

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

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JEANNETTE KRIZMAN,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	No. 06-402
	:	
AAA MID-ATLANTIC, INC.,	:	
	:	
Defendant.	:	

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**MEMORANDUM**

**ROBERT F. KELLY, Sr. J.**

**OCTOBER 12, 2006**

Plaintiff, Jeannette Krizman (“Krizman”), brings this suit against Defendant, AAA Mid-Atlantic Inc. (“AAA”), alleging discrimination in violation of Title VII of the Civil Rights Act of 1964. 42 U.S.C. §§ 2000e-2000e-15 (2000). She alleges that AAA, through its employees, discriminated against her because she was of Haitian birth. Specifically, Krizman claims that she was treated differently than other similarly situated employees, was subjected to harassment in the form of a hostile work environment, and was ultimately constructively discharged. AAA has filed a Motion for Summary Judgment on all claims averred by Krizman. After careful review of the record, this Court grants AAA’s Motion for Summary Judgment on all claims.

**I. BACKGROUND**

AAA Mid-Atlantic Inc. is a not-for-profit corporation that provides a wide array of services and products to its members and customers in the automotive, travel, insurance, and financial areas. AAA’s human resources department handles various types of issues for the corporation including payroll and benefits processing for all employees. Krizman was employed

in AAA's human resources department.

**A naturalized U.S. citizen, Krizman was born in Haiti, but has lived in the U.S. since 1972.** She began working for AAA in November 1997, as a File Clerk. Krizman was promoted twice within her first eighteen months of employment; to a File Clerk II in November 1998, and then to the position of Secretary for Compensation and Benefits in May 1999. She applied for a position as a Human Resources Coordinator under the supervision of Ms. Theresa Reese in January, 2001. Ms. Reese interviewed Krizman and ultimately decided to hire her for the position of a Payroll Analyst. Ms. Reese is African American.

As a Payroll Analyst, Krizman's duties included collecting time sheets, inputting figures into the payroll system, entering paid time off requests, and inputting new hire and promotion data. She was also responsible for entering the proper tax codes into employee's files so that accurate records and tax withholdings could be maintained for employees living or working in Philadelphia and subject to the city wage tax. The tax setup task did not involve tax analysis, rather it was a data entry function.

AAA reorganized its internal operations in 2002. Prior to the reorganization, the human resources department consisted of two groups, one to service the insurance group and the other devoted to the corporate group. Krizman's group serviced the Mid-Atlantic Insurance Group's employees. With the combination of the two groups, the workload for all human resources employees increased. Krizman was promoted in October 2002, in recognition of this additional responsibility.

The situations giving rise to this Complaint all occurred after AAA reorganized its human resources operations. Prior and subsequent to the reorganization, Krizman distributed

confidential cost center reports, which included salary information, to vice-presidents in the insurance group. After the restructuring, she assumed the duty of distributing these reports to the corporate group's vice presidents as well. In March 2003, approximately five months after she assumed this new duty, Krizman delivered the cost center reports to unauthorized low level employees in the corporate group, not the vice presidents. Ms. Reese received numerous complaints from the vice-presidents about the severity of this error who expressed deep concern about properly addressing Krizman's action to avoid future occurrences. Consequently, a written warning was issued, but Krizman did not receive a copy.

Krizman complained shortly after the reorganization that her workload was too much to handle, so Ms. Reese temporarily assigned some of the duties to another employee, Ms. Carol Belgum. After the work was reassigned, Krizman complained to Ms. Reese that she was not providing her with enough assistance to complete her job. Krizman was informed by Mr. Conley, Director of Human Resources, and Ms. Reese that the position was a one person job. They could not divert anymore of her work to other employees. Krizman was expected to complete the remaining tasks assigned. Krizman has not claimed that she was assigned an inordinate amount of work, rather she stated that she was taking long hours to finish her tasks. (Krizman Dep. 114-16). She believed that the job was too much for one person to handle. After Krizman's resignation, Ms. Belgum assumed all of Krizman's tasks in addition to her own responsibilities.

Krizman felt Ms. Reese demeaned her in various ways and made derogatory comments. Ms. Reese would shout any remark about the work Krizman was performing from across the room instead of coming to her cubicle, which was within close proximity to Ms. Reese's office. Krizman complained to Mr. Conley that if he just listened, since his office was right next door to

Ms. Reese's, he would hear the things that she was complaining about. (Krizman Dep. 135). Additionally, Krizman was offended by Ms. Reese coming to her desk to talk to her or ask her questions instead of calling her on the telephone or emailing her. Krizman considered this demeaning because she felt unable to say to Ms. Reese that she did not have time to answer her question, or she was in a rush, or she had to meet someone. Krizman disliked Ms. Reese's management style and her tone of voice. Ms. Reese also frequently said to Krizman that she could not understand her or she could not hear her. Ms. Reese also said things like, "don't come to my office," "I don't want you to do it this way," and "this is your job now." (Krizman Dep. 35). Krizman felt these comments were not fair and believes they were made because she was born in Haiti.

In April 2003, Ms. Reese received an email from the director of payroll, Mr. Robert Deissroth highlighting deficiencies he observed in Krizman's work. (Def. Mem. Ex. F). While Mr. Deissroth was not responsible for Krizman, she did impact him as he was ultimately responsible for the payroll. He was concerned that she was seeking excessive assistance from other groups, and she seemed to lack basic knowledge about payroll tax. Ms. Reese scrutinized Krizman's work more closely thereafter, and found that some of the concerns raised were warranted. Ms. Reese counseled Krizman, provided one-on-one guidance on tasks she was having difficulty with, and directed her to utilize other employees as resources for additional questions she might have.

In September 2003, Ms. Reese and Mr. Conley met with Krizman to discuss their concerns with her performance. Specifically, Krizman's failure to process promotional increases and final payments, and her failure to issue live checks for a special request were addressed.

Krizman erroneously issued the checks as direct deposits, and AAA had to pay the fee to stop payment. Ms. Reese also requested that Krizman send her drafts of her email responses to employees' questions before they were sent, as she was concerned that Krizman was not providing thorough responses. These issues were addressed in Krizman's 2003 annual appraisal, where she received an overall rating of 2.65, reflecting that she had not consistently met job standards the previous year.

AAA converted to an automated payroll system during 2004. Employees began entering their time sheets directly, which substantially reduced the amount of data Krizman was required to enter. The focus of her job moved towards reviewing, auditing, and correcting payroll reports generated by the system. Krizman and the other payroll processors received only limited group training on the new system. She had difficulties reconciling the reports, so Ms. Reese provided assistance to her in auditing the reports which were time sensitive

On August 30, 2004, Mr. Conley and Ms. Reese met with Krizman again to discuss the problems associated with her performance. They made available options to address her complaints of having an excessive workload and their need to have this job completed by one employee. This discussion was summarized in an email Ms. Reese sent to Krizman on September 1, 2004. (Def. Mem. Ex. M). In the email, Ms. Reese reiterated the three options that Krizman was presented with regarding her employment. She could: (1) "[r]emain in [her] current position and perform at the expected levels," (2) transition into an HR Support position which carried with it a salary reduction of \$300 and less responsibility, or (3) she could elect to resign and sign a release entitling her to collect ten weeks of pay. (Id.). Krizman chose to remain in her position. Ms. Reese and Mr. Conley continued to monitor Krizman's work,

instituted bi-weekly status meetings to assess her progress, and advised Krizman on the steps that needed to be taken for her to become proficient in her position.

However, Krizman informed Mr. Conley two weeks later on September 15, 2004, that she now intended to resign. Mr. Conley requested a written notice of resignation, which she provided to him on September 20, 2004. Krizman worked for AAA for the two week period following her notice of resignation.

## **II. STANDARD OF REVIEW**

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, granting summary judgment is proper “if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). This Court must ask “whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. Anderson, 477 U.S. at 249. A factual dispute is material only if it might affect the outcome of the suit under governing law. Id. at 248.

The non-moving party must go beyond the pleadings and present “specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). Similarly, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. Williams v. Borough of W. Chester, 891 F.2d 458, 460

(3d Cir. 1989). The non-moving party must raise “more than a mere scintilla of evidence in its favor” in order to overcome a summary judgment motion. Tziatzios v. United States, 164 F.R.D. 410, 411-12 (E.D. Pa. 1996). Further, the non-moving party has the burden of producing evidence to establish each prima facie element of its claim. Celotex, 477 U.S. at 322-23. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Id. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

### **III. DISCUSSION**

In this action, relief is sought under Title VII, 42 U.S.C. § 2000e–2000e-15, for national origin employment discrimination. Krizman states in her Complaint that she was treated differently because of her Haitian heritage. She claims that the disparate treatment manifested itself in a hostile working environment severe enough to compel a reasonable person to resign. Because she was subjected to a hostile work environment, her resignation was forced and not voluntary. This constitutes a constructive discharge which is an unlawful employment action under the Act, and she believes, entitles her to relief under the Act. This Court disagrees.

Under the Civil Rights Act, it is unlawful for an employer to “fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to [her] 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. The Act defines employer as “a person engaged in an industry affecting commerce who has fifteen or more employees[.]” 42 U.S.C. § 2000e. The unlawful act language has been interpreted as something done by an employer that bears a discriminatory animus manifesting itself in a challenged action against an

employee. Lewis v. Univ. of Pittsburgh, 725 F.2d 910, 914 (3d Cir. 1983). A plaintiff must show that the alleged unlawful action taken by the employer bore discriminatory animus against her in order to establish employment discrimination. Id.

Discriminatory animus can be proven through circumstantial evidence. The courts apply a burden shifting framework, articulated by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), when intent is proven through circumstantial evidence. First, a plaintiff establishes the prima facie elements of the discrimination claim. Id. at 802. Next, if the plaintiff meets the elements of the claim, the burden is shifted to the defendant to articulate a legitimate non-discriminatory reason for rejecting the employee. Id. Finally, should the defendant carry that burden, the plaintiff gets another opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but rather were just a pretext for discrimination. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). The McDonnell Douglas framework applies to the present claims. However, it will not be utilized beyond the first step as Krizman has failed to establish either of her prima facie cases.

An individual disparate treatment claim requires a showing of an adverse employment action, most frequently a termination, which Krizman cannot demonstrate. See Gray v. York Newspapers, Inc., 957 F.2d 1070, 1079 (3d Cir. 1992). The elements that Krizman must show are that: (1) she is a member of a protected class, (2) she is qualified for the position in question, (3) she was either not hired for or was fired from the position (suffered an adverse employment action), and (4) the circumstances “give rise to an inference of unlawful discrimination such as might occur when the position is filled by a person not of the protected class.” Jones v. Sch.

Dist. of Phila., 198 F.3d 403, 410-11 (3d Cir. 1999). Applying the foregoing analysis to this case at hand, this Court finds that Krizman has not met her burden of establishing her prima facie case. While Krizman has shown that she was born in Haiti, and that she has performed her position satisfactorily, she has not shown that she was not hired or fired. She resigned, and this fact will preclude her from establishing her prima facie case. Additionally, as will be seen in the discussion of the hostile work environment claim, the facts of this case do not give rise to an inference of unlawful discrimination under the Act.

A voluntary resignation is not an adverse employment action. However, a voluntary resignation prompted by a working environment so hostile that a reasonable employee subjected to it would feel compelled to resign will be considered a constructive discharge, which is an adverse employment action. See Goss v Exxon Office Sys. Co., 747 F.2d 885, 887 (3d Cir. 1984). Since Krizman alleges a constructive discharge, this Court must focus its attention on the underlying basis for that claim and therefore must discuss whether a hostile work environment existed at AAA. Failure to establish a hostile work environment will preclude Krizman from establishing a constructive discharge. Consequently, if she cannot demonstrate that her resignation was forced, she has not established that AAA committed an adverse employment action against her. Therefore, failure to establish a hostile workplace will render this individual disparate treatment claim moot. After careful consideration, this Court finds that Krizman has not established a prima facie case of a hostile work environment, and therefore AAA is entitled to prevail as a matter of law.

An employer who knowingly permits the existence of harassing conditions so intolerable that a reasonable person subjected to them would feel compelled to resign, can be found to have

constructively discharged an employee who voluntarily resigned. See Gray, 957 F.2d at 1079; Goss, 747 F.2d at 888. The law does not permit an employee's subjective perceptions to govern a claim of constructive discharge, rather an objective standard is applied to determine whether an employer knowingly permitted such conditions. See Jones v. Sch. Dist. of Phila., 19 F. Supp. 2d 414, 419 (E.D. Pa. 1998); see also Gray, 957 F.2d at 1083. Employees are protected from calculated efforts to pressure them into resignation, but they are not guaranteed a stress free workplace. Gray, 957 F.2d at 1083. Overzealous supervision is not a basis upon which constructive discharge can be founded. Clowes v. Allegheny Valley Hosp., 991 F.2d 1159, 1162 (3d Cir. 1993). A plaintiff fails to establish the necessary factual predicate for constructive discharge, however, when they cannot demonstrate a hostile working environment . Konstantopoulos v. Westvaco Corp., 112 F.3d 710, 718-19 (3d Cir. 1997).

Krizman fails to establish a constructive discharge because she cannot show that AAA subjected her to a severely hostile work environment. A workplace that is permeated by severe and pervasive discriminatory intimidation, ridicule, and insult is one in violation of Title VII. Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993). The severity and pervasiveness of the discrimination is determined by looking at the totality of the circumstances including the "frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it interferes with the employee's work performance." Faragher v. City of Boca Raton, 524 U.S. 775, 787-88 (1998).

A prima facie case for hostile working environment requires that Krizman show: (1) she suffered intentional discrimination based on her national origin, (2) which was pervasive and regular, (3) and detrimentally affected her, and (4) this discrimination would detrimentally affect

a reasonable person of the same national origin in that position, and (5) respondeat superior liability existed. Aman v. Cort Furniture Rental Corp., 85 F.3d 1074, 1081 (3d Cir. 1996).

With respect to the first element, Krizman has not shown that she suffered intentional discrimination based on her national origin. The Supreme Court has said that when a workplace is permeated with discriminatory intimidation, ridicule, or insult Title VII has been violated. See Harris, 510 U.S. at 21. In this case, the record shows that Krizman was not subjected to intimidation, ridicule, or insult because she was born in Haiti. When AAA took actions against her those actions were based on her job performance. AAA did not try insult or ridicule her, rather they offered critiques of her job performance. The record shows they considered her an asset, as she had been promoted often during her many years with the organization. The actions Krizman claims give rise to discrimination, are all related to her job performance. AAA took disciplinary action when errors occurred, but they also provided assistance and coaching to help her develop the skills necessary to adequately perform her position. Any treatment that Krizman was subjected to was the result of her job performance and not her national origin.

Krizman was issued a written warning for distributing confidential reports to low level employees. AAA did this because she had failed to perform an important part of her job properly. Krizman admitted that she distributed the confidential cost center reports to the low level employees who received them. (Krizman Dep. 66-75). Ms. Reese and Mr. Conley issued a written warning for this incident because the vice-presidents of the group were very upset that this information had been divulged. Krizman has not alleged that they issued the written warning for any reason other than that. This Court finds nothing in the record which shows that this warning was issued because she was born in Haiti. Krizman was subjected to discipline for

performing her job incorrectly.

No derogatory, intimidating, or insulting remarks or comments were made about Krizman according to the record. In Aman, the Third Circuit found that two black employees who were falsely accused of favoritism, had documents stolen from them, and were frequently referred to as “another one,” “one of them,” and “poor people,” by white employees, had produced sufficient evidence to survive summary judgment. 85 F.3d at 1078, 1082. In the present case, Krizman admits that “Ms. Reese did not make any derogatory statements regarding [Krizman’s] national origin.” (Pl. Mem. 14). Rather, Krizman alleges that Ms. Reese’s habit of talking to her from across the room or at her desk is the equivalent of derogatory statement like those found in Aman. (Krizman Dep. 34-36). The record shows that Krizman was unhappy with Ms. Reese’s style of management, and would have preferred that she used more passive communication devices like email. (Id.). However, talking to an employee either at her desk or from across the room is not an intentionally discriminatory remark or comment.

Regarding the second element, AAA’s actions were not regular or pervasive and were not based on her national origin. Disciplinary actions occurred when issues arose with Krizman’s performance that required a formal response. The Third Circuit has stated that reasonably exacting standards of job performance do not create a hostile work environment. Clowes, 991 F.2d at 1161. Ms. Reese required Krizman to submit drafts before sending email responses to employees because she had determined that Krizman’s responses might be lacking. Ms. Reese was concerned, and as Krizman’s supervisor she was ultimately responsible for Krizman’s work. Krizman alludes that this step might have been instituted because Ms. Reese found it difficult to understand her, but Krizman does not claim that Ms. Reese looked over her email responses

because she is of Haitian heritage. The record also shows that other errors had occurred. Krizman processed a request for paper bonus checks incorrectly as direct deposits, and this required a cancellation and reissue. (Conley Dep. 43-45). After these incidents, Ms. Reese began to scrutinize Krizman's performance. The record shows that this was a justified response, as Krizman was not performing her job properly. Nothing in the record shows that Krizman's national origin prompted these actions, and discipline was only instituted when Krizman did not perform her duties in accordance with the standards.

The third element requires that Krizman establish that she was detrimentally affected by the above noted conduct. Whether an employee has been detrimentally affected by an employer's action is a subjective question. However, Krizman has not alleged any emotional damage from AAA's actions. (Krizman Dep. 146). She claims that she was detrimentally effected by Ms. Reese's managerial style and the lack of adequate assistance in performing her job functions. Giving Krizman the benefit of all reasonable inference, this Court presumes that she has shown that the actions of AAA have detrimentally affected her.

In regards to the fourth element, Krizman has not established that a reasonable person of the same national origin subjected to a similar situation would have been detrimentally affected. As stated previously, when a working environment is so hostile that a reasonable employee subjected to it feels compelled to resign, the courts will consider the voluntary action to be a constructive discharge. See Goss, 747 F.2d at 887. This Court finds that a reasonable person of Haitian heritage, would not have resigned from AAA under these circumstances.

Krizman was not pressured to resign her position. Constructive discharge typically involves threats of termination or suggestions to resign. See Clowes, 991 F.2d at 1161. The

email Ms. Reese sent Krizman on September 1, 2004, was not a threat intended to force Krizman to resign. The email outlined alternatives available to address Krizman's complaints. She had stated that she was overburdened in this role and she felt the workload was too much for one person. AAA could only devote one employee to the job. As a way to accommodate Krizman, AAA offered her the option of moving into another role within the organization. The email outlined three choices: she could stay in her current role and perform all associated tasks; she could transfer to a different position, which had an accompanied \$300 pay decrease; or if those options were not satisfactory, she could resign and AAA would provide her with a severance. (Krizman Dep. 104-05; Def. Mem. Ex. M Cite). The options presented in the email sent to Krizman are not analogous to a threat of termination or suggestion to resign.

Krizman may have believed she was being encouraged to resign, however an employee's subjective perceptions do not govern constructive discharge claims. See Jones, 19 F. Supp. 2d at 419. Objectively, nothing about her position or the options presented to her would lead a reasonable person to think that their only alternative was to resign. Quite the contrary, Ms. Reese and Mr. Conley seem to have shown a willingness to help her improve in her job or find a position suitable for her needs. They found a less rigorous position for her and worked to maintain her salary at the level it was as best they could within the pay ranges. (Conley Dep. 71-74). This Court can infer that AAA wanted to retain Krizman in a role most appropriate for her, and not pressure resignation.

The final element necessary to establish a prima facie harassment hostile work environment claim is respondeat superior liability. Because Krizman has failed to establish the preceding elements of a hostile work environment claim, discussion of this is unnecessary.

In conclusion, Krizman has failed to establish a prima facie case of hostile working environment. Failure to establish a hostile work environment precludes her from claiming that she was constructively discharged, which it turn precludes her ability to establish the adverse employment action necessary for the prima facie case of individual disparate treatment. Consequently, AAA is entitled to summary judgment as a matter of law on all claims. Accordingly, this Court grants AAA's Motion for Summary Judgment on all claims.

We therefore enter the following Order.

