

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

STANLEY B. CRUMPTON,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	97-3814
	:	
MARVIN T. RUNYON,	:	
Postmaster General U.S.P.S.,	:	
	:	
Defendant.	:	
	:	

MEMORANDUM

R.F. KELLY, J.

MARCH, 19, 1998

Stanley B. Crumpton ("Plaintiff"), has brought this action against Marvin T. Runyon, the Postmaster General of the United States Postal Service ("Defendant"), alleging sexual discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1991. 42 U.S.C. § 2000e et. seq. Plaintiff seeks compensatory damages, punitive damages, back pay, overtime, and benefits. Presently before this Court is the Defendant's Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. For the reasons that follow, Defendant's Motion is granted in part.

I. FACTS.

Plaintiff is employed as a "letter carrier" by Defendant. Plaintiff alleges that from 1993 until September 13, 1997, he was sexually harassed by Crystal Thompson ("Thompson"), his supervisor.¹ Specifically, at his deposition, Plaintiff

¹ On September 13, 1997, Plaintiff received a requested transfer to another facility and no longer has contact with

testified to the following acts of sexual harassment by Thompson:

1. In August or September 1993 Thompson rubbed Plaintiff's buttocks.
2. In March or April 1994 Thompson bent over Plaintiff's back.
3. Sometime in 1994 Thompson directed sexual looks and vibes towards Plaintiff.
4. In August or September 1995 Thompson placed her hand on Plaintiff's buttocks.
5. Sometime in 1995 Thompson directed sexual looks and movements towards Plaintiff.
6. On June 11, 1996, Thompson rubbed Plaintiff's legs.
7. Sometime in 1996 Thompson directed sexual looks toward Plaintiff and rubbed his hand.

Additionally, Plaintiff claims that Rachel White ("White"), Thompson's supervisor, retaliated against him for complaining to the Equal Employment Opportunity Commission ("EEOC") about Thompson's conduct.

II. STANDARD.

Summary Judgment is proper "if there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c); Anderson v. Liberty Lobby Inc., 477 U.S. 242, 247 (1986). Defendant, as the moving party has the initial burden of identifying those portions

Thompson or White.

of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Then, 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(c). 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. Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

III. DISCUSSION.

Title VII is the exclusive remedy available to a federal employee who claims to have been discriminated against in employment. Abdullah-Johnson v. Runyon, No. 94-5240, 1995 WL 118268, at * 4 (E.D. Pa. Mar. 8, 1995). It is well settled that exhaustion of administrative remedies is a prerequisite to filing a Title VII action in federal court. Metsopoulos v. Runyon, 918 F. Supp. 851, 857 (D.N.J. 1996)(citing Brown v. Gen. Servs. Admin., 425 U.S. 820, 832 (1976)). Defendant seeks to bar Plaintiff from introducing any evidence concerning the alleged sexual harassment that occurred before June 11, 1997 for failure to exhaust administrative remedies.

Title 29 of the Code of Federal Regulations at Part 1614 sets forth the administrative process that a federal employee who claims to have been discriminated against must follow. 29 C.F.R. Part 1614. The regulations provide that an aggrieved employee has 45 days from the date of the incident of

discrimination to contact an EEOC counselor for informal precomplaint counseling. 29 C.F.R. 1614.105(a). If informal counseling is unsuccessful, an employee must file a formal complaint with the agency within 15 days of receiving Notice of Final Interview. 29 C.F.R. 1614.106(b). Once the agency issues a final decision, an employee has 90 days to file suit in federal court. 29 C.F.R. 1614.408.

A. Claims Barred for Failure to Exhaust Administrative Remedies.

In 1993, Plaintiff contacted an EEOC counselor complaining of sexual harassment and race discrimination.² After receiving Notice of Final Interview, Plaintiff filed a formal complaint, however, he failed to include his sexual harassment claim. Plaintiff's formal complaint was accepted but only as to race discrimination and Plaintiff failed to dispute that this issue was properly identified. Plaintiff abandoned his sexual harassment claim without exhausting his administrative remedies, therefore, he cannot revive this claim in district court.

Plaintiff's second contact with the EEOC occurred on February 21, 1996. At his deposition, Plaintiff testified to four acts of sexual harassment that allegedly occurred more than 45 days before February 21, 1996. Plaintiff claims that it is

² Plaintiff filed two precomplaints, one alleging racial discrimination by Robert Clark for placing Plaintiff on Emergency Off Duty Status, and another alleging sexual harassment by Crystal Thompson. On May 11, 1994, both claims were consolidated and thereafter considered together under file number 1-C-191-1036-94.

unnecessary for each instance of sexual harassment to be brought to the attention of the EEOC and that mere reference to the years 1993 to 1996, inclusively, in each of Plaintiff's complaints is sufficient. Plaintiff's argument is incorrect. To hold otherwise would allow Plaintiff to circumvent the applicable administrative procedures. Because Plaintiff failed to timely contact the EEOC regarding these acts, they are also barred from the current litigation for failure to exhaust administrative remedies.

B. Hostile Work Environment Sexual Harassment.

Next, Defendant argues that summary judgment is proper because Plaintiff has failed to establish a prima facie case of hostile work environment sexual harassment. To establish his prima facie case, Plaintiff must prove that (1) he was intentionally discriminated against because of his sex; (2) the discrimination was pervasive and regular; (3) he was detrimentally affected by the discrimination; (4) a reasonable person of the same sex would also have been detrimentally affected by the discrimination; and (5) respondeat superior liability. Bonenberger v. Plymouth Township, 132 F.3d 20, 25 (3d Cir. 1997).

Defendant argues that because evidence of harassment occurring prior to June, 11, 1996, is barred for failure to exhaust administrative remedies, there is insufficient evidence that the alleged discrimination was "pervasive and regular." To rise to the level of a hostile work environment, the conduct

complained of "must be sufficiently severe or pervasive 'to alter the conditions of [the victim's] employment and create an abusive working environment.'" Meritor Sav. Bank FSB v. Vinson, 477 U.S. 57, 67 (1986). This is to be determined "from the perspective of a reasonable person in the plaintiff's position, considering 'all the circumstances.'" Oncale v. Sundowner Offshore Servs., Inc., ___ U.S. ___, 118 S.Ct 998, No. 96-568, 1998 WL 88039, at *4 (U.S. La. Mar. 4, 1998) These circumstances "include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." West v. Philadelphia Elec. Co., 45 F.3d 744, 753 (3d Cir. 1995)(citing Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993)).

Plaintiff testified to two incidents of sexual harassment that are properly before this Court. First, Thompson rubbed Plaintiff's legs during a meeting on June 11, 1996. Second, Thompson directed sexual looks toward Plaintiff and rubbed his hand sometime in 1996. As a matter of law, these incidents do not rise to the level of a hostile working environment.

The acts alleged occurred infrequently and are not severe enough to alter the conditions of Plaintiff's employment. See, McGraw v. Wyeth-Ayerst Lab., Inc., No. 96-5780, 1997 WL 799437, at *6 (E.D. Pa. Dec. 30, 1997); Cooper-Nicholas v. City of Chester, No. 95-6493, 1997 WL 799443, at * 3 (E.D. Pa. Dec.

30, 1997). Plaintiff did not state that he felt threatened or humiliated by these acts, nor did Plaintiff state that these acts interrupted his work performance. Id. Considering the totality of the circumstances, Plaintiff was not subjected to "pervasive and regular" harassment, therefore, Summary Judgment as to Plaintiff's hostile work environment claim will be granted.

C. Quid Pro Quo Sexual Harassment.

Plaintiff indicates that he has stated a claim for quid pro quo sexual harassment. This issue is not addressed by the Defendant. A claim for quid pro quo sexual harassment is stated when it is alleged that an individual's submission to or rejection of "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature" (1) is made an explicit or implicit term or condition of employment or (2) is used as the basis for employment decisions affecting such individual. Bonenberger, 132 F.3d at 27 (citing Robinson v. City of Pittsburgh, 120 F.3d 1286, 1296 (3d Cir. 1997)).

Plaintiff contends that on January 20, 1996 he was placed on Emergency Off Duty Status because he rejected Thompson's advances. Defendant contends that Plaintiff was placed on Emergency Off Duty Status for failure to collect first class mail on time. This issue of fact precludes Summary Judgment at this time. Plaintiff's claim for quid pro quo sexual harassment may proceed to trial.

D. Retaliation.

Defendant maintains that there is an insufficient causal link between Plaintiff's protected conduct and White's employment action against him which is fatal to Plaintiff's retaliation claim. To establish a prima facie case of retaliation, Plaintiff must show that (1) he was engaged in protected activity; (2) he was subjected to an adverse employment action, and (3) there is a causal link between the protected activity and the adverse employment action. Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997), cert. denied, ___ U.S. ___, 118 S.Ct. 299 (1997). Plaintiff argues that his 1996 EEOC complaint is the basis for his retaliation claim and that this establishes the necessary causal link.

Plaintiff contacted the EEOC on February 21, 1996. Any adverse employment action taken against Plaintiff in retaliation for this contact would have necessarily occurred after that date, yet none is revealed by the record. Thompson proposed that a Letter of Warning be placed in Plaintiff's file on May 22, 1997, however, because that letter was never formally issued, it did not adversely affect Plaintiff. Robinson, 120 F.3d at 1300. Plaintiff has failed to offer evidence of an adverse employment action taken against Plaintiff after February 21, 1996, therefore, Summary Judgment as to Plaintiff's claim for retaliation is granted.

E. Punitive Damages.

No Court in this circuit has yet addressed whether or not punitive damages are recoverable against the United States

Postal Service ("USPS") under Title VII. Section 1981a provides:

(1) Determination of punitive damages

A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

42 U.S.C. § 1981a(b)(1)(emphasis added). Thus, the issue is whether the USPS is a "government agency" and thus exempt from awards for punitive damages under Title VII.

The majority of courts that have considered this issue have held that the USPS is a governmental agency and is therefore exempt from awards for punitive damages. Baker v. Runyon, 114 F.3d 668 (7th Cir. 1997); Robinson v. Runyon, ___ F. Supp. ___, No 3:97CV7018, 1997 WL 784204 (N.D. Ohio Dec. 8, 1997); Ausfeldt v. Runyon, 950 F. Supp 478 (N.D.N.Y. 1997); Cleveland v. Runyon, 972 F. Supp. 1326 (D. Nev. 1997); Tuers v. Runyon, 950 F. Supp. 284 (E.D. Cal. 1996); Miller v. Runyon, 932 F. Supp. 276 (M.D. Ala. 1996); but see Roy v. Runyon, 954 F. Supp. 368 (D. Me. 1997). Likewise, I hold that Plaintiff is not entitled to punitive damages in this action.

An appropriate Order follows.

