

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

LINDA BRAZENEC,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	NO. 05-4415
	:	
EASTON HOSPITAL,	:	
Defendant	:	

MEMORANDUM

STENGEL, J.

November 20, 2006

Plaintiff Linda Brazenec brought this action against her employer, Easton Hospital, alleging violations of the Age Discrimination in Employment Act (“ADEA”) and the Pennsylvania Human Relations Act (“PHRA”).¹ Defendant Easton Hospital filed a motion for summary judgment. For the reasons set forth below, I will grant the motion in its entirety.

BACKGROUND

Brazenec has been a registered nurse for 29 years and was employed full time by Easton Hospital from 1980 until October 2003, when she changed her employment status from full-time nurse to that of a *per diem* nurse.² (Brazenec Dep. at 19, 24). Before this change in status, Brazenec was subject to disciplinary action stemming from an incident that occurred on June 24,

¹ The Pennsylvania Supreme Court, in establishing the allocation of proof in employment discrimination claims brought under the PHRA, has adopted the United States Supreme Court’s formulation as set forth in McDonnell-Douglas Corp. v Green, 411 U.S. 792 (1973), and its progeny. Allegheny Housing Rehabilitation Corporation v. Commonwealth of Pennsylvania, et al., 532 A.2d 315 (Pa. 1987); see also Kelly v. Drexel University, 94 F.3d 102, 105 (3d Cir. 1996) (claims for discrimination under the PHRA are subject to the standards for claims under the ADEA). Since the burden, order, and allocation of proof are identical under the PHRA and the ADEA, these claims are addressed jointly.

² As a *per diem* nurse, Brazenec works only when she informs the hospital of her desire to work a particular shift, and the hospital has a need for additional help for that shift. (Brazenec Dep. at 19).

2003, when she refused to orient temporary nurses at the hospital. (Report of Disciplinary Action, dated July 11, 2003). Two days later, Brazenec was suspended from the hospital pending an investigation into whether she failed to perform assigned duties. (Report of Disciplinary Action, dated June 26, 2003).

After the investigation, Brazenec was found to have compromised patient care and to have failed to work collaboratively with her coworkers. (Report of Disciplinary Action, dated July 11, 2003). On July 11, 2003, Nurse Manager Patty Boyer contacted Brazenec at home to inform her of the disciplinary action being taken against her. (Brazenec Dep. at 73). Brazenec claims that during this conversation Boyer threatened her with discharge from her position with the hospital should Brazenec discuss her suspension with anyone (Brazenec Dep. at 73); a charge which Boyer denies (Boyer Dep. at 38). Boyer also read a written disciplinary warning to Brazenec over the telephone, and notified her that she was permitted to return to work and receive back pay for the period of suspension. (Brazenec Dep. at 73-78, 80).

Brazenec returned to work at the hospital on July 12, 2003, and worked for two more days without incident. (Brazenec Dep. at 82, 111). Afterwards, Brazenec began a scheduled three-week vacation. (Brazenec Dep. at 86). Before she left for vacation, however, Brazenec submitted a grievance through her union challenging the suspension and seeking to have it removed from her personnel file. (United Independent Union Grievance Form, dated July 21, 2003). Brazenec noted on the form that she felt the suspension was unjust and unwarranted, but made no indication that she felt discriminated against on the basis of her age. Id. This grievance was subsequently reviewed by Easton Hospital and all record of the disciplinary action was removed from Brazenec's file. (Letter from Patrick Lombardo to Paul Diana, dated January 12,

2004).

Upon her return from vacation, Brazenec could not work because the nurses at Easton Hospital had gone out on strike. (Brazenec Dep. at 87, 111-12). Brazenec claims that when she reported to work on September 30, 2003 when the strike was over, she was told by Boyer that “things are different here and you will abide by the rules.” (Brazenec Dep. at 113-14). Brazenec had no further conversations with Boyer or anyone else representing Easton Hospital for the remainder of that day, or the next day when she submitted her request for the change in her employment status. (Brazenec dep. at 116-20). Brazenec contends that the reason for her requesting this change was because she felt intimidated and threatened by Boyer. (Brazenec Dep. at 73-75, 113-14). Brazenec’s written request for status change, however, contains no indication of threats or harassment. (Brazenec Letter, dated October 1, 2003).

DISCUSSION

Subject matter jurisdiction over the alleged violations is proper pursuant to 28 U.S.C. § 1331. Because Brazenec’s state law claim forms part of the same case or controversy, subject matter jurisdiction over the Pennsylvania Human Relations Act claim is proper pursuant to 28 U.S.C. § 1367(a).

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.

A party seeking summary judgment always bears the initial responsibility for 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). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party'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 non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party 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 opposing party. Anderson v. Liberty Lobby, Inc., 477 U.S. at 255. The court must decide not whether the evidence unmistakably favors one side or the other but whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented. Id. at 252. If the non-moving party has exceeded the mere scintilla of evidence threshold and has offered a genuine issue of material fact, then the court cannot credit the movant's version of events against the opponent, even if the quantity of the movant's evidence far outweighs that of its opponent. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

Under the ADEA, it is unlawful for an employer to fail or refuse to hire or to discharge

any individual or otherwise discriminate against any individual with respect to her compensation, terms, conditions, or privileges of employment, because of such individual's age. 29 U.S.C. § 623(a)(1). When a plaintiff alleges disparate treatment, liability depends on whether the protected trait, i.e., age under the ADEA, actually motivated the employer's decision. Hazen Paper Co. v. Biggins, 507 U.S. 604, 610 (1993). That is, the plaintiff's age must have actually played a role in the employer's decisionmaking process and had a determinative influence on the outcome. Id.

A plaintiff alleging age discrimination has two potential avenues to prove her case. First, a plaintiff can present direct evidence of discrimination that satisfies the requirements of Price Waterhouse v. Hopkins, 490 U.S. 228 (1989). Second, a plaintiff can present indirect evidence of discrimination that satisfies the three-part analysis articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

Here, because Brazenec has not presented direct evidence of age discrimination, I will consider her claim using McDonnell Douglas's three-step analysis. Under this framework, a plaintiff must first establish a *prima facie* case of discrimination. Keller v. Orix Credit Alliance, 130 F.3d 1101 (3d Cir. 1997). When a plaintiff alleges unlawful termination based on age, establishing a *prima facie* case requires her to prove that she:

- (i) was a member of the protected class, i.e., was 40 years of age or older;
- (ii) was otherwise qualified for the position at issue;
- (iii) suffered an adverse employment action; and
- (iv) was replaced by a "significantly younger" person, such that a reasonable inference of age discrimination can be raised.

See Anderson v. CONRAIL, 297 F.3d 242, 249 (3d Cir. 2002); Keller, 130 F.3d at 1108.

In the framework's second step, "[t]he burden of production (but not the burden of persuasion) shifts to the defendant, who must then offer evidence that is sufficient, if believed, to support a finding that it had a legitimate, nondiscriminatory reason for the discharge." Keller, 130 F.3d at 1108 (citing St. Mary's Honor Center v. Hicks, 509 U.S. 502, 506 (1993)). If the defendant cannot meet this burden, then judgment must be entered for the plaintiff. Hicks, 509 U.S. at 509.

If the defendant does meet this burden, then the third step in the framework is reached where the plaintiff may survive summary judgment by submitting evidence from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994).

Easton Hospital concedes that for purposes of this motion, Brazenec can establish the first two prongs of the *prima facie* test, namely that she was a member of the protected class of those 40 years of age or older, and that she was otherwise qualified for her position.

Accordingly, my discussion will be limited to the remaining two prongs.

The parties dispute whether adverse employment action was taken against Brazenec. Easton Hospital argues that neither Brazenec's compensation nor her duties were changed, and that she was neither demoted nor terminated while at the hospital. On the other hand, Brazenec argues that she was constructively discharged.

In determining whether an employee has been constructively discharged, a court employs

an objective test. Duffy v. Paper Magic Group, Inc., 265 F.3d 163, 167 (3d Cir. 2001).

Specifically, a court must determine “whether a reasonable jury could find that the employer permitted conditions so unpleasant or difficult that a reasonable person would have felt compelled to resign.” Id. (citing Spangle v. Valley Forge Sewer Auth., 839 F.2d 171 (3d Cir. 1988)). Whether a reasonable employee would resign when confronted with a particular set of circumstances is not a pure question of historical fact. Clowes v. Allegheny Valley Hosp., 991 F.2d 1159 (3d Cir. 1993).

Brazenec claims that her suspension from work, coupled with Boyer’s alleged statement that if she spoke with anyone about the incident she would be fired, established grounds for constructive termination. Additionally, she contends that her fear of hospital administrators, borne from the investigation, further contributed to her feeling she had no other option but to resign her full-time position.

Nevertheless, a reasonable jury could not find that Easton Hospital permitted conditions so unpleasant or difficult that a reasonable employee would have felt compelled to resign under the same circumstances. Brazenec received disciplinary action for refusing to train temporary nurses. She was placed on unpaid administrative leave for a couple of weeks, but was fully compensated when she returned to work following the investigation which revealed that she had compromised patient care. Any record of this disciplinary action was subsequently removed from her personnel file.

Moreover, Brazenec made no attempt to remediate her own situation before tendering her request to change her employment status to *per diem*. A reasonable employee, placed in a working environment in which she felt uncomfortable, would usually explore alternative avenues

to resolve the conflict before concluding that resignation was the only option. Clowes, 991 F.2d at 1161. Such appropriate alternatives would include requesting a transfer to another department or position, discussing employment concerns with higher levels of hospital administration, and informing supervisors that she may be compelled to leave if the manner in which she was being supervised did not change. Id. While not every set of facts presents an employee with the opportunity to pursue these alternate courses of action, id. at 1162 n.6, Brazenec had each avenue available to her and failed to pursue any of them. She tried none of these measures to remedy an allegedly uncomfortable working situation before voluntarily changing her employment status.

Drawing every inference in favor of Brazenec, I find that Brazenec did not suffer an adverse employment action, and thus does not satisfy the third prong of the test for a *prima facie* case of age discrimination in employment.

Even assuming, however, that Brazenec satisfied the third prong of the test, her claim would still not survive the fourth prong which requires a plaintiff to demonstrate that she “was replaced by a ‘sufficiently younger’ person, such that an inference of age discrimination can be raised.” Anderson, 297 F.3d at 249; Keller, 130 F.3d at 1108. Brazenec contends that her case satisfies this prong because she and many of the other suspended nurses were targeted for suspension because of their age and their longevity with Easton Hospital, thus giving rise to an inference of discriminatory animus. However, Brazenec makes no contention that she was replaced by anyone whose presence in her prior position would give rise to such an inference. In fact, Brazenec has not claimed to have been replaced at all at Easton Hospital. She remains a *per diem* employee of the hospital with the ability to request shifts to work should she desire. Accordingly, Brazenec has failed to produce any indications of age discrimination as required by

the fourth prong.

Because she has failed to show that she suffered an adverse employment action, or that she was replaced by a sufficiently younger person as to raise an inference of discriminatory animus, Brazenec has failed to establish a *prima facie* case of age discrimination. Thus, proceeding through the remaining steps of the McDonnell Douglas framework is unnecessary. I will grant the defendant's motion for summary judgment in its entirety.

An appropriate Order follows.

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LINDA BRAZENEK,	:	CIVIL ACTION
Plaintiff	:	
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v.	:	NO. 05-4415
	:	
EASTON HOSPITAL,	:	
Defendant	:	

ORDER

STENGEL, J.

AND NOW, this 20th day of November, 2006, upon consideration of defendant's motion for summary judgment (Document #12), and plaintiff's response thereto (Document #15), it is hereby **ORDERED** that the motion is **GRANTED** in its entirety.

IT IS FURTHER ORDERED that the Clerk of Court shall mark this case closed for all purposes.

BY THE COURT:

/s/ Lawrence F. Stengel

LAWRENCE F. STENGEL, J.