Not Intended for Print Publication

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

DEBRA BOWEN,	)	
	)	
Plaintiff,	)	Case No. 2:04CV00019
	)	
v.	)	**OPINION AND ORDER**
	)	
TEMPUR PRODUCTION USA, INC.,	)	By: James P. Jones
	)	Chief United States District Judge
Defendant.	)	
	)	

Charlton R. DeVault, Jr., Kingsport, Tennessee, and Thomas William Baker, Wolfe Williams & Rutherford, Norton, Virginia, for Plaintiff; Julie Poe Bennett, Hunter Smith & Davis, LLP. Kingsport, Tennessee, for Defendant.

In this Title VII[1] action, the plaintiff, Debra Bowen, contends that she was subjected by her employer Tempur Production, USA, to sexual harassment, a hostile work environment and retaliation. The defendant employer has moved for summary judgment. Based on the record, I will grant summary judgment as to the plaintiff's sexual harassment and hostile work environment claims, but will deny summary judgment as to the plaintiff's retaliation claim.

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[1] Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. §§ 2000e to 2000e-17 (West 2003 & Supp. 2004).

I

Summary judgment is appropriate when there is "no genuine issue of material fact," given the parties' burdens of proof at trial. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986); *see* Fed. R. Civ. P. 56(c). In determining whether the moving party has shown that there is no genuine issue of material fact, a court must assess the factual evidence and all inferences to be drawn therefrom in the light most favorable to the non-moving party. *See Ross v. Communications Satellite Corp.,* 759 F.2d 355, 364 (4th Cir. 1985), *abrogated on other grounds*, *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

"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). Summary judgment is not "a disfavored procedural shortcut," but an important mechanism for weeding out "claims and defenses [that] have no factual basis." *Id.* at 327.

A

Sexual harassment claims fall into two general types: hostile work environment and quid pro quo discrimination. *See Spencer v. Gen. Elec. Co.*, 894

F.2d 651, 658 (4th Cir. 1990). Bowen contends that she was the victim of a hostile work environment.

In order to prove discrimination on the basis of a hostile work environment, Bowen must show "'(1) unwelcome conduct; (2) that is based on the plaintiff's sex; (3) which is sufficiently severe or pervasive to alter the plaintiff's conditions of employment and to create an abusive work environment; and (4) which is imputable to the employer.'" *Anderson v. G.D.C., Inc.*, 281 F.3d 452, 458 (4th Cir. 2002) (quoting *Conner v. Schrader-Bridgeport Int'l, Inc.*, 227 F.3d 179, 192 (4th Cir. 2000)). To prove the third element, Bowen must demonstrate that the work environment was "so polluted with sexual harassment that it altered the terms and conditions of her employment." *Id*. at 458-59. The court must assess whether the work environment was objectively hostile, "consider[ing] 'all the circumstances,' including '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.'" *Id.* at 459 (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993)).

The record is clear that the incidents recited by Bowen, even if true, and even viewed in their totality, do not amount to a hostile environment. Bowen began work on the mattress manufacturing line at Tempur on May 12, 2003. In her first days at

Tempur, Wayne Osborne, one of Bowen's coworkers, complimented Bowen and asked for her phone number. Soon, the compliments escalated to invitations to go to restaurants and a motel. At the height of his inappropriate behavior, Osborne asked Bowen to wear short shorts so that he could "look at her legs and rear end." He asked Bowen whether she would cook biscuits and gravy for him if he went to her house, and he called Bowen "his Debbie." Osborne also told Bowen that he was going to locate the free mattress the company was giving her and masturbate while lying on it, so that he could tell all their coworkers that he had had "a good time" in Bowen's bed.

Ten days after Bowen began working at Tempur, she reported Osborne's behavior to a supervisor, who then spoke with Osborne. Immediately, Osborne's comments stopped, although Bowen does allege that Osborne continued to stare at her. Finally, Bowen claims that Osborne sometimes drove behind her on the way to work and attempted to walk beside her on the way into the Tempur building, but she has presented no evidence to corroborate these claims.

Considering all of the circumstances, I find as a matter of law that the incidents complained of were not pervasive or severe enough to create an abusive environment. Osborne's most abusive behavior lasted less than eight work shifts and stopped after Bowen complained to a supervisor. While Osborne's comments were embarrassing

to Bowen, even the worst of them were not physically threatening or humiliating. Bowen does not claim that the quality of her work suffered. Even at its height, the conduct alleged simply was not sufficiently severe or pervasive to constitute a violation of Title VII.

B

To establish a prima facie case of retaliation, Bowen must present evidence that she engaged in a protected activity, her employer took an adverse employment action against her, and there is a causal connection between the two events. *See Tinsley v. First Union Nat'l Bank*, 155 F.3d 435, 443 (4th Cir. 1998). The employer may rebut the plaintiff's prima facie case by offering non-retaliatory reasons for its actions. *Carter v. Ball*, 33 F.3d 450, 460 (4th Cir. 1994) (citing *Williams v. Cerberonics, Inc.*, 871 F.2d 452, 457 (4th Cir. 1989)). "The burden then shifts back to plaintiff to prove the pretextual nature of those reasons." *Id.*

In its summary judgment motion, Tempur challenges the causation of Bowen's prima facie case. In addition, the company asserts that Bowen has failed to create a genuine issue of material fact as to whether Tempur's stated reasons for her termination are mere pretext. I disagree.

Tempur began an internal investigation of Bowen's complaint during her third week of work at the company. The investigation was completed sometime around

May 29, 2003, and Tempur informed Bowen that while she no longer would be assigned to work as partners with Osborne, she would remain in his department. Bowen was fired a few weeks later, on July 1, 2003. A short time elapsed between Bowen's protected activity and her termination, about two and a half months. *See Price v. Thompson*, 380 F.3d 209, 213 (4th Cir. 2004) (stating "a causal connection for purposes of demonstrating a prima facie case exists where the employer takes adverse employment action against an employee shortly after learning of the protected activity"). Indeed, some evidence indicates management may have decided to fire Bowen as early as June 3, 2003, just two weeks after she first complained to a supervisor.

In addition, the company acknowledges that there is some connection between Bowen filing her sexual harassment complaint and her termination, although it maintains that it did not fire her because she filed a complaint. In light of the fact that "very little evidence of a causal connection is required to establish a prima facie case," *Tinsley v. First Union Nat. Bank*, 155 F.3d at 443, Bowen has presented enough evidence to proceed to the second stage of the analysis, examination of the employer's non-retaliatory basis for her termination.

Tempur claims that it terminated Bowen "based upon her negative reaction to management's handling of the complaint and her inappropriate expressions of her

dissatisfaction." (Def.'s Mem. Supp. Summ. J. at 19.) Tempur claims that Bowen's complaints were disruptive and her coworkers had started to complain about her behavior. "[H]ad Plaintiff accepted the outcome of the investigation or directed her continued concerns to management in an appropriate manner, instead of involv[ing] her co-workers in her dissatisfaction," Tempur explains, "management would not likely have concluded that the department's morale was suffering as a result of Plaintiff's negativity." (Def.'s Mem. Supp. Summ. J. at 19-20.)

Tempur has presented no independent evidence of coworker complaints. The company does not claim that Bowen failed to complete her work assignments or prevented others from doing their work. Indeed, taking the facts in the light most favorable to Bowen, her supervisors were telling her she was "doing well" or "fine."

The heart of Tempur's argument is that Bowen was not fired because she complained, but because of the manner in which she complained. There is a thin line between this and the activity Title VII is designed to protect. A reasonable jury could find that Tempur's stated reasons for terminating Bowen were, indeed, mere pretext for retaliation against her. Based on the present record, I find a genuine issue of material fact exists as to whether there is a causal connection between Bowen's protected activity and termination and whether Tempur's stated reasons for her

termination are pretextual. Thus, summary judgment is not appropriate as to this claim.

II

For the reasons stated above, it is **ORDERED** as follows:

1. The defendant's Motion for Summary Judgment is **GRANTED** in part and **DENIED** in part;

2. The defendant's Motion for Summary Judgment is **GRANTED** and judgment is entered in favor of the defendant as to the plaintiff's claims of sexual harassment and hostile work environment;

3. The defendant's Motion for Summary Judgment is **DENIED** as to the plaintiff's retaliation claim; and

4. The clerk is directed to set the case for jury trial.

ENTER: January 31, 2005

/s/ JAMES P. JONES
Chief United States District Judge