

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LISA STEPLER,)
)
 Plaintiff,)
)
 v.) Civ. No. 03-320-SLR
)
 AVECIA INC.,)
)
 Defendant.)

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MEMORANDUM OPINION

Dated: July 19, 2004
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

On March 24, 2003, the Equal Opportunity Commission (the "EEOC") 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.). (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 (D.I. 11), on July 17, 2003, Stepler filed a three count complaint in intervention against Avecia. (D.I. 15) Stepler alleged retaliation under Title VII of the Civil Rights Act of 1964; (2) wrongful termination pursuant to Delaware state law; and (3) intentional infliction of emotional distress pursuant to Delaware state law. On August 23, 2003, Avecia answered the retaliation and wrongful termination claims and moved to dismiss the intentional infliction of emotional distress claim. (D.I. 27) On October 23, 2003, the court granted Avecia's motion to dismiss. (D.I. 41, 42) On November 3, 2003, Stepler filed a motion for reconsideration of the court's decision to dismiss her intentional infliction of emotional distress claim. (D.I. 44) The court denied this motion on April 28, 2004. (D.I. 66) On February 11, 2004, Avecia, Stepler, and the EEOC participated in a court-ordered mediation. (D.I. 68 at 3) As a result, Avecia and the EEOC entered into a voluntary consent decree and the EEOC withdrew its claims against Avecia.

(D.I. 54, 55)

Stepler is a resident of the State of Maryland. (D.I. 15 at ¶ 4) Avecia is a Delaware company with business operations in the State of Delaware and the City of New Castle. (D.I. 1 at ¶ 4) The court has jurisdiction over Stepler's federal civil rights claims pursuant to 28 U.S.C. §§ 1331 and 1334 and supplemental jurisdiction over all other claims pursuant to 28 U.S.C. § 1367(a).

Presently before the court is Avecia's motion for summary judgment as to Stepler's retaliation and wrongful termination claims. (D.I. 67) For the reasons that follow, the court grants Avecia's motion as to both claims.

II. BACKGROUND

Stepler began her employment at Avecia on November 16, 1987. (D.I. 15 at ¶ 6) She worked as a senior laboratory technician. From 1987 until April 1999, she reported to Jeff Pierce ("Pierce"). (D.I. 69 at A37) Stepler enjoyed her work assignments under Pierce and experienced a mentoring type of relationship with him. Pierce gave her good performance reviews throughout this period, and she described the laboratory atmosphere as "pleasant and relaxed" and "a great place to work." (Id. at A11; A14; A39)

In April 1999, Stepler was reassigned to a new supervisor, Emerentiana Sianawati ("Siana"), due to her workload and product

realignment. Stepler described Siana as unsupportive. She likewise felt that Siana threw her "into the deep end." (Id. at A39) As a result of work frustration, Stepler's relationships with her co-workers began to deteriorate. (Id. at A47)

On August 24, 1999, Warren Scott ("Scott"), the then president of Avecia, distributed a memorandum to all personnel regarding inappropriate use of company computers. (D.I. 71 at B101) Scott stated that inappropriate electronic files have been accessed, stored, and emailed using company computer systems. Scott ordered all employees to purge such offensive and obscene materials from their computers and warned that failure to adhere to this company policy would lead to termination of employment.

In April 2000, at the end of her first year reporting to Siana, Stepler received a "needs improvement" rating in two core competencies during her performance review. (Id. at A47) Stepler approached Dr. Alex Cornish ("Cornish"), the group leader for Avecia's protection and hygiene business, after receiving these ratings. She cried and reported feeling like a laboratory animal. She also described extreme communication problems with Siana.¹ (Id. at A48) Stepler also informed Cornish that she was being subjected to sexual harassment and/or a hostile work environment. (Id. at A49) Specifically, Stepler complained

¹During late spring 2000, Stepler was transferred from Siana and assigned to work for Kathleen Hopwood. In September 2000, Stepler officially began working for Jana Rajan ("Rajan").

about a workplace conversation that occurred three weeks earlier involving a strip club and lewd sexual acts. Stepler, however, refused to provide any details or to identify the person responsible for the alleged harassment.² She also declined to speak with a human resource representative about the incident. Cornish encouraged Stepler to confront her alleged harasser to let him know that his comments offended her.

Following this conversation with Stepler, Cornish sent an email on May 11, 2000 to Kathleen Ryan ("Ryan"), a human resource representative, stating:

I have told [Stepler] that in the future she must make it clear to anyone using improper behavior that she finds offensive to insist that they stop immediately . . . As agreed, I will distribute hard copies of the company policy on behavior amongst my group as a reminder of what we expect and draw their attention to relevant sections.

(D.I. 71 at B17) Cornish then distributed the standards of conduct guidelines to his group on May 18, 2000. (Id. at B18-19)

On August 4, 2000, Snyder described another visit to a strip club to a co-worker. (D.I. B21-22) Snyder detailed the appearance and performance of the strippers he observed while in attendance. Stepler overheard the conversation.

On August 9, 2000, she took Cornish's advice to confront her

²Darrell Snyder ("Snyder"), a lead technician who worked in the laboratory with Stepler, was the person responsible for discussing his visit to a strip club. Snyder discussed two particular sexual acts performed by one of the female strippers.

harasser and approached Snyder in the lunchroom. (D.I. 71 at B21-22) She told him that she found his conversation about the strip club offensive. She requested that he not describe such obscenity in her presence in the future. After speaking to Snyder, Stepler then formally complained to Cornish for a second time about being sexually harassed at work. (D.I. 69 at A63-64; D.I. 71 at B21-22) Stepler specifically identified Snyder and discussed his recent visit to the strip club.

Following Stepler's written sexual harassment complaint, Ryan initiated an investigation. She interviewed Snyder, various lab technicians, and Siana. She found sexually related material stored on three employees' computers, one of which belonged to Snyder. (D.I. 69 at A 197) As a result, Snyder and the two other employees were placed on probation. (Id. at A206-7, A214) Ryan likewise discovered that Stepler had participated in the inappropriate workplace behaviors prior to 1999. To this end, Ryan learned that Stepler engaged in multiple conversations with her co-workers about graphic sexual subject matter, including male and female anatomy. (Id. at A50-A53) Among other things, Stepler shared that her husband attended strip clubs. In 1996, Stepler gave a pornographic film to Snyder. She later discussed the contents of the film with him after he viewed it. Stepler also participated in telling and hearing dirty jokes. She further discussed the details of horse breeding and acts of

bestiality.

On August 17, 2000, Cornish wrote a memorandum captioned, "Lisa Stepler's Recent Behavior," to Mark Kenline ("Kenline"), the director of Avecia's protection and hygiene business. (D.I. 71 at B24) Kenline forwarded this communication to Jim McEntire ("McEntire"), the human resources director, and to Avecia's in-house counsel. Cornish commented:

I am logging in this note some incidents involving Lisa Stepler that have caused significant disruption in my group. . . . She is consistently failing to use the correct management channels to address issues of safety and is instead making public statements that could prove prejudicial to Avecia's [h]ealth and [s]afety record and damage the credibility of its managers.

(Id.) Cornish then described instances of Stepler's disruptive behavior. For example, he stated that at a training session regarding the use of a new microscope to observe and photograph bacteria and fungi, Stepler charged that Avecia was handling fungi unsafely in the laboratory and that people with an allergy to fungi were being subjected to health risks. (Id.) He also reported that Stepler told him that he should be careful because there were legal cases waiting to happen in his group. In this regard, he noted that she stated that her co-workers were not using correct chemical handling procedures and that she found the sexual content of certain conversations offensive. (Id.) Additionally, Cornish documented that Stepler distributed an email claiming that she developed tendinitis from work on a

specific project. (Id.) Cornish reported that Stepler's email was the first notification that he had received concerning her condition. Cornish concluded his memorandum by stating: "A pattern is emerging where [Stepler] throws up examples of perceived management deficiencies (e.g. poor concern for safety, behavioral standards, employee health) when she believes that her performance is coming under scrutiny. Furthermore, some [of] the allegations have more than a hint of a threat about them." (Id.)

On August 23, 2000, Kenline and McEntire met with Stepler to discuss the results of Ryan's investigation. (Id. at A197) They informed her that the investigation confirmed that inappropriate behavior had occurred in the lab and that actions were being taken to stop such conduct. (Id.) Kenline and McEntire also informed Stepler that they found her to be a "willing participant" in much of the sexual banter. Nevertheless, they emphasized that her conduct did not justify the inappropriate behavior of others. They concluded their discussion with Stepler by emphasizing that Avecia was committed to establishing an appropriate working environment in the lab. (Id.)

Because of the investigation and subsequent disciplinary action against Snyder and others, the atmosphere in the laboratory changed. Stepler's co-workers reported being afraid to talk freely around her and acted cautiously in her presence. (Id. at A222) Stepler specifically described the environment as

sterile, stating: "It became a very uncomfortable work environment. It became an angry work environment." (Id. at A66)

In December 2000, Stepler began personally investigating her co-workers. She documented their workplace and telephone conversations and day-to-day activities. She then reported her findings to management. On one instance, she told her supervisor: "Be careful how you talk to me, I will report you." (Id. at A223) She likewise photocopied confidential laboratory notes and photographed pictures of laboratory equipment. (Id.)

As Stepler engaged in these investigations, her work performance began to falter. She failed to complete certain projects and deadlines on time. For example, in early December 2000, Stepler extended a half-day vacation into a full day vacation without notifying her supervisor. In doing so, she delayed finishing a report for one of Avecia's customers. When Rajan sent her an email inquiring about the status of the report, she sent him an email response and enclosed a document entitled, "Your blasted Reichhold report." (Id. at A89, A201) Stepler later apologized for taking the day off without notification and told her supervisor that her school work was the most important thing in her life and that she took the day off to prepare a school-related project. (Id. at A239) As a result of this incident, Rajan began to monitor Stepler's projects and time management. He also showed her how to track her projects on a

large calendar. (Id. at A202)

On February 9, 2001, Rajan reported in an email to Ryan that Stepler had been conscientious about her work and had kept on top of her projects since January 2001. (D.I. 71 at B28) He also reported that Stepler sought his permission in early February 2001 to apply for a marketing assistant position in another division. (Id.) He concluded his email by stating that “[t]he only residual effect from the incidents of last year are in the form of her ‘venting,’ approximately every two weeks, about a feeling of isolation by her colleagues.” (Id.)

Around February 2001, Stepler began sending emails to Ryan almost on a daily basis. (See id. at A243-286; A288-99) Her communications detailed the behaviors of her co-workers, safety concerns, and overtime work. She also relayed episodes of harassment and retaliation. (See e.g., id. at A258; A260; A268; A278; A279)

On February 19, 2001, Stepler telephoned Ryan to allege that Cornish retaliated against her for filing a sexual harassment claim by selecting Snyder over her as a judge in an inter-company safety contest to be held in the United Kingdom. (Id. at A96-97; A198) Stepler elaborated that she viewed Snyder as being rewarded, even though he was on probation for maintaining sexually explicit material on his computer. (Id. at A96-97) In response, Ryan initiated a second investigation and informed

Stepler about it on February 21, 2001. (Id. at A198) Stepler requested Ryan to speak only with Rajan. (Id.) Ryan, however, indicated that she would need to speak with a number of people to conduct a proper and thorough investigation. She agreed, nevertheless, to start her discussions with Rajan.

On March 5, 2001, McEntire and Ryan met with Stepler to discuss the results of the second investigation. (Id.) They informed her that they were unable to substantiate her allegations. Specifically, they told her that Rajan did not support her claims. Stepler responded by calling Rajan a liar. (Id.) She also told McEntire and Ryan that Cornish violated safety policies on numerous occasions and provided details of two particular instances. Id.

On March 19, 2001, Ryan arranged a meeting with Stepler, Rajan, Cornish, and representatives from Avecia's Safety, Health, and Environment Department to address Stepler's safety concerns. (Id.) They informed her that Avecia management would request the Safety, Health, and Environment Department to conduct a thorough and independent investigation of her safety concerns. (Id.) They instructed her not to engage in an independent investigation. (Id.)

On Saturday, April 21, 2001, Stepler sent an email to Ryan from her home account entitled, "Funny Farm." (Id. at A288) In this communication, she stated: "I am starting to think I am no

longer normal. I have spent most of the weekend curled up in a ball staring at the wall." Stepler also discussed her vacation, the history of her sexual harassment claim, and her ensuing health and mental problems, which she attributed to her work environment. (Id.) To this end, she claimed:

Being under constant surveillance by [Snyder] and [Cornish] (and unfortunately occasionally [Rajan]) was making me physically ill. Strange things are happening to my body. My teeth are clenched all the time and as a result my jaws hurt. My elbows hurt (no idea). My skin cleared up being on vacation but it is starting to get very oily and break out again. My stomach is in a continual knot and I imagine it bleeding all the time. My head itches and I have dandruff. The tops of my knees itch and I rub them all the time so they are red. The palms of my hands itch incessantly at times. Sometimes I just shake[.] [I]t is especially bad when I sit on the toilet for some reason. I tell myself every morning that I can get through this one day at a time. It is 8.3 hours, go in do your best and go home. Weekends are horrendous though because all I think about is "What will be in store for me Monday?" I worried during my entire vacation that management had a whole week to think up a plan to torture me.

(Id.)

On Monday, April 23, 2001, Stepler did not report to work. Instead, she informed Avecia via an email communication from her home account that her doctor placed her on a three-week disability leave for stress-related physical problems. (Id. at A286) In this email, Stepler also asserted that she had been exposed to a suspected carcinogen during her tenure with Avecia. She stated:

I did some reading this weekend and now realize all the

[f]ederal laws that were broken during the period of time I worked for Siana. I want blood work done and my fatty tissue tested for deposits of chlorothalonil If I come down with [c]ancer or [l]eukemia I want everything documented.

(Id.)

Also on April 23, 2001, McEntire sent a memorandum to Stepler documenting various employment related issues, including her allegations of sexual harassment, retaliation, and safety violations. (Id. at A197-199) McEntire informed Stepler that

[i]t is imperative that we now focus our time and energy on the significant challenges facing the [p]rotection [and] [h]ygiene business in 2001. The level of distraction that has been evident in the lab represents a real threat to our ability to deliver upon the goals for the business and cannot be tolerated. Simply stated, it appears that your intense focus upon alleged harassment, then retaliation[,] and now purported violations of the [health and safety] policies and laws is so interfering with the performance of your job to the point that it has rendered you ineffective Our preference is that you continue to work in the lab, however, it cannot be under circumstances as described herein. I would like to discuss with you a way forward that is mutually beneficial for both you and AVECIA.

(Id.)

From April 23, 2001 through May 4, 2001, Stepler continued to barrage Ryan with various emails. (See id. at A126-28, A289-300) On April 30, 2001, Stepler informed Rajan and Ryan that

since my review was dilly dallyed on [Cornish's] desk for 19 days we may have to meet in the [public] library so that I can see what your opinion of my work and [Cornish's] opinion of my work in the past year is. It is also notable that [Snyder], despite according to [Snyder], [Cornish's] reluctance to meet with him

because [Snyder] is afraid to be alone in a room with a closed door, [Snyder] still managed to receive his review prior to April 19th.

(Id. at A291) On May 1, 2001, Stepler shared a story about a friend who contracted *Asperguillus Niger* while working at a different company. Stepler then commented that

[i]t [referring to her friend's disease] was especially saddening to me when I pointed out that personnel with asthma (or even allergies which most of us have- including me) are especially susceptible to problems with direct inhalation of spores and [Cornish] responded with "I am not Rich Quillen's boss." . . . No one is asking us to test [e]bola vaccine on our selves [sic] here but with [Cornish's] mentality that would be a possibility as long as we could do it as cheaply as possible. . . . if [Cornish] had taken the time to ask me why (other than the obvious) I had concerns about this I would have gladly shared [my friend's] story with him.

(Id. at A298) On May 3, 2001, Stepler told Ryan that she should allow her to review her performance review. She also requested Ryan to relay a message to Rajan: "Tell Jana I am not feeling better but if he would just tell the truth about all of this it would definitely help." (Id. at A297)

On May 4, 2001, Avecia sent a termination letter to Stepler, ending her employment with the company as of May 11, 2001.³

(D.I. 15 at ¶ 15; D.I. 60 at A301-02) Avecia explained that her intense focus on allegations of wrongdoing impeded her ability to perform her job. Avecia also stated:

³Ryan, Cornish, McEntire, and Kenline discussed terminating Stepler's employment between April 29, 2001 and May 4, 2001.

Your behavior has not only impaired your performance, but the performance of others, in that the wholly inappropriate manner in which you have pursued these complaints as well as the sheer number and frequency of complaints has proven to be a major disruption within the laboratory environment as well as within the company as a whole.

(Id.) Avecia further noted that her increasingly disloyal, antagonistic, and disruptive conduct became so damaging to the morale and productivity of the laboratory environment that she left it with no other alternative than to sever her employment.

(Id.) Avecia offered Stepler severance benefits in return for a release and compromise of any and all potential claims. (Id.)

On June 14, 2001, Stepler filed a complaint under Section 11(c) of the Occupational Safety and Health Act of 1970 ("OSHA Act")⁴ against Avecia with the U.S. Department of Labor, Occupational Safety and Health Administration ("OSHA"). (Id. at A304) Stepler alleged that she was terminated in retaliation for requesting that safe procedures be used in handling chemicals in her work area. After conducting an investigation, OSHA failed to substantiate her allegations. On May 20, 2002, OSHA informed

⁴The OSHA Act prohibits an employer from discharging or discriminating against any employee who exercises "any right afforded by" the Act. Section 11 (c) (1) provides:

No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.

Stepler of its finding. She, consequently, signed a complaint withdrawal request on June 6, 2002. (Id. at A317)

Separately, on June 14, 2001, Stepler filed a claim of sexual discrimination and retaliation against Avecia with the State of Delaware Department of Labor. (Id. at A303) The Department of Labor investigated Stepler's allegations and found that she failed to provide sufficient evidence to establish her contentions. The Department of Labor, therefore, concluded that Avecia did not engage in any unlawful employment practice in violation of Title 19 of the Delaware Code with respect to Stepler and, in turn, dismissed her charge. (Id.)

III. STANDARD OF REVIEW

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on 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 judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper

Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted).

If the moving party has demonstrated an absence of material fact, then the nonmoving party "must come forward with 'specific facts showing that there is a genuine issue for trial.'"

Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pennsylvania Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In other words, the court must grant summary judgment if the party responding to the motion fails to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. Omnipoint Comm. Enters., L.P. v. Newtown Township, 219 F.3d 240, 242 (3rd Cir. 2000) (quoting Celotex, 477 U.S. at 323).

IV. DISCUSSION

A. Stepler's Retaliation Claim

Stepler alleges that she was subject to retaliation in violation of Title VII of the Civil Rights Act of 1964. The anti-retaliation section of Title VII provides in pertinent part:

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment ... because she has opposed any practice made an unlawful employment practice by this subchapter, or because she has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C. § 2000e-3(a). In McDonnell Douglas Corp. v. Green, 411 U.S. 792, 801 (1973), the Supreme Court set forth a three-step burden shifting analysis for Title VII retaliation claims. First, a plaintiff must prove: (1) that she engaged in a protected activity; (2) that her employer took adverse action against her either after, or contemporaneously with, her protected activity; and (3) that there is a causal connection between the protected activity and the employer's adverse action. Id. at 802. Once the plaintiff succeeds in establishing a prima facie case, the burden of production shifts to the employer to "articulate some legitimate, nondiscriminatory reason" for its actions. McDonnell Douglas, 411 U.S. at 802. If the employer is able to successfully articulate such a reason, then the burden shifts back to the plaintiff to show that the employer's

non-discriminatory reason for the termination was a pretext for a true discriminatory intent. Id. at 802-804. This is accomplished by showing either that the employer's explanation "[is] not worthy of credence or that the true reason for the employer's act was discrimination." Bray v. Marriot Hotels, 110 F.3d 986, 990 (3d Cir. 1997). The plaintiff's "ultimate burden in a retaliation case is to convince the factfinder that retaliatory intent had a 'determinative effect' on the employer's decision." Shaner v. Synthes (USA), 204 F.3d 494, 501 (3d Cir. 2000).

Avecia argues that Stepler cannot establish a prima facie case of retaliation. Avecia contends that Stepler was terminated for engaging in activities not protected under the retaliation provision of Title VII. Avecia likewise asserts that the third prong of the McDonnell Douglas test for Title VII retaliation claims cannot be satisfied.

The court agrees with Avecia. Title VII prohibits retaliatory conduct by an employer in two specific situations: (1) where an employee has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding or hearing under Title VII (i.e., participation activity); or (2) where an employee has opposed a violation of Title VII (i.e., opposition activity). See 42 U.S.C. § 2000e-3(a); see also Robinson v. Southeastern Pennsylvania

Transp. Auth., 982 F.2d 892, 896 n.4 (3d Cir. 1993). The latter situation is implicated in the facts at bar. Plaintiff has alleged both sexual harassment and retaliation within her workplace and reported such conduct to Avecia management. At first glance, these activities appear to constitute opposition to alleged violations of Title VII. The Third Circuit, however, has held that opposition does not confer an irrevocable tenure on the opponent. Novotny v. Great Am. Fed. Sav. & Loan Ass'n, 584 F.2d 1235, 1261 (3d Cir. 1978), *vacated on other grounds*, 442 U.S. 366 (1979). To this end, the Third Circuit has opined that an opposition activity is not protected when it either involves illegality or unreasonably interferes with the employer's legitimate interests. Id. (citing Hochstadt v. Worchester Found. For Experimental Biology, 545 F.2d 222, 230-31 (1st Cir. 1976)).

Viewing the underlying facts and all reasonable inferences therefrom in the light most favorable to Stepler as the non-moving party, the court finds that Stepler's opposition activities unreasonably interfered with Avecia's business operations. By engaging in personal investigations of her co-workers, Stepler failed to adequately perform her job. She also impeded her co-workers' abilities to perform their jobs. Moreover, the nature, vigor, and frequency of her accusations of improper conduct (e.g., assertions that her supervisor lied, that the company planned to torture her, and that the company would

consider testing an ebola vaccine on employees to save costs) disrupted the laboratory environment and fostered an atmosphere of antagonism within the company. As such, the court concludes that plaintiff's opposition activities fall outside the protection of the retaliation provision of Title VII.

Assuming, for the sake of argument, that Stepler's opposition activities were protected under the retaliation provision of Title VII, the court, nevertheless, does not find a causal connection between her activities and her termination. "To show the requisite causal link, the plaintiff must present evidence sufficient to raise the inference that her protected activity was the likely reason for the adverse action." Ferguson v. E.I. DuPont de Nemours & Co., 560 F. Supp 1172, 1200 (D. Del. 1983). In the facts at bar, there is no evidence to show that Stepler was terminated because she opposed sexual harassment or retaliation in the workplace. Instead, Stepler was terminated because she failed to perform her job assignments and repeatedly disrupted business operations with her investigation tactics and erratic behavior. On this basis, the court concludes that there are no genuine issues of material fact as to either the first or third prongs of the McDonnell Douglas test. The court, therefore, grants summary judgment in favor of Avecia as to Stepler's retaliation claim.

B. Stepler's Wrongful Termination Claim

Under the common law, an employee is considered "at-will" and may be dismissed from employment at any time without cause and regardless of motive. See Merrill v. Crothall-American, Inc., 606 A.2d 96 (Del. Super. 1992). Delaware law, however, has evolved from the harshness of the "employment-at-will" doctrine. It now recognizes a limited implied covenant of good faith and fair dealing exception to protect at-will employees from wrongful termination. Id. Nevertheless, the Delaware Supreme Court has limited the application of this exception to four narrowly defined categories: (1) where the termination violated public policy; (2) where the employer misrepresented an important fact and the employee relied thereon either to accept a new position or to remain in her present one; (3) where the employer used its superior bargaining power to deprive an employee of clearly identifiable compensation related to the employee's past services; and (4) where the employer falsified or manipulated employment records to create fictitious grounds for termination. Lord v. Souder, 748 A.2d 393, 400 (Del. 2000) (citing E.I. Dupont de Nemours & Co. v. Pressman, 679 A.2d 436, 442-44 (Del. Super. 1996)). Stepler attempts to avail the first exception category. The court, therefore, focuses its analysis solely on whether Stepler's termination violated public policy.

To demonstrate a breach of the covenant of good faith and fair dealing under the public policy category, an employee must

satisfy a two-part test: (1) the employee must assert a public interest recognized by some legislative, administrative, or judicial authority; and (2) the employee must occupy a position with responsibility for advancing or sustaining that particular interest. Lord, 748 A.2d at 401 (citing Pressman, 679 A.2d at 441-42). The parties at bar agree for purposes of this motion that Stepler satisfies the second prong of the two-part test. Consequently, the court need only decide the first prong, to wit, whether Avecia terminated Stepler's employment in violation of a clearly mandated public policy recognized by some legislative, administrative or judicial authority.

Stepler appears to claim that she was terminated in violation of the anti-retaliation provision of Title VII because she opposed sexual harassment and retaliation in the workplace. As discussed above, however, the court has concluded that Avecia terminated Stepler because of poor performance and erratic behavior, not because she lodged complaints of sexual harassment and retaliation. This conclusion has support in the record. For instance, Avecia stated in Stepler's termination letter that "[t]he reason for this decision is that your intense focus upon alleged harassment, then retaliation[,] and now purported violation of [health and safety] policies has so interfered with the performance of your job to the point that it has rendered you ineffective in your position." Additionally, Avecia treated

Stepler's allegations seriously and undertook investigations on three separate occasions to address her concerns. Avecia also took remedial actions to correct inappropriate behavior when discovered. For example, Avecia distributed its standards of conduct for employees following Stepler's first complaint of sexual harassment and placed on probation those employees who were found to keep sexual materials on their work computers. Moreover, the court notes that the State of Delaware Department of Labor conducted an investigation of Stepler's allegations of sexual harassment and retaliation and did not find that Avecia discriminated against Stepler with respect to sex or retaliation or otherwise engaged in any unlawful employment practice. There is insufficient evidence to enable a jury to find for Stepler on her wrongful termination claim premised on the anti-retaliation provision of Title VII.

Alternatively, Stepler seems to suggest that Avecia terminated her employment in violation of the anti-discrimination provision of the OSHA Act because she questioned and exposed unsafe chemical handling practices. This contention is equally unsupported by the evidence of record. As noted multiple times above, Stepler was terminated because of poor work performance and disruptive behavior. That she raised safety concerns about Avecia's handling of chemicals was not a factor in Avecia's decision to terminate her employment. Furthermore, OSHA

independently reviewed her safety allegations and conducted interviews with various co-worker witnesses. OSHA found no evidence of improper handling of various chemicals. Thus, the court concludes there are no genuine issues of material fact as to Stepler's wrongful termination claim premised on the anti-discrimination provision of the OSHA Act. Accordingly, the court grants summary judgment in favor of Avecia as to Stepler's wrongful termination claim.

V. CONCLUSION

For the reasons stated above, the court grants Avecia's motion for summary judgment as to Stepler's retaliation and wrongful termination claims.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LISA STEPLER,)
)
 Plaintiff,)
)
 v.) Civ. No. 03-320-SLR
)
 AVECIA INC.,)
)
 Defendant.)

O R D E R

At Wilmington this 19th day of July, 2004, consistent with
the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Avecia's motion for summary judgment (D.I. 67) is
granted.

2. The Clerk of Court is directed to enter judgment
against plaintiff and in favor of defendant.

Sue L. Robinson
United States District Judge