

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

VICKIE J. SMITH,)	
)	
Plaintiff,)	Civil Action No.: 5:04CV00022
)	
v.)	<u>MEMORANDUM OPINION</u>
)	By: Hon. Glen E. Conrad
SHENANDOAH VALLEY JUVENILE)	United States District Judge
DETENTION HOME COMMISSION)	
and TIMOTHY J. SMITH,)	
)	
Defendants.)	

Vickie J. Smith brings this action against her former employer, the Shenandoah Valley Juvenile Detention Home Commission (the detention home), and Timothy J. Smith, the detention home's superintendent, pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, and 42 U.S.C. § 1981. Ms. Smith claims that she was denied a promotion because of her race and gender. Ms. Smith also claims that she was later terminated because of her race and gender, as well as in retaliation for complaining about discrimination. The case is currently before the court on the defendants' motion for summary judgment. For the reasons that follow, the court will grant the defendants' motion as to the plaintiff's claims of race and gender discrimination. The court will deny the defendants' motion as to the plaintiff's retaliation claim.

I.

Ms. Smith is Caucasian. She began working full-time for the detention home as a children's supervisor on May 1, 1996. Ms. Smith remained in that position until her employment was terminated on October 18, 2002. From January 1999 through the date of her termination, Ms. Smith worked the 11:00 p.m. to 7:00 a.m. shift at the detention home.

During the last six years of her employment with the detention home, Ms. Smith also worked part-time at Abraxas House, a state residential facility for boys. Ms. Smith typically worked at Abraxas House from 8:00 a.m. to 4:00 p.m. or from 4:00 p.m. to midnight.

In April 2002, a supervisory position became available at the detention home. Ms. Smith and several other employees applied for the position. All of the employees, including Ms. Smith, received an interview. Greg Thurman, an African-American male employee, was selected for the position. Mr. Thurman had a college degree and approximately eleven years of experience working with children.

On August 7, 2002, Ms. Smith wrote a letter to Charles Edwards, the detention home's assistant superintendent, after she was asked to correct a mistake on one of her time sheets.

While Ms. Smith apologized for the mistake, she also stated that she felt a "degree of discrimination aimed [her] way." Ms. Smith explained that although certain employees arrived late and left early on a regular basis, she always was "singled out at the smallest transgression."

Ms. Smith was terminated from the detention home on October 18, 2002. The plaintiff was advised in a letter from Mr. Smith that her termination resulted from an investigation, which determined that she "violated detention center policy by submitting false reports of sick leave." Mr. Smith explained that the plaintiff's "deliberate and willful misrepresentation of the facts" constituted gross misconduct. On more than fifteen occasions between June 1, 2000 and August 11, 2002, the plaintiff used sick leave from the detention home within ten hours of working at Abraxas House.

The detention home's policy manual provides that employees may be terminated at the will of the employer. The manual outlines some of the offenses that may subject an employee to

termination, including misconduct. The manual also distinguishes between annual and sick leave.

On April 15, 2003, the plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). In December 2003, the plaintiff was advised that she had a right to sue in federal court. The plaintiff filed the present action on March 17, 2004.

II.

The case is currently before the court on the defendants' motion for summary judgment. Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is properly granted 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). For a party's evidence to raise a genuine issue of material fact to avoid summary judgment, it must be "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). In determining whether to grant a motion for summary judgment, the court must view the record in the light most favorable to the non-moving party. Terry's Floor Fashions, Inc. v. Burlington Industries, Inc., 763 F.2d 604, 610 (4th Cir. 1985). "Rule 56(c) mandates the entry of summary judgment . . . against a party who fails to make a 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. 317, 322 (1986).

III.

Ms. Smith claims that she was subjected to intentional race and gender discrimination and retaliation, in violation of Title VII and 42 U.S.C. § 1981.¹ A plaintiff may defeat a

¹ Plaintiff's claims under § 1981 are evaluated under the same standards as her claims under Title VII. Thompson v. Potomac Elec. Power Co., 312 F.3d 645, 649 n.1 (4th Cir. 2002); Causey v. Balog, 162 F.3d 795, 804 (4th Cir. 1998).

defendant's motion for summary judgment and establish a claim for intentional discrimination or retaliation through either the mixed-motive or pretext methods of proof. See Hill v. Lockheed Martin Logistics Mgmt., Inc., 354 F.3d 277, 284-285 (4th Cir. 2004) (en banc). Under the mixed-motive method, the plaintiff may avoid summary judgment by introducing sufficient direct or circumstantial evidence for a reasonable jury to conclude that an impermissible factor motivated an adverse employment decision. Id. at 286; see also Desert Palace Inc. v. Costa, 539 U.S. 90, 101 (2003).

Under the pretext method, which was established by McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973), the plaintiff must initially establish a prima facie case of unlawful discrimination or retaliation. If the plaintiff establishes a prima facie case, the burden of production shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the adverse employment action. Hill, 354 F.3d at 285. Once the defendant articulates such a reason, the burden shifts back to the plaintiff to prove by a preponderance of the evidence that the employer's proffered reason is not its true reason, but is a pretext for discrimination or retaliation. Id. (citing Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143 (2000)). In Reeves, the United States Supreme Court explained that under appropriate circumstances, "a plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated." Reeves, 530 U.S. at 148.

A.

The plaintiff's first claim alleges that she was discriminated against because of her race and gender when the defendants failed to promote her to the supervisory position in April 2002. The court concludes that the plaintiff has not presented sufficient evidence for a reasonable jury

to conclude that race or gender was a motivating factor in the defendants' decision to award the promotion to Greg Thurman. Therefore, the court will apply the traditional pretext method to determine whether the plaintiff's claim should proceed to trial.

In order to establish a prima facie case of employment discrimination based on a failure to promote, the plaintiff must show (1) that she is member of a protected class; (2) that her employer had an open position for which she applied; (3) that she was qualified for the position; and (4) that she was rejected for the position under circumstances giving rise to an inference of unlawful discrimination. Honor v. Booz-Allen & Hamilton, 383 F.3d 180, 189 (4th Cir. 2004). The defendants argue that Ms. Smith's claim fails at the prima facie level, because she cannot establish that she was rejected under circumstances giving rise to an inference of unlawful discrimination. However, to satisfy the fourth element, Ms. Smith must only show that the supervisory position was awarded to an African-American male applicant, which she has done. See Carter v. Ball, 33 F.3d 450, 458 (4th Cir. 1994) (citing Patterson v. McLean Credit Union, 491 U.S. 164, 186-187 (1989)). See also Bailey v. Anne Arundel County, 259 F. Supp. 2d 421, 426 (D. Md. 2003) ("Because the person selected for the promotion was black, female and younger than plaintiff, the fourth prong of the test has also been satisfied."). Since there is no dispute as to the other elements, the court concludes that Ms. Smith has established a prima facie case of discrimination with respect to the defendants' decision to promote Mr. Thurman.

The defendants, however, have responded with a legitimate, nondiscriminatory reason for selecting Mr. Thurman for the promotion. According to Mr. Smith and Mr. Edwards, Mr. Thurman was selected primarily on the basis of his four-year college degree and his experience working with children. The plaintiff did not have a college degree, and she had less experience working with children. See Mackey v. Shalala, 360 F.3d 463, 468 (4th Cir. 2004) (holding that

an employer offered a legitimate, nondiscriminatory explanation for hiring another candidate, where the employer argued that the candidate was better qualified, based on her work history and educational background).

Because the defendants have offered a legitimate, nondiscriminatory explanation for promoting Mr. Thurman, the plaintiff must demonstrate that the defendants' explanation is a pretext for discrimination. The court concludes that the plaintiff has failed to present sufficient evidence to support this finding. The plaintiff does not dispute Mr. Thurman's educational background and work experience, and she has not offered any evidence to contradict the testimony from Mr. Smith and Mr. Edwards that their decision was based on these factors. Instead, the plaintiff argues that she was better qualified for the position, since she had a paralegal studies certificate from an area community college, she was dependable and hardworking, and she was known to have good communication skills. However, the plaintiff's own opinions about her qualifications are irrelevant. See Bailey, 259 F. Supp. 2d at 429; Evans v. Technologies Application & Service Co., 80 F.3d 954, 960 (1996). While the plaintiff also emphasizes that she received higher scores than Mr. Thurman on a series of computerized tests, there is no evidence to suggest that these tests were relevant to the promotion decision. More importantly, it is not the province of the court to decide whether the reasons for promoting Mr. Thurman were "wise, fair, or even correct." Dugan v. Albemarle County School Bd., 293 F.3d 716, 722 (4th Cir. 2002). The United States Court of Appeals for the Fourth Circuit has emphasized that courts do not "sit as a kind of super-personnel department weighing the prudence of employment decisions made by firms charged with employment discrimination...." DeJarnette v. Corning, Inc., 133 F.3d 293, 298-299 (4th Cir. 1998) (quoting Giannopoulos v. Brach & Brock Confections, Inc., 109 F.3d 406, 410 (7th Cir. 1997)).

Ms. Smith also has not offered “other forms of circumstantial evidence sufficiently probative” of race or gender discrimination to show that the defendants’ explanation for selecting Mr. Thurman is pretextual. Mereish v. Walker, 359 F.3d 330, 336 (4th Cir. 2004). The plaintiff emphasizes that Wayne Anderson, another African-American male employee, received higher marks on his 2001 performance evaluation in the area of attendance and punctuality, even though he had a greater number of absences than the plaintiff. She also emphasizes that Mr. Thurman received a written reprimand in August 2004 for using annual leave without prior approval. However, this evidence does not indicate that race or gender factored into the defendants’ decision to promote Mr. Thurman in April 2002 or that the defendants’ explanation for promoting Mr. Thurman is a pretext for discrimination. For these reasons, the court concludes that the defendants are entitled to summary judgment with respect to the plaintiff’s promotion claim.

B.

The plaintiff’s next claim alleges that she was wrongfully terminated because of her race and gender. Again, the court concludes that she has not presented sufficient evidence for a reasonable jury to conclude that race or gender was a motivating factor in the defendants’ termination decision. Therefore, the court will apply the traditional pretext method to determine whether the plaintiff’s claim should proceed to trial.

The plaintiff was allegedly terminated from the detention home for using sick leave in order to work at Abraxas House. To establish a prima facie case of race or gender discrimination in the enforcement of employee disciplinary measures, the plaintiff must show (1) that she is a member of a protected class; (2) that she was qualified for her job and her job performance was satisfactory; (3) that she was terminated; and (4) that other employees who are not members of

the protected class were retained under similar circumstances. See Honor, 383 F.3d at 188; Bryant v. Bell Atlantic Maryland, Inc., 288 F.3d 124, 133 (4th Cir. 2002). While it is undisputed that the plaintiff has established the first three elements of her prima facie case, the defendants argue that the plaintiff has not provided evidence to show that other employees who are not members of her protected class were retained under similar circumstances.

Although the plaintiff correctly points out that she is not required to demonstrate that other employees committed exactly the same offense without being terminated, the plaintiff must show that other employees engaged in comparable misconduct. To satisfy this element, the plaintiff contends that Mr. Anderson used more sick leave than she did in 2001 and 2002. However, as the defendants argue, the plaintiff was not terminated for the amount of sick leave that she used, and there is no concrete evidence that Mr. Anderson's sick leave was used for an improper purpose. While the plaintiff alleges that Mr. Anderson used sick leave from the detention home to visit his daughter, and that Mr. Anderson used sick leave from the detention home after having worked as a custodian at a church, the plaintiff's allegations are not supported by the record. Mr. Anderson's evaluation reports from 2001 and 2002 indicate that his high use of sick leave was related to ongoing health issues. Furthermore, Mr. Anderson specifically testified at his deposition that he never worked at one of his other jobs after having used sick leave from the detention home. See Bryant, 288 F.3d at 134 (finding that the plaintiff failed to show that his fellow employees engaged in the same type of misconduct, where the employees' own testimony contradicted the plaintiff's allegations); Trammell v. Balt. Gas & Elec. Co., 279 F. Supp. 2d 646, 659-660 (D. Md. 2003) (concluding that the plaintiff failed to establish a prima facie case of disparate discipline where the plaintiff "produced only self-serving testimony to support his claim that Caucasian employees similarly violated company policy").

The plaintiff also emphasizes a portion of Mr. Edwards' deposition, in which he testified that he previously "suspected" that Mr. Anderson "might" be misusing sick leave in a similar manner. However, there is no evidence in the record to show that Mr. Anderson actually worked a second job within hours of taking sick leave from the detention home. For these reasons, the court concludes that the plaintiff has failed to show that other employees who are not members of her protected class engaged in comparable misconduct without being terminated. Thus, the defendants are entitled to summary judgment with respect to the plaintiff's disparate discipline claim.

C.

Ms. Smith's final claim alleges that she was terminated in retaliation for complaining about discrimination in her August 7, 2002 letter to Mr. Edwards. In their summary judgment motion, the defendants argue that the plaintiff cannot establish a prima facie case of retaliation, and that the plaintiff has failed to create a genuine issue of material fact as to whether the defendants' stated reason for her termination is pretextual. The court disagrees.

In order to establish a prima facie case of retaliation, the plaintiff must show (1) that she engaged in a protected activity; (2) that her employer took an adverse employment action against her; and (3) that there was a causal connection between the protected activity and the adverse employment action. Honor, 383 F.3d at 188. The defendants do not dispute the first two elements. Instead, the defendants argue that the plaintiff cannot establish a causal connection between her termination and the letter to Mr. Edwards. However, the plaintiff was terminated less than two and a half months after she wrote the letter. The fact that her termination came so close to the submission of the letter provides a sufficient inference of causation to satisfy the third required element. See King v. Rumsfeld, 328 F.3d 145, 151 (4th Cir. 2003) (reaching this

conclusion where the plaintiff was terminated two months and two weeks after filing an EEO complaint); Williams v. Cerberonics, Inc., 871 F.2d 452, 457 (4th Cir. 1989) (“Appellant’s proof of a causal connection between the protected activity and her discharge was that she was fired after her employer became aware that she had filed a discrimination charge. While this proof far from conclusively establishes the requisite causal connection, it certainly satisfies the less onerous burden of making a prima facie case of causality.”).

The defendants also argue that the plaintiff has failed to create a genuine issue of material fact as to whether their stated reason for her termination is pretextual. As previously stated, the defendants contend that Ms. Smith was terminated because they believed that she used sick leave from the detention home in order to work at Abraxas House. To support a finding of pretext, the plaintiff emphasizes several inconsistencies in the record regarding when the defendants decided to investigate her use of sick leave.

For instance, the detention center submitted a position statement to the EEOC after the plaintiff filed a charge of discrimination. In the position statement, the detention center stated that it first learned that the plaintiff was submitting false leave requests on July 11, 2002:

A Shift Supervisor, Mr. Joseph Coffey, saw Ms. Smith’s car parked at [Abraxas] House on his way to work. The next morning, July 12, 2002, Mr. Coffey reported his suspicion to the [Detention Home] Assistant Superintendent, Mr. Edwards. Mr. Edwards then gave the information to Mr. Smith, who then called the supervisor at [Abraxas] House, Ms. Donna Logan, and learned that Ms. Smith had indeed worked the 4:00 p.m. to 12:00 a.m. shift at [Abraxas] House the previous evening. During this phone call to Ms. Logan, Mr. Smith also learned that Ms. Smith had worked at [Abraxas] House on 18 of the previous 20 sick days which she had requested at [the Detention Home].

As the plaintiff points out, her records from Abraxas House contradict the detention home’s assertion that the plaintiff “had indeed worked the 4:00 p.m. to 12:00 a.m. shift at

Abraxas House” on July 11, 2002. The plaintiff’s work records indicate that she did not work at Abraxas House on that date.

An examination of the deposition testimony of Mr. Coffey, Mr. Edwards, and Mr. Smith reveals additional inconsistencies. Mr. Coffey testified during his deposition that although he could not remember the exact date on which he saw Ms. Smith’s car parked at Abraxas House, he relayed the information to Mr. Edwards the very next day. In contrast to Mr. Coffey’s testimony, as well as the information provided to the EEOC, Mr. Edwards testified that Mr. Coffey did not relay the information the day after he saw the plaintiff’s car at Abraxas House. Instead, Mr. Edwards testified that Mr. Coffey mentioned the incident a couple of weeks later, and that he did not do anything with the information Mr. Coffey provided. Although the detention home stated in its EEOC position statement that Mr. Smith immediately contacted Donna Logan after receiving the information from Mr. Coffey, Mr. Smith testified at his deposition that he did not begin investigating the plaintiff’s suspected misuse of sick leave until October 2002.

Based on the inconsistencies in the record regarding when the defendants began investigating the plaintiff’s suspected misuse of sick leave, and the lack of evidence to support the defendants’ statements to the EEOC, the plaintiff contends that a reasonable jury could conclude that the defendants’ proffered reason for her termination is a pretext for retaliation. The plaintiff emphasizes that the defendants did not terminate her employment until after she complained about discrimination to Mr. Edwards, even though they alleged in the EEOC position statement that they became aware of her misuse of sick leave in July 2002. The plaintiff also argues that the defendants’ changed position as to the timing of their investigation into her use of sick leave is probative of pretext. See Dennis v. Columbia Colleton Med. Ctr., Inc., 290

F.3d 639, 646 (4th Cir. 2002) (“The fact that an employer has offered inconsistent post-hoc explanations for its employment decisions is probative of pretext.”) (citing EEOC v. Sears Roebuck, 243 F.3d 846, 852-853 (4th Cir. 2001)); Sullivan v. Hernandez, 215 F. Supp. 2d 635, 639-640 (D. Md. 2002) (concluding that various inconsistencies presented by the plaintiff could lead a reasonable jury to infer that the legitimate, nondiscriminatory explanation offered by the defendants is pretextual).

In response, the defendants offer no explanation for the inconsistencies identified by the plaintiff, or the lack of evidence to support the information provided to the EEOC. Instead, the defendants reiterate that the plaintiff was terminated for improperly using sick leave, and that the proffered reason for her termination has remained consistent. The court recognizes that there is evidence in the record to show that on multiple occasions, the plaintiff took sick leave from the detention center within hours of working at Abraxas House. However, as a result of the inconsistencies in the record regarding the timing of the defendants’ investigation, the court concludes that the plaintiff has raised a genuine issue of material fact as to whether the defendants’ stated reason for her termination is a pretext for retaliation. Accordingly, summary judgment is not appropriate as to the plaintiff’s retaliation claim.

IV.

For the reasons stated, the defendants’ motion for summary judgment is granted with respect to the plaintiff’s claim that she failed to receive a promotion because of her race and gender, as well as the plaintiff’s claim that she was terminated because of her race and gender. The defendant’s motion for summary judgment is denied with respect to the plaintiff’s retaliation claim.

