

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION and LISA STEPLER, )  
)  
)  
Plaintiffs, )  
)  
v. ) C.A. No. 03-320-SLR  
)  
AVECIA INC., )  
)  
Defendant. )

**MEMORANDUM ORDER**

At Wilmington, this 28<sup>th</sup> day of April, 2004, having reviewed Stepler's motion for reargument;

IT IS ORDERED that said motion (D.I. 44) is denied, for the reasons that follow:

1. On March 24, 2003, the Equal Opportunity Commission filed a complaint against Avecia, Inc. ("Avecia") on behalf of Lisa Stepler ("Stepler") alleging retaliation under Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000(e), et seq.) and Title I of the Civil Rights Act of 1999 (42 U.S.C. § 1981A). (D.I. 1) On July 3, 2003, Stepler filed a motion to intervene in this action. (D.I. 11) After the court granted Stepler's motion on July 8, 2003 (D.I. 11), Stepler filed a three count complaint in intervention against Avecia. (D.I. 15) Stepler alleged: (1) retaliation under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991; (2) wrongful termination pursuant to Delaware state law; and (3) intentional infliction of

emotional distress pursuant to Delaware state law. On August 22, 2003, Avecia moved to dismiss Stepler's state law tort claim for intentional infliction of emotional distress. The court granted this motion on October 23, 2003. (D.I. 41, 42)

2. "As a general rule, motions for reconsideration should be granted 'sparingly.'" Stafford v. Noramco of Delaware, Inc., 2001 WL 65738, \*1 (D. Del. 2001) (quoting Karr v. Castle, 768 F. Supp. 1087, 1090 (D. Del. 1991)). The purpose of granting a motion for reconsideration is to "correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicky, 176 F.3d 669, 677 (3d Cir. 1999) (citing Keene Corp. v. International Fid. Ins. Co., 561 F. Supp. 656, 665 (N.D. Ill. 1983)). Parties, therefore, should remain mindful that a motion for reconsideration is not merely an opportunity to "accomplish repetition of arguments that were or should have been presented to the court previously." Karr v. Castle, 768 F. Supp. 1087, 1093 (D. Del. 1991) (citing Brambles U.S.A., Inc. v. Blocker, 735 F. Supp. 1239, 1240-41 (D. Del. 1990)). A court should reconsider a prior decision if it overlooked facts or precedent that reasonably would have altered the result. Id. (citing Weissman v. Fruchtman, 124 F.R.D. 559, 560 (S.D.N.Y. 1989)).

3. Stepler complains that the court misunderstood the basis for her tort claim against Avecia when it decided Avecia's

motion to dismiss. To this end, Stepler asserts that her claim is not premised on the "personal injury" exception to the Delaware Workers' Compensation Act (the "Act"), but instead relies on the definition of "accident" as it appears in the Act.<sup>1</sup> Stepler offers Rafferty v. Hartman Walsh Painting Co., 760 A.2d 157 (Del. 2000), for support and asserts that this decision stands for the proposition that "[w]hen there is a true intent to injure the employee, there is no 'accident' [within the meaning of the Act] and the victim has a common law tort claim." (D.I. 44 at ¶ 4) Stepler, consequently, contends that the court at least should allow plaintiff to engage in discovery to prove that Avecia intentionally set out to emotionally injure her through a campaign of retaliation, given the court's prior alleged misunderstanding.

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<sup>1</sup>The Act states in pertinent part:

Every employer and employee, adult and minor, except as expressly excluded in this chapter, shall be bound by this chapter respectively to pay and to accept compensation for **personal injury or death by accident** arising out of and in the course of employment, regardless of the question of negligence and to the exclusion of all other rights and remedies.

Del. Code Ann. tit. 19, § 2304 (emphasis added). Based upon this language, the Act bars common law actions against an employer where: (1) plaintiff is an employee; (2) his condition is shown to be a "personal injury" or "death by accident" within the meaning of the statute; and (3) the injury is shown to have arisen out of and in the course of employment. However, "personal injury" caused by the willful conduct of another employee for personal reasons not related to the scope of employment is not covered by the Act. See 19 Del. Code Ann. tit. 15, § 2301(15)(b). This situation is the only "personal injury" exception provided for in the Act.

4. The court finds Stepler's "accident" theory unpersuasive. In Rafferty, the plaintiff's husband died from a fall during the course of his employment. The plaintiff sued her husband's employer in tort to recover for his death, claiming that the "death by accident" language found in the Act was inapplicable to bar her claim because her husband's employer failed to provide adequate safety procedures. Plaintiff alleged that such failure constituted an intentional tort. The Delaware Supreme Court held that "an intentional act by the employer that causes injury to an employee is not an 'accident' and therefore a claim based on a intentional injury is not barred by the [Act]." Id. at 159. In so holding, the Delaware Supreme Court joined other states with similar workers' compensation law in allowing a tort recovery for an intentional injury caused by an employer.

5. Two doctrines exist to judge an employer's conduct in states that allow a tort recovery for an intentional injury by an employer: (1) the intentional tort doctrine; and (2) the substantial certainty doctrine. Id. at 160. The Delaware Supreme Court specifically ruled that the substantial certainty doctrine does not apply in Delaware. Id. Therefore, under the intentional tort doctrine, Stepler must show "facts which, if true, show a deliberate intent to bring about an injury" to escape the exclusivity provision of the Act. Id.

6. Accepting the allegations in Stepler's complaint as true, Avecia, at worst, scrutinized Stepler's work, vacation requests, work breaks, and work area. Such scrutiny occurs in most employment situations and does not evidence a deliberate intent to injure Stepler. Indeed, the court previously found in its memorandum opinion directed to Avecia's motion to dismiss that Avecia did not deliberately set out to personally harm Stepler. (See D.I. at 11) Without more, the court, therefore, declines to reconsider its previous decision.

Sue L. Robinson  
United States District Judge