

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

LYNNE A. REGAN	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
TOWNSHIP OF LOWER MERION	:	
and	:	
JOSEPH DALY, Individually and as	:	
Superintendent in the Lower Merion	:	
Township Police Department	:	
and	:	
MICHAEL MCGRATH, Individually	:	
and as Lieutenant in the Lower Merion	:	
Township Police Department,	:	
	:	
Defendants,	:	No. 98-2945

MEMORANDUM

Reed, S.J.

October 28, 1999

Presently before the Court is the motion of defendant Joseph Daly (“Daly”) for summary judgment (Document No. 16), the response of plaintiff Lynne A. Regan (“Regan”) and the reply of Daly thereto. Based on the following analysis, the motion of Daly will be granted.

I. Background

Regan was employed as a dispatcher with the Lower Merion Township Police Department (“Township”) from July 1993, until her termination on June 11, 1996. (Appendix of Defendant Joseph Daly in Support of His Motion for Summary Judgment (“Def. App.”), Exh. 3 at 58 (“Regan Dep.”)). While employed at the Township, Regan worked the late night shift and was responsible for inputting information, answering telephones, including 911 emergency calls, dispatching calls and keeping track of the location of on-duty police officers. (*Id.* at 82-83).

Regan was also responsible for monitoring the premises and prisoners through television monitors. (*Id.*). Regan avers that during her shift, Township employees and/or police officers, including several of Regan's superiors, sexually harassed her. The harassment included sexually offensive comments directed at her, inappropriate touching, unwanted gifts of a sexual nature, the watching of pornographic movies in her presence and the making of lewd gestures. (Plaintiff's Appendix to Memorandum of Law ("Plt. App."), Exh. A at ¶¶10-13).

Prior to her June 6, 1996 pre-termination hearing, Regan contends that she made a complaint of sexual harassment on two occasions. Both of these occasions occurred during meetings called to discuss her work performance. The first of these meetings occurred in September of 1995. Regan was called into Lieutenant McGrath's ("McGrath") office to be reprimanded for insubordination. (Def. App., Exh. 3 at 164 ("Regan Dep. of 11/2/98")). It was during this meeting that Regan reported to McGrath that Sergeant Albany had made inappropriate comments to her concerning her clothes. Regan admits, however, that she did not convey to McGrath that the comments were of a sexual nature, nor use the term sexual harassment at any point in the conversation. (*Id.* at 164-66).

The second of these meetings occurred in March 1996. Regan had been suspended for three days for making personal telephone calls during her shift in violation of the Township's telephone policy. (Def. App., Exh. 4 at 12-14 ("Regan Dep. of 11/9/98")). On March 19, 1996, Roseann Siso ("Siso"), Director of Personnel for Lower Merion Township, called Regan to her office to discuss the extended personal calls Regan had made during working hours. (Def. App., Exh. 7 at ¶4 ("Siso Affidavit")). Siso explained to Regan that "she wanted to know what was

going on in the police station.” (Regan Dep. of 11/2/98). Regan did not take advantage of Siso’s offer to discuss any problems she was experiencing during this meeting, nor did Regan speak to anybody outside the police department about her situation. (Id. at 25).

Regan did, however, contact Siso on March 22, 1996, to discuss several things that were “going on” in the police station. (Id. at 28). Regan “told [Siso] about the things that occurred in the radio room, specifically about the television and the sergeant’s reactions to the television.” (Id. at 29-30). Regan also “told her about two different sergeants and their behavior towards me while I was working on duty and they were working on duty.” (Id. at 30). Siso inquired “if Daly was involved in anything.” (Id.). Regan responded that he was not. (Id.). During their conversation, however, Regan did not specifically mention the names of either sergeant. Regan asserts that she was “too scared at this point to tell anything specific.” (Id.).

Despite the fact that Regan did not wish to file a personal complaint, in accordance with Township policy, the Township hired Jacqueline Shulman from an outside law firm to investigate Regan’s claims.¹ (Siso Affidavit at ¶4). Throughout the investigation, Regan refused to assist Shulman or provide any information. (Id.). Nevertheless, Siso was able to identify at least one of the sergeants, Sergeant Albany, from Regan’s description of him. (Id.). Shulman ultimately concluded that Regan’s claims were unsubstantiated. Thereafter, Shulman and Siso

¹The Policy of Lower Merion Township provides:

1. Anytime the Township Manager receives notification of a complaint, he/she will immediately conduct a general inquiry in order to ascertain the validity of the complaint. When there is a substantive basis for the claim or if the nature of the claim is serious enough but no clear determination can be made regarding its validity, the Township Manager will engage an outside investigator to conduct an independent investigation and provide a report summarizing his/her findings.
2. The Township Manager or his/her designee(s) shall make every reasonable effort to determine the facts and resolve the situation in an expeditious manner.

(See Pl. App., Exh. H at 3 (“Policy of Lower Merion Township, Responsibilities of the Township Manager”)).

met with Regan to discuss the outcome of the investigation, as well as her current work situation and continuous infractions. (Id. at ¶5).

On June 6, 1996, a loudermill hearing was held regarding Regan’s employment.² In attendance were Daly, Regan, Siso, Siso’s assistant Christine Marchini, and union representatives Bob Taylor and Tom Strang. (Id. at ¶6). At this meeting, Regan accepted responsibility for making personal calls during work hours, including a 55-minute call to her boyfriend, in violation of the Township’s rules and procedures. (Id.). Regan again made references to the fact that she was being “treated differently” but refused to identify anybody. (Def. App., Exh. 6 at 54 (“Daly Dep.”)). However, when Daly asked Regan about this and whether it was ongoing, Regan responded that one sergeant had been transferred and the other sergeant had stopped. (Id. at 54-55).

A second meeting was held after the loudermill hearing. In between the loudermill hearing and the second meeting, Daly met with Captain McGrath, Lieutenant McGrath, Sergeant Herzog and Siso to see if there was anything to dissuade him from terminating Regan’s employment. (Id. at 55). The general consensus of those conversations was that all that could possibly be done had been exhausted. (Id.).

The second meeting was held on June 11, 1996. The same people in attendance at the June 6, 1996, loudermill hearing were present at the June 11th meeting when Daly informed

²When asked what a loudermill hearing was, Daly responded, “[b]efore a final decision is made on disciplining an employee, anything that could – could [sic] result in a suspension or a termination, the employee is brought into a meeting, generally in attendance is the director of Human Resources, myself if it’s the Police Department, union representation if the employee so desires, they can have legal representation there if they so desire, and at that meeting, the allegations or the events leading up to the disciplinary action are explained at length, the employee is given an opportunity to offer any mitigating circumstances or anything that they feel we should know before we make a final determination on discipline.” See Def. App., Exh. 6 at 42 (“Daly Dep.”).

Regan of his decision to terminate her. (Id. at 69). Prior to this second meeting, union representative Tom Strang informed Daly that if he proceeded with the termination, a sexual harassment suit would be filed. (Id.). Despite this warning, Daly informed Regan of his recommendation to the Township manager that she be terminated. At this meeting, Regan started to mention the names of people that had harassed her. (Id. at 70). While Regan had made some innuendoes involving two sergeants at the June 6th hearing, at this meeting she named two additional sergeants and three or four patrolmen. (Id.).

After the termination meeting, Daly received a call from Regan asking if it was possible that she resign, as opposed to being terminated. (Id. at 71). Daly told her that was not generally Township policy, but that he would pass the information along. Daly had no further conversations with Regan, but advised Siso of Regan's request. (Id.). Regan contends that approximately one week after she was terminated, Siso asked Regan to meet with her. (Plt. App., Exh. A at ¶27). Regan alleges that Siso handed her a release of all claims and threatened her with a fine for each person she told about the contents of the release. (Id.). Regan further avers that Siso told her that if she did not sign the release, she would be given a bad recommendation and all of her benefits would be canceled and her unemployment claim contested. (Id.).

Regan filed a six-count complaint herein asserting claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000 et seq., the provisions of 42 U.S.C. §1983, and various state law causes of action against the Township of Lower Merion, Police Superintendent Joseph Daly and Police Lieutenant Michael McGrath. Following this Court's Order of February 12, 1999, granting in part defendants' motion to dismiss, there remains against defendant Joseph

Daly in his individual capacity, Counts III, IV and V. Count III of the complaint asserts a cause of action under 42 U.S.C. §1983 and alleges that Daly directly deprived or acquiesced in the deprivation of Regan's equal rights. Count IV of the complaint also asserts a cause of action under 42 U.S.C. §1983 and alleges that Daly, in retaliation for Regan's sexual harassment complaint, terminated her employment. Count V of the complaint asserts a cause of action under the common law for intentional infliction of emotional distress. In this motion, Daly seeks summary judgment on Regan's claims brought against him under 42 U.S.C. §1983 in his individual capacity, and on her claim against him for intentional infliction of emotional distress.

II. Standard for Summary Judgment

Rule 56(c) of the Federal Rules of Civil Procedure provides that "if the pleadings, depositions, answers to interrogatories, and admissions of file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law," then a motion for summary judgment may be granted.

The moving party has the initial burden of illustrating for the court the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Adickes v. S. H. Kress & Co., 398 U.S. 144, 159-161 (1970). The movant can satisfy this burden by "pointing out to the district court that there is an absence of evidence to support the nonmoving party's case;" the movant is not required to produce affidavits or other evidence to establish that there are no genuine issues of material fact. Celotex, 477 U.S. at 323-325.

Once the moving party has made a proper motion for summary judgment, the burden

switches to the nonmoving party. Under Rule 56(e),

[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against [the adverse party].

Hence, the non-moving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” Matsushita Electric Industries Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). A party opposing the motion must come forward with specific facts. Id.

Before a court will find that a dispute about a material fact is genuine, there must be sufficient evidence upon which a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Thus, the moving party is entitled to summary judgment, as a matter of law, when the “non-moving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.” Celotex, 477 U.S. at 323.

III. Analysis

A. Deprivation of Equal Rights

Count III of Regan’s complaint asserts a cause of action against Daly for deprivation of equal rights under the provisions of 42 U.S.C. § 1983. Regan is suing Daly in his individual capacity as a supervisor. Because supervisory liability under § 1983 cannot be based upon the doctrine of respondeat superior, there must be some affirmative conduct by the supervisor that played a role in the discrimination. Andrews v. City of Philadelphia, 895 F.2d 1469, 1478 (3d

Cir. 1990). Thus, to prevail on her § 1983 claim against Daly in his individual capacity, Regan must prove that Daly either (1) personally participated in violating her rights or directed others to violate them, or (2) that Daly had actual knowledge of and acquiesced in the violation of her rights by subordinates. Robinson v. City of Pittsburgh, 120 F.3d 1286, 1293 (3d Cir. 1997); Andrews, 895 F.2d at 1478.

Regan concedes that Daly did not personally discriminate against her. (Regan Dep. of 11/9/98 at 116-17). Regan testified that Daly was named a defendant solely because of his position. When asked why Daly was named as a defendant, Regan responded, “[b]ecause he’s the head of the police station and the rules and regulations and everything are given by him.” (Id. at 87). Regan further stated that all of her personal interactions with Daly were good and that he always treated her with respect. (Id. at 151). Thus, the question before the Court is whether there is any evidence that Daly personally directed or had “actual knowledge and acquiesce[d]” in the alleged harassment. Andrews, 895 F.2d at 1478.

If a supervisor with authority over a subordinate “knows that the subordinate is violating someone’s rights but fails to act to stop the subordinate from doing so, the factfinder may usually infer that the supervisor ‘acquiesced’ in (i.e., tacitly assented to or accepted) the subordinate’s conduct.” Robinson, 120 F.3d at 1294. However, the existence of an order or acquiescence leading to discrimination must be pled and proven with appropriate specificity. Andrews, 895 F.2d at 1478.

Regan argues that there are sufficient inferences to be drawn that Daly knew and acquiesced in the harassment. Indeed, Regan argues strenuously that Daly had constructive

notice of the harassment by virtue of his position as a supervisor and that constructive notice is sufficient to find liability. I disagree.

To bring a successful claim under § 1983 for a denial of equal protection, a plaintiff must prove the existence of purposeful discrimination and personal involvement. Robinson, 120 F.3d at 1293-94. Accordingly, there is no respondeat superior liability and a supervisor is only liable for his or her affirmative conduct. Andrews, 895 F.2d at 1478. In Robinson, the Court of Appeals for the Third Circuit explained that the reason that actual knowledge and acquiescence suffice to establish supervisory liability is because such knowledge coupled with acquiescence can be equated with “personal direction” and “direct discrimination by the supervisor.” Robinson, 120 F.3d at 1294. Thus, the law in this Circuit requires “actual knowledge” or its equivalent. Andrews, 895 F.2d at 1479 Actual knowledge can be proven by introducing evidence that knowledge of the complained of conduct could not be reasonably denied. Id. (evidence that complained of conduct was “so offensive and regular that they could not have gone unnoticed by the man who was ultimately responsible for the conduct of the Division” sufficient to satisfy actual knowledge requirement). However, constructive knowledge by virtue of being the supervisor of subordinates who may have actual knowledge is not sufficient to support liability under § 1983.³ Robinson, 120 F.3d at 1295 (no evidence that chief of police had

³Regan cites two cases for the proposition that constructive knowledge is sufficient. Jemmott v. Coughlin, 85 F.3d 61 (2d Cir. 1996); Chapin v. University of Massachusetts, 977 F. Supp. 72, 79, 81 (D. Mass. 1997). First, I note that neither of these decisions is binding on this Court. More importantly, however, in Chapin, although the court states that constructive notice will support a claim under § 1983, the plaintiff in Chapin did in fact allege actual knowledge on the part of the individual defendants. 977 F. Supp. at 79, 81. Thus, the Chapin Court did not analyze whether constructive notice is sufficient. Similarly, Jemmott simply does not stand for the proposition that individual liability can be based upon anything other than personal involvement of the individual against whom liability is asserted. See 85 F.3d at 67-68 (plaintiff informed both supervisors of harassment).

actual knowledge of harassment despite fact that plaintiff complained to assistant chief of police); Andrews, 895 F.2d at 1478. Thus, I reject Regan’s argument that constructive notice is sufficient to support liability under § 1983.

Regan next argues that the various acts of sexual harassment were so regular that they could not have gone unnoticed by Daly. Specifically, Regan argues that watching risque or “soft porn” movies in the radio room during the midnight shift was a regular occurrence and that, therefore, a jury could infer that supervisors not only knew but participated in watching the movies. Regan also alleges that during the midnight shift there were incidents during which she was subjected to sexually offensive comments, lewd gestures and inappropriate touching. (Plt. App., Exh. A at ¶¶10-13). In so doing, Regan relies on Andrews, where the Court of Appeals for the Third Circuit determined that, although there was no evidence to prove direct discrimination by the Captain, there was evidence that the Captain was aware of the problems concerning foul language and pornographic materials but did nothing to stop it.

In Andrews, the “excessively lewd pictures were in clear view” and the name calling of the plaintiff was “so pervasive and the terms used were so outrageous” that they could not be overlooked by “the man ultimately responsible for the conduct of the Division.” 895 F.2d at 1478-79. In addition, was not only was the Captain aware of the problem and did nothing to stop it but he also told the plaintiff that “[y]ou have to expect this working with the guys.” Id. at 1479. Thus, the Court of Appeals held that there was sufficient evidence to support a finding that the Captain had actual knowledge and acquiesced in the sexual discrimination against the plaintiff.

Here, in contrast, there is no evidence that the conduct complained of was so obvious and pervasive that Daly could not reasonably deny knowing of it. The complained of conduct for the most part was not in “clear view.” In addition, it all occurred on the midnight shift.

Nevertheless, Regan asserts that because there were supervisors in and out of the radio room, they must have been aware of Sergeant Acello’s obvious attraction to her and his actions towards her. Regan argues that, therefore, Sergeant Acello’s attraction and conduct toward her were widely known throughout the department, including to Daly. However, an independent investigation could not substantiate Regan’s claims. Furthermore, in support of her argument that the practice of watching risque movies was pervasive and obvious, Regan relies upon the deposition testimony of Officer Kiper. However, while Kiper admitted that officers watched risque movies during the midnight shift, he also testified at his deposition that he never watched such movies while Regan was in the room because “[w]hen I worked with [Regan], she had the control of the TV and picked the TV shows on the midnight shift.” (Plt. App., Exh. G at 14-15). Thus, despite Regan’s argument to the contrary, the evidentiary record does not support a finding that the alleged harassment was so pervasive and obvious that it was common knowledge. Therefore, unlike the excessively lewd pornography which was in clear view and pervasiveness of the name calling in Andrews, to have knowledge of the offensive conduct which Regan complains of, Daly would either have to have been told about it or been present at some time during the midnight shift. There is no evidence that Daly observed (or could not have avoided observing) any of the conduct complained of by Regan.

The only evidence which might support an inference that Daly knew anything about

Regan's complaints is that Siso may have told him that Regan had voiced a complaint and that it was being investigated. In her deposition, Siso stated that after her March 19th meeting with Regan, she contacted Daly to inquire whether he knew what Regan meant when she said she was being treated differently. (Plt. App., Exh. D at 71). There is, however, no testimony about what Daly knew or whether Siso told Daly that she was going to speak with the Township manager and that Regan's claims would be investigated. (See id.). However, even if an inference that Daly was informed as to Regan's claims and the ensuing investigation could be drawn from Siso's comment, the timing of the alleged report of harassment with respect to the launching of the investigation undermine any argument that he acquiesced in the conduct. Thus, in addition to a lack of evidence that Daly had knowledge of any discriminatory conduct directed at Regan prior to her loudermill hearing, there is no evidence that he directed, condoned or acquiesced in such conduct.⁴ Therefore, I conclude that Daly is entitled to summary judgment as to Count III of the complaint.

B. Retaliation

Count IV of Regan's complaint asserts a cause of action for retaliation under the provisions of 42 U.S.C. § 1983. Specifically, Regan alleges that Daly retaliated against her for

⁴Moreover, to the extent that Regan told Daly at the pre-termination hearing that she was being treated differently, there is no evidence that Daly acquiesced in the conduct of his subordinates. Specifically, when Regan mentioned that one of the sergeants that would make comments about the way she looked, and how she dressed and that another sergeant had given her a teddy as a gift, Daly did not dismiss Regan's remarks, but rather, probed further into the matter. Daly asked Regan "if she had ever told that second sergeant with the teddy that she did not like his conduct, and . . . asked her. . . had there been any repeat performances," (Id. at 55). Regan responded to Daly that one sergeant had been transferred and wasn't bothering her anymore and the other sergeant had stopped. (Id.). This is in stark contrast to the Captain in Andrews, who told the plaintiff that "boys will be boys" and that she had to expect such things when working with men. Andrews, 895 F.2d at 1479.

reporting incidents of sexual harassment and discrimination. In order to prevail on a claim alleging an adverse employment action because she engaged in activity protected by the First Amendment, a public employee must show that: (1) she engaged in protected activity; and (2) the protected activity was a substantial or motivating factor for the adverse action. Fultz v. Dunn, 165 F.3d 215, 218 (3d Cir. 1998) (applying Mount Healthy City Sch. Dist. Bd. of Ed. v. Doyle, 429 U.S. 274 (1977)). If the plaintiff satisfies the first two prongs, the defendant can escape liability by showing that he would have taken the same action absent the protect activity. Id.

Daly appears to concede for purposes of this motion that Regan engaged in a protected First Amendment activity. Also, termination is undeniably an adverse employment action. The parties dispute, however, whether Regan has satisfied her burden with respect to causation.⁵

“The element of causation, which necessarily involves an inquiry into the motives of an employer, is highly context-specific.” Katchmar v. SunGuard Data Sys., Inc., 109 F.3d 173, 178 (3d Cir. 1997). At this stage, Regan must proffer sufficient evidence that her protected activity was a substantial or motivating factor for the adverse employment action. Id. at 221. A determination of whether the evidence is sufficient to support a casual connection must be “based upon the whole picture.” Woodson v. Scott Paper Co., 109 F.3d 913, 921 (3d Cir. 1997).

Regan essentially argues that a temporal inference can be drawn between the time she complained to McGrath in September of 1995, and her dismissal in June of 1996, such that a reasonable jury could infer retaliatory intent. Regan further argues that Daly knew that Regan

⁵The causation inquiry is essentially the same in the context of a retaliation suit under § 1983 as it is in Title VII cases. See Azzaro v. County of Allegheny, 110 F.3d 968, 981 (3d Cir. 1997) (reversing summary judgment on plaintiff’s § 1983 retaliation claim for same reasons that the court reversed summary judgment on plaintiff’s Title VII retaliation claim; namely that factual issues existed regarding defendant’s motivation for terminating plaintiff). Thus, with respect to causation, I rely in part on cases analyzing Title VII retaliation claims.

had been disciplined prior to her termination hearing but did not investigate the basis for the discipline. In response, Daly argues that the protected activity did not come until after disciplinary proceedings had been instituted against Regan and, therefore, there is no temporal inference to support a finding of causation.

The only disciplinary action relevant to Daly and a claim against him in his individual capacity is the only one in which he is alleged to have participated; namely, the termination of her employment. Robinson, 120 F.3d at 1304 n.18 (judgment as a matter of law properly granted in favor of individual defendants on § 1983 retaliation claim because neither defendant was personally involved in the retaliation). Therefore, if Regan complained of sexual harassment in a prior disciplinary setting and Daly knew about it, her complaint would still be prior in time to her termination by Daly. Nevertheless, Regan's argument fails for two reasons: (1) there is no evidence that Daly knew Regan had complained about sexual harassment prior to the loudermill hearing which led to her termination; and (2) even if an inference can be drawn that Daly knew of her complaints by virtue of the investigation into her complaints, under the circumstances of this case, a temporal inference alone is not enough to establish a retaliatory motive.

“It is important to emphasize that it is causation, not temporal proximity itself, that is an element of plaintiff's prima facie case, and temporal proximity merely provides an evidentiary basis from which an inference can be drawn.” Katchmar, 109 F.3d at 178. In Robinson, the Court of Appeals for the Third Circuit recognized an apparent intra-circuit split on the issue of whether temporal proximity between the protected activity and the adverse action, standing alone, could support an inference regarding the defendant's motivation. 120 F.3d at 1302-03; see

also Krouse v. American Sterilizer Co., 126 F.3d 494, 503 (3d Cir. 1997). After reviewing precedent from the Third Circuit, the Court of Appeals concluded that “even if timing alone can prove causation . . . , the mere fact that adverse employment action occurs after a complaint will ordinarily be insufficient to satisfy the plaintiff’s burden of demonstrating a casual link between the two events.” Id. at 1302 (noting that the facts in Jalil v. Avdel Corp., 873 F.2d 701, 708 (3d Cir. 1989), presented exceptional circumstances because plaintiff was terminated two days after engaging in protected conduct). A few months later, in Krouse, the Court of Appeals explained that “the timing of the alleged retaliatory action must be ‘unusually suggestive’ of retaliatory motive before a causal link will be inferred.” 126 F.3d at 503. Thus, only where the facts of a particular case are “unusually suggestive” of a retaliatory motive will temporal proximity, standing alone, support an inference of causation. Robinson, 120 F.3d at 1302; Rodriguez v. Torres, ---F. Supp.2d---, 1999 WL 605595, at *5 n.3 (D.N.J. June 30, 1999).

Here, I am convinced that no reasonable factfinder could conclude the facts are unusually suggestive of retaliation. First, there is no evidence that Daly knew Regan had complained to McGrath. In addition, even if an inference can be drawn that Daly was informed about Regan’s allegations after she spoke with Siso, two and a half months passed before she was discharged. Moreover, there is no evidence that Daly engaged in a pattern of antagonism in the intervening period. See Woods, 109 F.3d at 920-21 (employer engaged in pattern of antagonism sufficient to establish a casual connection between plaintiff’s administrative complaints and his discharge two years later). Thus, this is “not one of the extraordinary cases where the plaintiff can demonstrate causation simply by pointing to the timing of the allegedly retaliatory action.” Robinson, 120

F.3d at 1302. In sum, the totality of the circumstances does not support an inference that Daly's action constituted unlawful retaliation. Accordingly, I conclude that Daly is entitled to summary judgment on Count IV of the complaint.⁶ ***C. Intentional Infliction of Emotional Distress***

Count V of Regan's complaint asserts a cause of action for the intentional infliction of emotional distress. To state a claim for the intentional infliction of emotional distress Regan must show that Daly's conduct was: (1) intentional or reckless; (2) extreme and outrageous; (3) actually caused the distress; and (4) caused distress that was severe. Cox v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988); Mulgrew v. Sears Roebuck & Co., 868 F. Supp. 98, 103 (E.D. Pa. 1994); Hoy v. Angelone, 720 A.2d 745, 755 (Pa. 1998); Kazatsky v. King David Memorial Park, Inc., 527 A.2d 988, 991 (Pa. 1987). In order to state a cognizable claim, however, the conduct must be "so extreme in nature as to go beyond all possible bounds of decency such that it would be regarded as utterly intolerable to civilized society." Mulgrew, 868 F. Supp. at 103.

“[I]t is extremely rare to find conduct in the employment context that will rise to the level of outrageousness necessary to provide a basis for recovery for the tort of intentional infliction of emotional distress.” Hoy, 720 A.2d at 754 (quoting Cox, 861 F.2d at 395). In the

⁶Because Regan has failed to present evidence of a causal connection between her complaints and Daly's conduct, Regan has not made out a prima facie case that Daly's conduct constituted retaliation. Had she done so, Daly would have had to present evidence of a legitimate, non-discriminatory reason for terminating Regan. Regan would then have the burden to present evidence from which a reasonable jury could conclude that "the articulated reason is a pretext for the retaliation or that a discriminatory reason more likely motivated the employer." Robinson, 120 F.3d at 1302 n.16 (quoting Delli Santi v. CNA Ins. Companies, 88 F.3d 192, 199 (3d Cir. 1996)). Here, Daly has proffered a legitimate, non-discriminatory reason for terminating Regan. Indeed, Regan admitted to violating Township policies. Regan conceded that based upon her discipline record, Daly had good cause for firing her. Moreover, she conceded that Daly had no reason to doubt the veracity of the reports. Thus, Regan has not pointed to any implausibilities, inconsistencies, contradictions or incoherences in Daly's proffered reason for firing her. Robinson, 120 F.3d at 1302 n.16 (citing Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1072 (3d Cir. 1996)). Thus, I hold in the alternative that Regan failed to present evidence undermining Daly's proffered legitimate, non-discriminatory explanation for discharging Regan.

employment context, sexual harassment alone does not rise to the level of outrageousness necessary to make out a cause of action. Id. “The only instances in which courts applying Pennsylvania law have found conduct outrageous in the employment context is where an employer engaged in both sexual harassment and other retaliatory behavior against an employee.” Id.; Andrews, 895 F.2d at 1487 (quoting Bowersox v. P.H. Glatfelter Co., 677 F. Supp. 307, 311 (M.D. Pa. 1988)).

In this case, there is no factual support for a claim of intentional infliction of emotional distress. Regan testifies in her deposition that she only named Daly in her complaint “[b]ecause he’s the head of the police station” (Def. App., Exh. 4 at 87 (“Regan Dep.”)). Regan does not assert that Daly did anything other than terminate her employment following numerous reports to him of her substandard work performance. Furthermore, Regan concedes that Daly always treated her with respect. (Id. at 151). She does not allege that he engaged in any improper conduct, let alone conduct which could be construed as outrageous. Moreover, Regan’s claim that Daly retaliated against her is without any factual support. Thus, Regan cannot rely upon allegations of retaliation to support her claim of intentional infliction of emotional distress. Consequently, I conclude that Daly is entitled to summary judgment on Count V of the complaint.⁷

⁷Daly also argues that the Pennsylvania Workmen’s Compensation Act (“PWCA”) bars a recovery for the intentional infliction of emotional distress. The exclusivity provision of the PWCA, 77 P.S. § 481(a), which is the exclusive source of an employer’s liability for covered injuries, bars claims for “intentional and/or negligent infliction of emotional distress [arising] out of [an] employment relationship.” Matczak v. Frankford Candy & Chocolate Co., 136 F.3d 933, 940 (3d Cir. 1997) (quoting Dugan v. Bell Telephone of Pennsylvania, 876 F. Supp. 713, 724 (W.D. Pa. 1994)). I need not reach this issue, however, as it is clear that Regan has adduced no evidence to support her claim of intentional infliction of emotional distress.

IV. Conclusion

Based on the foregoing memorandum, the motion of Daly for summary judgment will be granted. An appropriate Order follows.

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

LYNNE A. REGAN	:	CIVIL ACTION
	:	
Plaintiff,	:	
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v.	:	
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TOWNSHIP OF LOWER MERION	:	
and	:	
JOSEPH DALY, Individually and as	:	
Superintendent in the Lower Merion	:	
Township Police Department	:	
and	:	
MICHAEL MCGRATH, Individually	:	
and as Lieutenant in the Lower Merion	:	
Township Police Department,	:	
	:	
Defendants,	:	No. 98-2945

ORDER

AND NOW, this 28th day of October, 1999, upon consideration of the motion of defendant Joseph Daly in his individual capacity for summary judgment (Document No. 16), the response of plaintiff and the reply of defendant thereto, the supporting memoranda, pleadings, discovery record, affidavits and exhibits submitted by the parties; having found that there is no genuine issue of material fact and that the defendant is entitled to judgment as a matter of law, for the reasons set forth in the foregoing memorandum, it is hereby **ORDERED** that the defendant's motion is **GRANTED** and **JUDGMENT IS HEREBY ENTERED** in favor of Joseph Daly in his individual capacity and against Plaintiff Lynne A. Regan.

LOWELL A. REED, JR., S.J.