

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

HENRIETTA WASHINGTON : CIVIL ACTION  
 :  
 v. :  
 :  
 PHILADELPHIA GAS WORKS : NO. 05-5543

**MEMORANDUM AND OPINION**

Plaintiff, Henrietta Washington, contends in her complaint that defendant, Philadelphia Gas Works (“PGW”), subjected her to a hostile work environment,<sup>1</sup> paid her less than her male coworkers, and retaliated against her for the protected activity of filing a charge with the Equal Employment Opportunity Commission (“EEOC”), all in violation of Title VII. PGW denies these claims and has filed the motion for summary judgment now before me. Viewing all facts in the light most favorable to the plaintiff, I have considered the pleadings, briefs, and attached exhibits, which include depositions, employment records, and affidavits, and I now grant defendant PGW’s motion and enter judgment in favor of defendant.

FACTS<sup>2</sup>

Washington was hired by PGW on May 23, 1994, to serve as a meter reader and was medically separated eleven years later on November 5, 2005. In her first five years of employment she failed to receive a progression raise, a raise based on performance and attendance, because PGW determined that her absences from work were excessive. *Def. Mot. for*

---

<sup>1</sup> Plaintiff’s complaint does not specifically assert a hostile work environment claim, but states that she was “the subject of excessive supervision, humiliation and harassment” and “was insulted and belittled.” *Compl.* ¶ 6.

<sup>2</sup> The vast majority of the facts are taken from defendant’s motion for summary judgment and the 45 attached exhibits as plaintiff attached little factual evidence in her response.

*Summ. J., Ex. D.*

One reason for her numerous hours of sick leave was Washington's plague of injuries: she filed twenty-one work-related injury claims in her eleven-year tenure. PGW repeatedly accommodated Washington's restrictions by providing to her temporary, light-duty assignments, such as the filing job she held prior to her medical separation. Washington also missed work due to suspensions for insubordination, including a two-day suspension in February of 2005 and a thirty-day suspension in August of the same year.

In the course of her employment, Washington filed a number of internal grievance reports,<sup>3</sup> and on February 3, 2005, Washington filed the charge of discrimination with the EEOC and PHRC at issue in this case. She alleged age and sex discrimination because she "was not given the proper rate of pay." Washington filed her complaint with this court on October 24, 2005, eleven days before she was actually terminated on November 4, 2005. Just before she was terminated, Washington was suspended from August 3, 2005, through September 15, 2005. When she returned to work on September 15, 2005, she was sent home because there was no work available that accommodated her medical restrictions.<sup>4</sup> *Def.'s Mot. for Summ. J., Ex. LL.* At a meeting on October 19, 2005, PGW managers decided to medically separate the plaintiff, and she was officially terminated by letter dated November 4, 2005.

---

<sup>3</sup>Although Washington filed numerous other grievances and complaints (*See Def. Mot. for Summ. J. Exs. E, H, G, S, Q, and AA*), only the February 3, 2005 charge filed with the EEOC (*Ex. L*) is raised in her complaint and that is therefore the only charge considered in her retaliation claims.

<sup>4</sup>I note that Washington filed a second charge of discrimination with the EEOC in September of 2005. This charge is not attached as an exhibit, but PGW's motion to dismiss describes the charge as alleging discrimination and retaliation for the thirty-day suspension and denial of work on September 15, 2005. *See Def. Mot. for Summ. J.*, p.30; *Ex. Q*. The EEOC issued a right-to-sue letter for this charge on December 28, 2005. *Def. Mot. for Summ. J., Ex. BB.*

## STANDARD

In applying the well-established standard for summary judgment, I note as especially relevant to this case that the “parties have a duty to present *evidence*; neither statements of counsel in briefs nor speculative or conclusory allegations satisfy this duty.” *Carver v. D.C.I. Chippewa Clinic*, No.2:05CV0122, 2006 U.S. Dist. LEXIS 74695, at \*13 (W.D. Pa. Oct. 12, 2006) (emphasis added).

## DISCUSSION

Plaintiff asserts two charges of discrimination: first, she alleges she was paid less than similarly situated male employees; and second, she claims that the defendant suspended her twice and eventually terminated her in retaliation for filing a charge with the EEOC.

In considering plaintiff’s claim, I am hampered by plaintiff’s filings. Her complaint contains only vague references to discrimination and retaliation with no specific instances or dates and no attached documents of evidentiary support. Although Washington’s response to defendant’s motion for summary judgment does include deposition testimony, EEOC charges, and a company memorandum, it is difficult to follow and fails to address the legitimate business reasons produced by PGW.

While the complaint alleges discrimination on the basis of sex, race, and age, I will consider only the charge of sex discrimination. The EEOC charge on which the complaint is based does not include race as a basis for discrimination, but only “sex” and “age,” and plaintiff has never alleged any disparate treatment based on race. Washington’s age discrimination claim was deficient in the complaint and dismissed in my March 16, 2006 order with leave to amend. The complaint has not been amended. Plaintiff’s only statement in her response to defendant’s

motion for summary judgment in support of her age discrimination claim, that her “birth date is October 14, 1950 . . . [so] she is also entitled to protection under the Age Discrimination in Employment Act,” is insufficient to establish such a claim. Therefore, the only valid claim for consideration is discrimination on the basis of sex.

“[T]here is a low bar for establishing a *prima facie* case of employment discrimination.” *Scheidemantle v. Slippery Rock Univ.*, 470 F.3d 535, 539 (3d Cir. 2006). A plaintiff who fails “to show that [her] work environment was permeated with discriminatory intimidation, ridicule, and insult that was severe or pervasive enough to alter the conditions of [her] employment” will not meet the bar. *Valdes v. Union City Board of Ed.*, 186 Fed. Appx. 319, 323 (3d Cir. 2006). Despite this low threshold, Washington, like the plaintiff in *Valdes*, has not made such a showing and has failed to plead a *prima facie* case of hostile work environment.

Nonetheless, for the purpose of this motion, I will assume that Washington has met the minimal requirement of a *prima facie* case of sex discrimination based on less compensation and retaliation. The burden therefore shifts to PGW to produce a legitimate business reason for Washington’s lower salary, her suspensions, and her termination. PGW has done so by showing: 1) Washington’s lower pay was the result of her failure to qualify for progression raises due to her poor attendance record; 2) her suspensions were for insubordination; and 3) she was medically separated because there was no position available which could accommodate all of her medical restrictions.

To survive summary judgment, Washington must prove that PGW’s reasons are a pretext for discrimination. To do so, she “must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer’s proffered legitimate reasons

for its action that a reasonable factfinder could rationally find them ‘unworthy of credence’ and hence infer ‘that the employer did not act for [the asserted] non-discriminatory reasons.’”

*Fuentes v. Perskie*, 32 F.3d 759, 765 (3d Cir. 1994) (alteration in original) (citations omitted).

Washington has failed to meet this burden.

### 1. Plaintiff’s First Charge: Discrimination Based on Lesser Pay

Washington states that she was discriminated against on the basis of sex because her male counterparts and a male co-worker with less seniority were paid at a higher rate.<sup>5</sup> PGW responded that Washington was paid less than her male counterparts because, unlike Washington, they had received regular merit progression raises which she was denied due to her poor attendance record. Washington argues in her response that “[t]he subjective nature of the definition of Defendants’ [sic] denial of these progression raises creates the implication that Defendant unlawfully discriminated against her because of sex and/or age.”<sup>6</sup>

In seeking to prove pretext, Washington quoted and attached to her response excerpts of the depositions of Gary Gioioso, PGW’s Manager of Organizational Development, and John P. Rooney, PGW’s Manager of Labor Relations. Gioioso stated he was “not sure” what determined

---

<sup>5</sup> PGW argues in its motion that plaintiff’s claim should be barred by the statute of limitations because Washington knew of the alleged discriminatory pay more than 300 days before she filed her complaint with the EEOC on February 3, 2005. Washington did file an internal grievance with PGW on October 10, 2003, alleging the “company has me at [sic] wrong pay scale since I came over from meter reading.” The grievance did not allege sex discrimination or any other type of discrimination prohibited by Title VII. On October 4, 2004, Washington filled out a complaint form with PGW in which she specifically alleged gender discrimination, noting “I’m doing riders [sic] work and not being paid what the other male riders are being paid.” In this complaint, she also stated that she explained to her union representative that she “felt she was being discriminated against . . . because not only was my pay wrong [but] I’ve been here for 10 years and do not have a title.” This complaint, however, does not note that Washington discussed gender as the basis for discrimination at any point before its filing. Because all facts must be viewed in the light most favorable to the plaintiff, I have given plaintiff the benefit of the doubt in using the later complaint as showing notice. February 3, 2005 is within 300 days of October 4, 2004. I will therefore consider the merits of her claim.

<sup>6</sup> See above for discussion dismissing plaintiff’s age discrimination claim.

a progression raise, but stated the raise “would be based on, I guess, attendance, skills, work performance, things of that nature.” *Dep. of Gioioso, Pl.’s Resp., Ex. 3* p.18. Gioioso agreed that “a merit progression is a negotiated, regularly scheduled salary increase. Any issues regarding job performance, attendance, time spent in non-title temporary positions and any disciplinary issues will determine if a progression would be made.” *Id.* Rooney described a progression raise as something achieved “as you progress through your job: title, productivity, attendance record and time missed from that job.” *Dep. of Rooney, Pl.’s Resp., Ex. 4* p.11. Rooney noted that the determination of progression raises would be made by either the manager or supervisor of an employee’s department.

Washington appears to have a similar understanding of the term, stating “we had to make a certain average to get a raise” and noted that she failed to receive a progression raise in 1995. *Dep. of Pl.*, p. 24. Contrary to Washington’s assertion in her response, the definition of a progression raise was consistent and she admits it was based on objective qualifications. I find nothing to implicate a discriminatory purpose to show or suggest pretext.

PGW made clear that Washington’s poor attendance was the reason it denied her progression raises. The letter explaining PGW’s 1995 denial noted that it was “due to below average production.” *Def.’s Mot. Summ. J., Ex. D.* Washington filed a grievance on October 23, 2004, alleging that she was not given the proper title and compensatory salary for her experience. Her grievance was denied because “[t]he attendance record of Henrietta Washington is excessive and justifies why she was not permitted to advance to Cadet.” *Def.’s Mot. Summary Judg., Ex. H.*

Washington does not contradict PGW’s proffered legitimate reason for the denials and

she does not demonstrate that PGW's proffered reason is unworthy of credence. To the contrary, Washington admitted that she was absent from work approximately 179 days between 1997 and 2004. Despite Washington's claim, there is absolutely no evidence that PGW's decisions to deny Washington progression raises were because of her sex.

Washington's argument that she was never subjected to formal discipline for her attendance, even if true, does not prove pretext. Further, Washington's argument that the record reflects "Plaintiff's absences were always for legitimate reasons and never were very long" is contradicted by the evidence. Washington was out of work for a twenty-four day period in 1998, a thirty-five day period in 1999, and a seventeen day period in 2000. *Def's Mot. for Summ. J., Ex. EE*. She used 184 hours of sick leave in 2002, 110 hours of sick leave in 2003, 99 hours of sick leave in 2004 (plus 40 unpaid hours), and 87 hours of sick leave in 2005 (when she worked just ten months). *Id.*

Washington's rate of pay was based on objective, legitimate, non-discriminatory factors. She has failed to prove that PGW's assertion that her poor attendance and consequent lack of progression raises is pretextual.

## 2. Plaintiff's Second Charge: Retaliation for Filing a Complaint With the EEOC

Washington's complaint seems to allege that her suspensions from work were in retaliation for having filed a charge of discrimination with the EEOC.<sup>7</sup> To establish a prima

---

<sup>7</sup> Plaintiff's complaint states that "she was retaliated against for asserting her rights. Plaintiff was forced off of her job and was discharged on a pretext of Defendant wrongfully discharged or laid-off Plaintiff [sic]. Plaintiff had protested to Defendant that its policies were not followed." *Compl.* ¶ 4. The complaint also states, "Defendant's discriminatory activities escalated in retaliation after Plaintiff complained and tried to assert her rights." *Id.* at ¶ 7. No specific suspensions or discriminatory acts of retaliation are listed. Washington does note that she filed a charge of discrimination and received a right to sue notice on July 26, 2005, but does not specify the nature or filing date of the charge. Plaintiff's response to defendant's motion for summary judgment notes the February 3, 2005, EEOC filing and cites November 4, 2004, as the date plaintiff notified PGW of unlawful discrimination.

facie case of retaliation, Washington must show that: (1) she engaged in a protected activity; (2) PGW took an adverse employment action against her; and (3) there is a causal connection between her participation in the protected activity and the adverse employment action. *Moore v. City of Phila.*, 461 F.3d 331, 340-41 (3d Cir. 2006). Workplace infractions provide a strong, legitimate reason for disciplining an employee, and such infractions are difficult to overcome in proving retaliation. *Id.* at 346.

#### A. February 2005 Suspension

On February 3, 2005, Washington filed a complaint with the EEOC alleging she was not being paid the proper rate of pay because her male coworkers were paid more. On February 4, 2005, Washington received a two-day suspension that was effective Friday, February 4, 2005, through Monday, February 7, 2005, for refusing to work with another employee. PGW asserts that Washington was suspended for her insubordination, and Washington signed a memorandum of agreement to that effect. The memorandum noted that she was “in violation of a dischargeable offense under the Corporate Discipline Policy,” and that she and the Union agreed that “any future incidents of this nature will result in immediate dismissal.” *Def’s Mot. for Summ. J., Ex. M.*

Further, PGW notes that it was not served with the February 3, 2005 EEOC complaint until March 15, 2005. The Third Circuit has held that an employee cannot impute knowledge of a lawsuit simply by the filing date. *Moore*, 461 F.3d at 351 (where plaintiff produced no evidence to show defendant was actually aware of a lawsuit before the retaliatory action, no inference of knowledge could be drawn merely from the filing date). Washington has offered no evidence that PGW knew of the EEOC filing before it suspended her and she has not shown that

her suspension was anything but a response to her insubordination. Washington has therefore failed to show that her suspension in February of 2005 was retaliatory.

#### B. August 2005 Suspension

On August 2, 2005, Washington was instructed to alphabetize customer records. Because she felt her work had been “sabotaged,” she repeatedly stated the assignment “was not fair” and did not complete the task. Washington denies that she would not do the work, rather she insisted the task “was not fair.” However, contrary to this assertion, Washington, along with her Union and PGW supervisors, signed a Memorandum of Agreement which repeatedly refers to her “refusal to work” as the reason for her thirty-day suspension from August 2, 2005, through September 15, 2005. *Def’s Mot. for Summary Judg., Ex. P.*

In Washington’s response to PGW’s motion for summary judgment, she argues that PGW retaliated against her because the light-duty assignment requiring her to alphabetize the records “was a set-up designed for her to fail.” Washington’s argument is little more than a schoolyard retort and does not weaken or contradict PGW’s assertion that the suspension was issued for insubordination and not because of Washington’s February 3, 2005 EEOC charge (or any other grievance she filed). Washington therefore has failed to establish a causal connection between her EEOC charge and either suspension.

#### C. Termination

Washington’s complaint alleging that she was “forced off her job and was discharged on a pretext” was filed on October 24, 2005, ten days before she was actually terminated. PGW asserts that Washington was medically separated, that is terminated, when no position which met all of Washington’s medical restrictions and qualifications was available. In her response,

Washington does not assert that PGW failed to offer her an available position and she does not dispute her medical restrictions were severe enough to qualify her for Social Security disability benefits.

Instead, Washington states, “While technically, the record that is presented by Defendant reflects that she was discharged because of medical issues, it cannot be denied that her medical conditions were in existence at the time she given [sic] light duty that precipitated the event of August 2, 2005.”<sup>8</sup> PGW does not deny that Washington’s “medical issues” led to her light-duty, filing assignment because Washington’s restrictions were precisely the reason she was assigned that position.

PGW repeatedly accommodated Washington during her eleven years of employment and throughout her twenty-one injury claims by finding her light-duty jobs. The light-duty, filing assignment beginning in March of 2005 was the most recent of these accommodations. After Washington submitted letters from her doctor listing the number of tasks she could not perform, she was moved from the Field Services Department to her limited duty assignment in the Customer Affairs division. *Def.’s Mot. for Summ. J., Ex. FF*. PGW secured this position for the plaintiff by sending a notice to other departments inquiring into light-duty vacancies. *Aff. of James Kelly, Def.’s Mot. for Summ. J., Ex. LL*, p.3. In April of 2005, Washington complained that there was too much dust in her work area and PGW responded by issuing her a breathing mask, vacuuming the area daily, and having the air filters checked and changed. *Def.’s Mot. for Summ. J., Ex. W and Ex. X*.

On June 17, 2005, PGW sent Washington a letter indicating that she had not performed

---

<sup>8</sup> The “event” referred to is Washington’s claim that her work was “unfair” which led to her thirty-day suspension for refusal to work.

the essential functions of her assigned position in the Field Services Department since March 4, 2005. She was given 60 days to conduct an internal job search and was warned that “failure to obtain a vacant position may result in medical separation.” *Def.’s Mot. for Summ. J., Ex. JJ* at Bates p. 441.

When Washington’s suspension ended on September 15, 2005, she returned to work but was sent home because “there was no work available for anyone with the same considerable physical limitations as Ms. Washington which would not involve replacing another light duty employee.” *Aff. of James Kelly, Def.’s Mot. for Summ. J., Ex. LL*, p.6. Washington’s August suspension was counted among her sixty days, and 140 days after she was notified she must find a vacant position, she was terminated by letter dated November 4, 2005.

The plaintiff has failed to present any evidence to contradict or weaken PGW’s assertion that she was medically separated because there was no available position for which she was qualified and physically able to perform.

#### CONCLUSION

Washington’s allegations of discrimination on the basis of race and age are completely unfounded and she fails to prove any hint of pretext on the part of PGW. The disparity in her pay was the direct result of Washington’s deficient attendance record. Washington’s claims of retaliation are equally without merit. PGW produced ample evidence showing Washington’s suspensions were for insubordination, and she was terminated because she was severely restricted by her medical condition and unable to perform the essential functions of her job. Although Washington’s suspensions were close in time to her charge of discrimination and the filing of her complaint, she has offered no evidence that PGW knew of her filings when it took

action to suspend her and has not denied that her actions were properly subject to discipline.

An appropriate order follows.

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

HENRIETTA WASHINGTON	:	CIVIL ACTION
	:	
v.	:	
	:	
PHILADELPHIA GAS WORKS	:	NO. 05-5543

**ORDER**

And now, this 21st day of March, 2007, IT IS HEREBY ORDERED that defendant's motion for summary judgment is GRANTED and judgment is entered in favor of defendant.

BY THE COURT:

/s/ J. William Ditter, Jr.  
J. WILLIAM DITTER, JR., S.J.