

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

<b>LEONARD HAMERA,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>NO. 05-2050</b>
	:	
<b>COUNTY OF BERKS,</b>	:	
<b>BERKS COUNTY PRISON,</b>	:	
<b>Defendants.</b>	:	

**MEMORANDUM**

**STENGEL, J.**

**July 11, 2006**

Leonard Hamera, a correctional officer since 1988 at the Berks County Prison, brings this employment discrimination case after derogatory comments were allegedly made regarding his religious beliefs and his alcoholism. Prior to becoming a correctional officer, Hamera was a Roman Catholic Priest. Hamera alleges that other correctional officers at the Berks County Prison created a hostile environment by repeatedly making light of the recent sex-abuse scandals involving Catholic priests, and by making fun of the plaintiff's disability, i.e. his alcoholism. The Berks County Prison officials allegedly condoned the hostile environment. The defendants filed a motion for summary judgment.

**I. BACKGROUND**

Hamera has been employed at the defendant Berks County Correctional facility since March 2, 1988. At the time of his hire, Hamera informed Robert Santoro, the prison's deputy warden at the time, and Captain Benjamin Johnson, that he was a former Catholic priest which he specifically requested be kept confidential. Despite Hamera's

request, Johnson began referring to plaintiff as “Reverend Hamera.” Thereafter, and beginning around 1992, plaintiff was allegedly subjected to various derogatory comments directed at Hamera because of his former position or because of his alcoholism. Drawing all reasonable inferences in favor of Hamera, the non-moving party<sup>1</sup>, the allegedly harassing comments were:

**A. Comments Allegedly Referring to Hamera’s Religion**

1) In February of 1992, a Lieutenant Pomian approached Hamera and crassly inquired about members of the clergy engaging in sexual acts with altar boys and about a sex scandal involving priests and nuns.

2) On November 11, 1992, a Sergeant Drescher stated that Hamera was a homosexual pedophile who derived pleasure from having sex with little boys and who lured altar boys into sexual acts with promises of candy.

3) In early 2000, a Correctional Officer Karen Rio approached Hamera and stated that she was informed that Hamera liked little boys.

4) In early 2000, a Correctional Officer Nick Deeter commented that priests are homosexual pedophiles.

5) In early 2004, there was an announcement made that a priest would be visiting the facility to provide counsel for an inmate. A Correctional Officer Betz responded to the announcement by wondering aloud whether the priest was going to bring

---

<sup>1</sup>Country Floors, Inc. v. A P’ship Composed of Gepner and Ford, 930 F.2d 1056, 1061 (3d Cir. 1991).

altar boys with him, and further insinuated there would be sexual activity between the altar boys, the priest, and the inmate.

**B. Comments Allegedly Referring to Hamera's Disability**

6) On February 25, 1995, Sergeants Mellot and Brown, stated during a roll call meeting, "Just ask the wino sitting in the back" and "What are you smiling about, have you been drinking again?"

7) In November of 2003, while Hamera was inspecting vehicles, Officer Betz stated over the officers communication radio that Hamera could breathe into a tube in order to start the vehicles, allegedly in reference to the breathalyzer device installed in Hamera's car.

8) In November of 2003, while Hamera was again inspecting vehicles and attempting to start a vehicle with low fuel, Officer Betz instructed Hamera over the radio to "just breathe into the tank."

9) In December of 2003, an Officer Knepp falsely accused Hamera of being intoxicated on the job.

10) On December 12, 2003, an Officer Betz stated to Hamera, and in the presence of approximately ten Correctional Officers that "it sure smells like a brewery in here, I could get drunk just standing here."

11) In early 2004, Officer Betz stated to an Officer Leach his belief that Hamera should not be able to work in the prison as a result of his problems with alcohol

and that Hamera should be required to work in the G-Unit, the unit where inmates with alcohol problems are held in custody.

12) In early 2004, an intoxicated individual entered the parking lot of the prison. An Officer Sutliff then sarcastically asked over the prison radio system “Did he have a badge pinned to his shirt?”

13) On May 16, 2004, after Hamera had accidently broken his wrist, a Correctional Officer Regina Copeland commented that Hamera had no problem utilizing that particular wrist when he was drinking. An Officer Rice then joined in and made numerous elbow bending motions to imitate someone drinking.

14) On September 19, 2004, while Hamera held his hands above his head while placing a target at the shooting range, a Correctional Officer Dustin Remp stated to Hamera “you should be used to this by now.” Allegedly in reference to how he had to hold his hands up while being arrested for driving under the influence.

15) On February 10, 2005, Officer Remp announced over the public address system that “Officer Hamera is still here waiting for his ride.” The comment then prompted other officers to state “He’s going to be late to the watering hole” and “That’s okay, happy hour is from six to seven.”

Although no adverse employment action was ever taken against him by the defendant, Hamera seeks an award of damages, declaratory and injunctive relief, and attorney’s fees for violations under title VII of the Civil Rights Act, and discrimination

under the Americans with Disabilities Act and the Pennsylvania Human Relations Act.

Hamera received his right to sue letter from the EEOC on February 2, 2005, and initiated this suit within ninety days.

## **II. SUMMARY JUDGMENT STANDARD**

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show 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). An issue is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is “material” if it might affect the outcome of the case under governing law. Id.

In this case, the defendant bears the initial responsibility of informing the court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). While plaintiff bears the burden of proof on a particular issue at trial, the defendant’s initial Celotex burden can be met simply by pointing out to the court that there is an absence of evidence to support the plaintiff’s case. Id. at 325. After the defendant has met its initial burden, the plaintiff’s response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the plaintiff fails

to rebut the defendant's assertions by making a factual showing sufficient to establish the existence of an element essential to their case, and on which they will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. at 322. Under Rule 56, the court must view the evidence presented on the motion in the light most favorable to the plaintiff, the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. at 255. If the plaintiff has exceeded the mere scintilla of evidence threshold and has offered a genuine issue of material fact, then the court cannot credit the defendant's version of events against the plaintiff, even if the quantity of the defendant's evidence far outweighs that of the plaintiff's. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

### **III. DISCUSSION**

The defendant argues that Hamera has failed to produce any evidence to support a claim for discrimination, retaliation, or hostile work environment under title VII of the Civil Rights Act, and that there were no ADA or PHRA violations as a matter of law.

#### **A. Discrimination and Retaliation Under Title VII**

Title VII of the Civil Rights Act makes it unlawful for an employer to “discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2 (a)(1). In this case, Hamera's complaint alleges

that he was subjected to a hostile work environment based upon the comments made by his fellow co-workers, and that when he complained, the comments got worse.

The Third Circuit recently recognized a cause of action for retaliation under a theory of hostile work environment. Jensen v. Potter, 435 F.3d 444 (3d Cir. 2006). The Jensen court held that in order to establish a hostile work environment for retaliation, the plaintiff must prove: “(1) [he] suffered intentional discrimination because of [his] protected activity; (2) the discrimination was severe or pervasive; (3) the discrimination detrimentally affected [him]; (4) it would have detrimentally affected a reasonable person in like circumstances; and (5) a basis for employer liability is present.” Jensen 435 F.3d at 449 (internal citations omitted). The first step, or determining whether the plaintiff suffered intentional discrimination because of his protected activity, requires the court to determine what actions a reasonable jury may find to be retaliatory. Id. The Jensen court further explained that courts generally focus on two factors for determining what is retaliatory: “(1) the temporal proximity between the protected activity and the alleged discrimination and (2) the existence of a pattern of antagonism in the intervening period” Id. at 450 (citations omitted). Furthermore, these two factors are not exclusive, and courts must look to the entire body of evidence to see if an inference can be made that the conduct complained of was retaliatory. Id.

According to Hamera, he filed a written complaint in February of 1992 with Warden George Wagner. However, because that complaint was not made in accordance

with Berks County Prison standard operating procedure, there is no record of the complaint. Hamera then sent a second written complaint in November of 1992. Both complaints only reference comments made about Hamera being called a homosexual or a pedophile because he was a former priest and did not mention any comments related to alcoholism. Hamera then voiced two more complaints to Warden Werst in March of 2004.

Drawing all inferences in favor of Hamera, there is no evidence that the subsequent offensive comments complained of by Hamera were in any way related to his complaints. Although Hamera's brief in opposition to the defendant's motion for summary judgment states that the harassing comments "steadily increased" after he complained, no evidence has been presented that Hamera was harassed in retaliation for complaining. Hamera's memorandum fails to directly address this issue. Accordingly, defendant's summary judgment motion shall be granted as to Hamera's retaliation claim.

**B. Statute of Limitations Under Title VII**<sup>2</sup>

"Under Title VII, a plaintiff ordinarily must file a charge of employment discrimination with the EEOC within 180 days of the alleged unlawful employment practice, or within 300 days if proceedings have been already instituted with a state or local agency with appropriate authority." Bishop v. AMTRAK, 66 F. Supp. 2d 650, 659 (E.D. Pa. 1999) (citing 42 U.S.C. § 2000e-5(e)(1)). However, in cases such as this one

---

<sup>2</sup>Hamera's Memorandum in Opposition to defendant's Motion for Summary Judgment fails to address this statute of limitations issue.

where the alleged discrimination was ongoing, discriminatory acts that occurred prior to the start of the 180 day time limit may be actionable under a continuing violation theory.

Id.

Under this “continuing violation” theory, a plaintiff can pursue a Title VII claim for “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. . .” [West v. Philadelphia Elec. Co., 45 F.3d 744, 754 (3d Cir. 1995)] First, a plaintiff must demonstrate that at least one act took place within the 180-day period. West, 45 F.3d at 754. Second, the plaintiff must establish a continuing pattern of discrimination rather than “the occurrence of isolated or sporadic acts of intentional discrimination.” Id. at 775. Once these requirements are satisfied, a plaintiff may “present evidence and recover damages for the entire continuing violation period.” Rush v. Scott Specialty Gases, Inc., 113 F.3d 476, 481 (3d Cir. 1997).

Bishop, 66 F. Supp 2d at 660.

In this case, Hamera filed an EEOC complaint on April 30, 2004. Therefore, in order for the discriminatory conduct that took place prior to November 1, 2003, (or 180 days before Hamera’s EEOC complaint) to be actionable, Hamera must demonstrate that it was part of a continuing violation. In this case, although Hamera alleges one discriminatory comment relating to his religion occurred in early 2004, no other comments occurred during a four-year period in between early 2000 and early 2004. Given this four-year gap in alleged discriminatory comments, Hamera has failed to pose a genuine issue of material fact under a continuing violation theory that the allegedly discriminatory comments that occurred during 2000 or before, and related to Hamera’s

religion, are actionable. See Kovoor v. Sch. Dist., 211 F. Supp. 2d 614, 623-624 (E.D. 2002) (finding plaintiff failed to demonstrate a proper Title VII hostile environment cause of action under a continuing violation theory). However, the one comment made in 2004 is worth considering because it is possible that a single, isolated incident of harassment may give rise to a hostile environment cause of action as long as that incident may “reasonably be said to characterize the atmosphere in which a plaintiff must work.” Bedford v. Southeastern Pa. Transp. Auth., 867 F. Supp. 288, 297 (E.D. Pa. 1994); cf. DeCesare v. National Railroad Passenger Corp., No. 98-cv-3851, 1999 U.S. Dist. LEXIS 7560, \* 7 (E.D. Pa. 1999) (Kelly, J.) (finding not all offensive conduct qualifies as harassment for Title VII purposes).

### **C. Hostile Environment Under Title VII Based Upon Religion**

A hostile work environment claim arises when “the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” Oncale v. Sundowner Offshore Serv., Inc., 523 U.S. 75, 78 (1998) (quoting Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993)). To establish a cause of action based upon a hostile environment, Hamera must demonstrate five elements: “(1) [Hamera] suffered intentional discrimination because of [religion]; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same [religion]

in that position; and (5) the existence of respondeat superior liability.” McCauley v. White, No. 01-cv-4071, 2002 U.S. Dist. LEXIS 13036, \* 15 (E.D. Pa. 2002) (Kelly, J.) (citing Abramson v. William Paterson Coll. of New Jersey, 260 F.3d 265, 267-8 (3d Cir. 2001)). The defendant argues Hamera is unable to establish any of the Third Circuit’s five elements.

1. Discrimination Because of Religion

According to the defendant, the 2004 comment made in Hamera’s presence was not “because of his religion.” The defendant claims that making an inappropriate comment regarding pedophilia or sexual relations between nuns and priests, while offensive, was not made “because of” Hamera’s religious beliefs. Rather, the comment was of the joking variety and is a crass example of the type of ribbing that routinely occurs among friendly correctional officers. See Koschoff v. Henderson, 109 F. Supp. 2d 332, 346 (E.D. Pa. 2000) (stating that simple teasing and offhand comments, even if motivated by gender, do not qualify as harassment). Hamera conversely argues that there is a genuine issue of material fact whether all of the comments directed at him, including those that occurred four years prior to the 2004 comment, were because of his religion.

Viewing the evidence in the light most favorable to Hamera, a reasonable jury could conclude that the comments made to Hamera, including the 2004 comment, were because of his religion. It is reasonable to assume the 2004 comment was said in Hamera’s presence because of his status as a former priest.

## 2. Discrimination was Pervasive and Regular

“The Third Circuit has defined pervasive harassment as that which occurs regularly or when incidents are in concert with one another.” McCauley v. White at \*11 (citing Andrews v. Philadelphia, 895 F.2d 1469, 1484 (3d Cir. 1990)). In order to determine whether Hamera’s allegations constitute severe and pervasive conduct, three factors the court may look to are: (1) the frequency of the discriminatory conduct; (2) the severity of the conduct and whether it was physically threatening or humiliating, or a mere offensive utterance; and (3) whether it affects the employee’s work performance. Harris v. Forklift Systems Inc., 510 U.S. 17, 23 (1993). In this case, the 2004 comment was not physically threatening, and there is no evidence that it negatively affected Hamera’s ability to carry out his job. The comment was, however, likely humiliating when made.

Hamera argues that Spain v. Gallegos, 26 F. 3d 439 (3d Cir. 1994) controls on this issue. In Spain the Third Circuit found that a series of interactions taking place over four years between a boss and a female employee resulted in a question of fact for the jury as to whether the discrimination was pervasive and regular.<sup>3</sup> In this case, even assuming the comments made prior to 2004 were actionable, the comments were made by various officers, infrequently, over a fourteen year span, with both an eight-year gap and a four-

---

<sup>3</sup>In Spain, a female employee complained that her boss was fueling inter-office rumors that the two were romantically involved. They were not, but the female was subjected to a hostile environment because her fellow co-workers believed she was involved in a romantic relationship with the boss for pecuniary gain. The boss was actually borrowing money from the female employee.

year gap in between. Accordingly, Hamera has failed to pose a genuine issue of material fact regarding this issue. The statements were simply not regular and pervasive. His Title VII hostile work environment claim will be dismissed.

**D. Hostile Environment Based Upon Violations of the ADA or PHRA**<sup>4</sup>

The Third Circuit has assumed, without confirming, the availability of a cause of action for discrimination under the Americans with Disabilities Act. Galle v. Dep't of Gen. Servs. et al., No. 02-cv-4622, 2003 U.S. Dist. LEXIS 4548, \* 13-14 (E.D. Pa. 2003) (Bartle, J.); Walton v. Mental Health Assoc. of Southeastern Pa., 168 F.3d 661, 666-67 (3d. Cir. 1999). Assuming the cause of action exists, and similar to the analysis for a Title VII hostile environment claim discussed above, Hamera must show:

(1) that he . . . is a qualified individual with a disability under the ADA or the Rehabilitation Act; (2) that he . . . was subject to unwelcome harassment; (3) the harassment was based on his . . . disability or request for an accommodation; (4) the harassment was sufficiently severe or pervasive so as to alter the conditions of his . . . employment and to create an abusive working environment; and (5) that his . . . employer knew or should have known of the harassment and failed to take prompt effective remedial action.

Galle at \* 14 (citing Walton, 168 F.3d at 667).

**1. Qualified Individual**

The defendant concedes for purposes of this motion that Hamera is a recovering alcoholic and that alcoholism is a qualified disability.

---

<sup>4</sup>The Statute of Limitations issue was not raised by either party with regard to the alleged ADA violations, while the PHRA claim was ignored by both parties.

2. Unwelcome Harassment

The defendant concedes that Hamera has created a genuine issue of material fact whether the comments complained of qualify as unwelcome harassment.

3. Harassment Based Upon Disability

Similar to the defendant's arguments that the comments were not made because of Hamera's religion, the defendant argues that the comments complained of by Hamera were not made because he was an alcoholic. Rather, some of the comments were not even directed at Hamera personally, and of the ones that were, it was not because he was an alcoholic. Drawing all inferences in favor of Hamera, he has met his "mere scintilla threshold." Big Apple BMW, 974 F.2d at 1363. Given the comments complained of relate to Hamera's history of abusing alcohol, I find that it is a genuine issue of material fact for the jury to decide whether the comments complained of were directed at Hamera because he is an alcoholic.

4. Severe and Pervasive

The court must consider all of the circumstances surrounding the harassment, including the frequency, its severity, whether it was threatening, and whether it reasonably interfered with the employee's work performance. Galle, at \* 15 (citing Harris). In this case, although the comments may have been humiliating to Hamera when made, they were relatively infrequent, non-threatening, and were likely mere offensive utterances. See Presta v. SEPTA, No. 97-cv-2338, 1998 U.S. Dist. LEXIS 8630 (E.D. Pa.

1998) (Yohn, J.) (after plaintiff was repeatedly called “Rainman,” court found “although Presta’s co-workers and supervisors engaged in behavior that was highly inappropriate, insensitive, and immature, their behavior is not actionable under the ADA”).

Although Hamera attempts to compare this case with Spain in which a woman was repeatedly harassed by both her co-workers and her supervisor based upon her sex, in this case Hamera has failed to pose a genuine issue of material fact that the alleged harassment was pervasive. Hamera has provided evidence that many of his co-workers knew about his troubles with alcohol, however, that knowledge has, at most, resulted in nine insensitive comments since 1995. Furthermore, there is no evidence Hamera’s work performance was ever interrupted by the comments that occurred. Hamera has failed to show a genuine issue of material fact that the comments were pervasive or severe, and his claim will be dismissed. See McCutchen v. Sunoco, Inc., 01-cv-2788, 2002 U.S. Dist. LEXIS 15426 at \* 37-38 (E.D. Pa. 2002) (Reed, J.), *aff’d*, 80 Fed. Appx. 287, 2003 U.S. App. LEXIS 18592 (3d Cir. 2003) (granting summary judgment after finding multiple offensive comments did not make harassment pervasive and severe).

## **V. CONCLUSION**

Plaintiff Leonard Hamera has failed to show genuine issues of material fact with regard to his discrimination and hostile work environment claims. In particular, Hamera has failed to show that the alleged Title VII discrimination was pervasive and regular, or that the alleged ADA discrimination was severe and pervasive. An appropriate order

follows.

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

<b>LEONARD HAMERA,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>NO. 05-2050</b>
	:	
<b>COUNTY OF BERKS,</b>	:	
<b>BERKS COUNTY PRISON,</b>	:	
<b>Defendants.</b>	:	

**OPINION**

**AND NOW**, this 11th day of July, 2006, upon consideration of defendant's Motion for Summary Judgment (Docket # 17), it is hereby **ORDERED** that the Motion is **GRANTED**. Plaintiff's case is dismissed with prejudice. The Clerk of Court shall mark

this case as closed for all purposes.

BY THE COURT:

s/ Lawrence F. Stengel  
LAWRENCE F. STENGEL, J.