inference of discrimination.

“Common circumstances giving rise to an inference of unlawful discrimination include the hiring of someone not in the protected class as a replacement or the more favorable treatment of similarly situated colleagues outside of the relevant class.” Bullock v. Children's Hospital of Philadelphia, 71 F.Supp.2d 482, 487 (E.D.Pa. 1999). In this case, there is some evidence of more favorable treatment of similarly situated colleagues outside of the relevant class.

Specifically, there is evidence that two white parking enforcement officers, Nick Antonio and Maureen Kelly, failed to report license issues to the Parking Authority but were not terminated.²

Viewing the record in the light most favorable to Addison-Eady, there is sufficient evidence to give rise to an inference of discrimination. Accordingly, the Parking Authority's motion for summary judgment is denied as it relates to the race discrimination claim.

² Addison-Eady Dep., at 91 (indicating that Nick Antonio, a white parking enforcement officer, failed to report a license issue but was only “taken out of the vehicle and placed on a walking beat until his license came current”); Def.'s Resp. to Pl.'s Second Set of Interrogs., at 3 (indicating that Maureen Kelly, a white parking enforcement officer, failed to report a license issue but was only suspended).

B. Retaliation Claim

To establish a prima facie case of retaliation, a plaintiff must demonstrate that: (1) he engaged in a protected activity; (2) the employer took an adverse action against him after or contemporaneous with the protected activity; and (3) there is a causal link between the protected activity and the adverse action. Krouse v. American Sterilizer Co., 126 F.3d 494, 500 (3d Cir. 1997). The Parking Authority argues that Addison-Eady cannot establish the third element, i.e., that Addison-Eady cannot show that there is a causal link between the protected activity and the adverse action.

Timing alone can be sufficient to establish the necessary causal link between the protected activity and the adverse action when it is “unusually suggestive.” Farrell v. Planters Lifesavers Co., 206 F.3d 271, 280 (3d Cir. 2000); see Jalil v. Avdel Corp., 873 F.2d 701, 708 (3d Cir. 1989) (finding that the plaintiff established sufficient evidence of causation by showing that the adverse action occurred only two days after the protected activity). Absent “unusually suggestive” timing, however, timing alone is generally insufficient to establish the causal link. Farrell, 206 F.3d at 280. In such circumstances, courts may look for other evidence from which a causal connection can be inferred, such as evidence of a “pattern of antagonism” occurring between the protected activity and the adverse action. Id. at 280-81.

In this case, Addison-Eady engaged in a protected activity in mid-September 2002, when he filed the race discrimination charge with the PHRC. Over five months later, in late February 2003, the Parking Authority notified Addison-Eady that it intended to suspend him with the intent to dismiss him. In mid-March 2003, the Parking Authority terminated him. This time gap of over five months between the protected activity and the adverse action is certainly not

unusually suggestive of a causal link. Without this unusually suggestive timing, the plaintiff must show other evidence from which a causal connection can be inferred.

Addison-Eady argues that inasmuch as his license had been in suspension since May 30, 2001, and inasmuch as the Parking Authority has a practice of obtaining driving records of all parking enforcement officers at least every four or five months, the Parking Authority knew about the suspension of his license far in advance of February 2003 and waited to use the information as a way to retaliate against him. However, Addison-Eady has not provided any evidence that the Parking Authority knew about the license suspension far in advance of February 2003 or that the Parking Authority waited to use the information as a way to retaliate against him for filing the race discrimination charge with the PHRC. Because there is no evidence from which a causal connection can be inferred, Addison-Eady's retaliation claim is dismissed.

IV. CONCLUSION

Viewing the record in the light most favorable to Addison-Eady, the nonmoving party, this court finds that there is sufficient evidence to give rise to an inference of race discrimination. Accordingly, Addison-Eady's race discrimination remains. However, Addison-Eady has not established a causal link between the discrimination charge with the PHRC and the adverse action. Therefore, his retaliation claim is dismissed. An appropriate order follows.

ORDER

AND NOW, this 18th day of May, 2005, upon consideration of the Philadelphia Parking Authority's motion for summary judgment (Doc. # 12), and Virgil Addison-Eady's response, it is hereby ORDERED that said motion is GRANTED IN PART and DENIED IN PART as follows:

- (1) The retaliation claim is dismissed.
- (2) The race discrimination claim remains.

/s/
LAWRENCE F. STENGEL, J.