

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IVAN M. TAYLOR,)
)
 Plaintiff,)
)
 v.) Civ. No. 03-252-SLR
)
 DIVISION OF STATE POLICE,)
 DEPARTMENT OF PUBLIC SAFETY,)
 STATE OF DELAWARE,)
)
 Defendant.)

Jeffrey S. Goddess, Esquire of Rosenthal, Monhait, Gross & Goddess, P.A., Wilmington, Delaware. Geraldine Sumter, Esquire and Amy C. Reeder of Ferguson, Stein, Chambers, Adkins, Gresham & Sumter, P.A., Charlotte, North Carolina. Counsel for Plaintiff.

W. Michael Tupman, Deputy Attorney General, Delaware Department of Justice, Dover, Delaware. Counsel for Defendant.

MEMORANDUM OPINION

Dated: June 15, 2004
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff Ivan Taylor filed suit against defendant, the Division of State Police, Department of Public Safety of the State of Delaware, alleging discrimination and retaliation under Title VII of the Civil Rights Act of 1964 with respect to his 1995 termination as a Delaware State Police Officer. At the close of discovery, defendant filed the pending motion for summary judgment. This court has jurisdiction pursuant to 28 U.S.C. § 1331. For the reasons that follow, said motion shall be granted.

II. BACKGROUND

Plaintiff was hired as a member of the State Police on January 21, 1989. During the course of his employment, plaintiff was generally assigned to Troop 7 in Lewes, Delaware. During the years 1990 to 1995, plaintiff served as a Trooper (1989 to 1992), a Trooper First Class (1992 to 1993), and a Corporal (1993 to 1995). (D.I. 19, ex. 7)

On August 19, 1994, the Superintendent of the State Police (Colonel Ellingsworth at the time)¹ was notified about a citizen complaint alleging that plaintiff had made sexual overtures to a

¹Colonel Ellingsworth was Deputy Superintendent with the rank of Lieutenant Colonel from January 1992 to May 1994. From May 1994 to September 1999, he was Superintendent of the Delaware State Police with the rank of Colonel. (D.I. 19, ex. 2)

young woman whom he had stopped for a traffic violation. The matter was referred to Internal Affairs and an investigation of the incident was thereafter initiated. (D.I. 19, exs. 2, 5) The investigator interviewed the complainant, who related the following:

On August 17, 1994, while driving home alone from work around midnight, a State Trooper (subsequently identified as plaintiff) pulled along side her car twice and then blocked her entry to her residence. Plaintiff asked if she had been drinking, and she said no. He asked if she had argued with her boyfriend because he had heard on his police radio that a woman was driving north on Route 1 and crying. She said she was fine, and plaintiff let her go without issuing a ticket. Plaintiff did not call the traffic stop in to the Sussex County Emergency Operations Center, as required by State Police procedures.

Two nights later, on August 19, 1994, the complainant was driving out of Rehoboth Beach towards Dewey Beach when she made an improper left turn. A Rehoboth Beach police officer stopped her but, before he could issue a citation, plaintiff arrived. The complainant recognized plaintiff as the State Trooper who had stopped her previously. Although the Rehoboth Beach police officer told plaintiff that there were no indications that the complainant had been drinking, plaintiff said he was taking over and ordered the complainant to drive into the rear of the parking

lot of a nearby restaurant. Because it was after midnight, the restaurant was closed and the parking lot was unlit and dark. The complainant drove her car to the rear of the parking lot and plaintiff pulled in behind her so that neither car was visible from Route 1. Plaintiff thereafter administered field sobriety tests, which the complainant passed. No drugs were found when plaintiff asked the complainant to pull up her sweatshirt and pull open her boxer shorts. Plaintiff then ordered the complainant into his patrol car. Plaintiff told the complainant that she was beautiful and he wanted to date her. He asked whether she had ever dated a black man and showed her pictures of himself in a photo album while sharing details about his personal life. The complainant was in plaintiff's patrol car for over an hour. Plaintiff did not issue a traffic citation to complainant. (D.I. 19, ex. 5)

After conducting the above interview, the investigator checked the files at Internal Affairs. He found two prior complaints, both made by women plaintiff had arrested in 1992 and both involved allegations that he had made sexual overtures to them. The Internal Affairs investigations of these allegations had been inconclusive. Nevertheless, the investigator of the 1994 complaint was concerned that a pattern of conduct was emerging and determined to follow up. (D.I. 19, ex. 5)

The investigator asked plaintiff's Troop Commander if he knew of any other complaints against plaintiff by women. The Troop Commander remembered one incident that occurred in 1993 but was never formally reported. The investigator interviewed the 1993 complainant, who reported that plaintiff had stopped her one evening on a dark side road, ostensibly because her car fit the description of a vehicle involved in a high-speed chase earlier that day. When the investigator checked police records, there was no report of any high-speed chase on the date in question involving a vehicle that matched the complainant's vehicle. (D.I. 19, ex. 5)

Through information offered by the 1993 complainant, the investigator interviewed two other women who had been stopped by plaintiff² and subject to his sexual overtures. Both of these women were 16 years old at the time of their interaction with plaintiff. One of them actually went out on a date with plaintiff, after plaintiff failed to appear at her trial and the case against her was dismissed. (D.I. 19, ex. 5)

The investigator subsequently obtained all of plaintiff's traffic cases for 1992-1994. The data showed 25 cases dismissed, nolle prossed, reduced, or with a "not guilty" finding. The investigator contacted some of the female drivers involved. Two

²One young woman was stopped for a traffic violation and one for underage drinking.

of the women interviewed indicated that plaintiff had broached with them the subject of dating. (D.I. 19, ex. 5)

During the course of analyzing plaintiff's traffic stops, the investigator discovered that plaintiff had failed to appear for court six times in 1992-1993, and had failed to submit disposition explanation forms for 37 traffic cases in 1992-1994. After case review with Superintendent Ellingsworth, plaintiff was charged with seven counts of conduct unbecoming an officer, four counts of neglect of duty, and one count of official misconduct. (D.I. 19, ex. 5)

Plaintiff exercised his rights under the State Police Rules and Regulations and the Law Enforcement Officer's Bill of Rights to have his case heard by a Divisional Trial Board. The charge sheet contained a list of names of potential board members and plaintiff had the right to strike three of the names. From the remaining names on the list, the Superintendent selected Major William H. Waggaman, III (as Presiding Officer), Captain Thomas F. Marcin (Commander of Troop 6), and Captain Thomas P. DiNetta (Commander of Troop 9) as the Trial Board. None of these officers were in plaintiff's chain-of-command. (D.I. 19, ex. 4)

The Trial Board held a three-day evidentiary hearing on February 21-23, 1995. The Trial Board heard testimony from four of the seven female complainants. Plaintiff was represented by counsel at the hearing and had the opportunity to present

evidence and cross-examine defendant's witnesses. Plaintiff did not call any witnesses, but testified on his own behalf. (D.I. 19, ex. 4)

The Trial Board unanimously found plaintiff guilty of nine of the ten charges against him. For all of these violations, it was the unanimous decision of the Trial Board to recommend to the Superintendent that plaintiff be suspended without pay with intent to dismiss. (D.I. 19, ex. 4)

Consistent with the State Police Rules and Regulations, the Superintendent reviewed the Trial Board's factual findings and recommended penalty. The Superintendent concurred with the recommended penalty of termination, based on the following considerations: Plaintiff had targeted young women who were driving alone and at night. Whether he stopped them for pretextual traffic violations or based on bona fide charges, he had abused his authority as a police officer to try to coerce them into sexual favors. According to Superintendent Ellingsworth: "This was one of the most severe violations of the public trust that I had ever seen, and I was shocked by the disrepute such misconduct brought upon the Division." (D.I. 19, ex. 2) Consequently, consistent with the State Police Rules and Regulations, the Superintendent wrote to the Secretary of the Department of Public Safety to recommend plaintiff's termination from employment. By state statute, 29 Del. C. § 8203(6), only

the Secretary can terminate an employee of the Department of Public Safety. (D.I. 19, ex. 2)

Plaintiff exercised his right of appeal to the Secretary. In a written decision dated May 24, 1995, the Secretary concurred with the recommendation of the Superintendent and terminated plaintiff's employment with the defendant. The Secretary found that the testimony of the complainants was not disputed or contradicted by plaintiff. She, therefore, found the evidence in the record to be "overwhelming and unrefutable" that plaintiff had "traded his badge . . . in return for dates and/or personal gain." She concluded that dismissal was an appropriate remedy for such conduct. (D.I. 19, ex. 7)

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, the nonmoving party then “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.” Pa. 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). With respect to summary judgment in discrimination cases, the court’s role is “to determine whether, upon reviewing all the facts and inferences to be drawn therefrom in the light most favorable to the plaintiff, there exists sufficient evidence to create a genuine issue of material fact as to whether the employer intentionally

discriminated against the plaintiff.” Revis v. Slocomb Indus., 814 F. Supp. 1209, 1215 (D. Del. 1993) (quoting Hankins v. Temple Univ., 829 F.2d 437, 440 (3d Cir. 1987)).

IV. DISCUSSION

A. Title VII Discrimination Claim

Discrimination claims under Title VII are analyzed under the framework set forth by the United States Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Plaintiff at bar must first establish a prima facie case of discrimination by proving that: (1) he is a member of a protected class; (2) he is qualified for the former position; (3) he suffered an adverse employment action; and (4) either non-members of the protected class were treated more favorably than the plaintiff, or the circumstances of the plaintiff’s termination give rise to an inference of discrimination. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 142 (2000). Once a prima facie case is established, the burden of production shifts to the defendant (the former employer) to produce a legitimate nondiscriminatory reason for the adverse employment action taken against the plaintiff. Id. Because the burden of persuasion does not shift at this stage, the defendant’s legitimate nondiscriminatory reason is not evaluated insofar as its credibility is concerned. Id. Once a legitimate nondiscriminatory reason is proffered, the presumption of discrimination created by the prima facie case

"disappear[s]." Id. At this point, the plaintiff must proffer sufficient evidence for the factfinder to conclude by a preponderance of the evidence that the legitimate nondiscriminatory reasons offered by the defendant were not true, but were a pretext for unlawful discrimination. "That is, the plaintiff may attempt to establish that he was the victim of intentional discrimination 'by showing that the employer's proffered explanation is unworthy of credence.'" Id. In this regard, the prima facie case and the inferences drawn therefrom may be considered at the pretext stage, as the Supreme Court has explained that "it is permissible for the trier of fact to infer the ultimate fact of discrimination from the falsity of the employer's explanation." Id. at 147. Nevertheless, the ultimate question remains whether the employer intentionally discriminated. "[P]roof that 'the employer's proffered reason is unpersuasive, or even obviously contrived, does not necessarily establish that the plaintiff's proffered reason . . . is correct.'" Id. at 147 (quoting St. Mary's Honor Center v. Hicks, 509 U.S. 502, 524 (1993)). "In other words, '[i]t is not enough . . . to **dis**believe the employer; the factfinder must **believe** the plaintiff's explanation of intentional discrimination.'" Id. (quoting St. Mary's Honor Center v. Hicks, 509 U.S. at 519).

1. Plaintiff's prima facie case

In the case at bar, defendant does not challenge plaintiff's proof regarding the first three elements of his prima facie case, but contends that there is no evidence of record to show that defendant treated similarly situated white State Troopers more favorably, or otherwise to support the inference that defendant terminated plaintiff's employment because of his race.

a. Plaintiff's evidence relating to comparators

Plaintiff provides evidence relating to eight white comparators. In order to raise an inference of discrimination based on the failure to discharge non-minority employees, plaintiff must demonstrate that: (1) the acts of the non-minority employees were of a "comparable seriousness," McDonnell Douglas v. Green, 411 U.S. at 804; and (2) the decision to discharge must have been made by the same supervisors, Taylor v. Proctor & Gamble Dover Wipes, 184 F. Supp. 2d 402, 410 (D. Del. 2002), aff'd, 2002 WL 31716395 (3d Cir. Dec. 4, 2002).

(1) Trooper 1

In 1990, Trooper 1 was suspended for 8 hours for failing to appear for a scheduled trial, resulting in speeding charges being dismissed. That same year, Trooper 1 was officially reprimanded for yelling at and grabbing the arm of a citizen. The supervisors who reviewed and imposed the penalties did not include Colonel Ellingsworth. (D.I. 19, ex. 6; D.I. 23 at 1535-36)

(2) Trooper 2

In 1997, Internal Affairs investigated Trooper 2 for having improper sexual relations with a woman he had arrested during a domestic violence complaint. He ultimately was charged with conduct unbecoming an officer. Rather than face discipline, Trooper 2 resigned. The State Police referred the matter to the Attorney General's Office for possible criminal prosecution, and to the Council on Police Training to de-certify Trooper 2 as a police officer. Colonel Ellingsworth was the Superintendent at the time. (D.I. 19, ex. 2)

(3) Trooper 3

In 1992, after an Internal Affairs investigation, Trooper 3 was charged with conduct unbecoming an officer for taking nude photos of himself in his office. He waived his right to a Divisional Trial Board and pled guilty. The Superintendent (Colonel Graviet) demoted and transferred Trooper 3 and ordered him to get counseling.³ (D.I. 19, ex. 3)

(4) Trooper 4

³Although plaintiff avers in an affidavit that Trooper 3 engaged in inappropriate behavior with a 17-year-old girl for whom he was a softball coach, the court will not consider such allegations in its analysis. First, there is no evidence of record to support plaintiff's averment; second, even if this conduct occurred, it did not relate to conduct undertaken as a police officer while on duty and, therefore, is not comparable to the charges against plaintiff.

In 1993, after an Internal Affairs investigation, Trooper 4 was charged with conduct unbecoming an officer for his trying to have continued contact with a woman who had ended their romantic relationship. Trooper 4 waived his right to a Divisional Trial Board and pled guilty. The Deputy Superintendent (Lt. Colonel Ellingsworth) suspended Trooper 4 for ten days, placed him on probation for one year, and ordered him not to have any contact with the woman. In 1994, Trooper 4 was disciplined for violating the no-contact order. Trooper 4 again waived his right to a Divisional Trial Board and pled guilty. The Deputy Superintendent (Lt. Colonel Pepper) suspended Trooper 4 for fifteen days. (D.I. 19, ex. 3)

(5) Trooper 5

In 1993, Trooper 5 was investigated after the Department of Motor Vehicles reported he might be changing traffic tickets to reduce points for the drivers involved. Trooper 5 waived his right to a Divisional Trial Board and pled guilty to violating the State Police Rules and Regulations. The Superintendent (Colonel Gravier) suspended Trooper 5 for five days and placed him on probation for one year. (D.I. 19, ex. 3)

(6) Trooper 7

In 1993, Trooper 7 was investigated for use of excessive force in the case of a woman arrested for driving under the influence of alcohol. In the course of that investigation, the

woman claimed that, while driving her to Troop 5 for processing, Trooper 7 offered to drop the DUI charge against her in exchange for oral sex. Internal Affairs concluded that these allegations were unfounded. After case review, the Superintendent (Colonel Graviet) agreed. (D.I. 19, ex. 6)

In 1994, Trooper 7 was investigated for agreeing with a defense attorney to reduce a DUI charge, and for agreeing with another defense attorney to get a motor vehicle violation nolle prossed. Trooper 7 pled guilty to the charges and went to a penalty hearing before the Superintendent (Colonel Ellingsworth), who demoted Trooper 7 two ranks (from Corporal to Trooper), placed him on probation for one year, and transferred him from Troop 5 to Troop 3. (D.I. 19, ex. 2)

(7) Trooper 13

In 1995, Trooper 13 was charged with misconduct for pursuing a romantic relationship with a woman whose criminal complaint he was investigating. A Divisional Trial Board found Trooper 13 guilty of conduct unbecoming an officer, and recommended discipline to the Superintendent, but not his termination. Under the State Police Rules and Regulations, the Superintendent does not have the authority to suspend a State Trooper with intent to terminate unless the Divisional Trial Board recommends termination. Although the Superintendent (Colonel Ellingsworth) believed there were grounds for termination, he did not have the

authority to do more than suspend the Trooper and impose additional, more severe, penalties, including transfer, remedial training, and a psychological evaluation. (D.I. 19, ex. 2)

(8) Trooper 14

In 2001, Internal Affairs investigated Trooper 14 for having a relationship with a 17-year old woman who was the victim of a crime Trooper 14 investigated. The Superintendent (Colonel Pepper) suspended Trooper 14 pending the outcome of the investigation. Internal Affairs found the charge of conduct unbecoming an officer substantiated. However, Trooper 14 resigned before the matter went forward to a disciplinary hearing. The State Police referred the matter to the Attorney General's Office for possible criminal prosecution, and Trooper 14 voluntarily gave up his police certification. (D.I. 19, ex. 3)

Having reviewed the record, the court concludes that the circumstances of each of the above identified comparators are not sufficiently similar to plaintiff's circumstances so as to create an inference that plaintiff was terminated as a result of racial discrimination. With respect to Troopers 1, 3, 4, and 5, neither the charges nor the decision makers are comparable to those of plaintiff. With respect to Trooper 7, although Colonel Ellingsworth was a decision maker as to some of the charges, those charges clearly were not of comparable seriousness. With

respect to Troopers 2 and 14, because these Troopers resigned before any disciplinary measures were imposed, there is no way of comparing the ultimate outcomes of their cases to that of plaintiff. Finally, with respect to Trooper 13, Colonel Ellingworth did not have the authority to terminate the employment of Trooper 13; therefore, Trooper 13's circumstances and those of plaintiff are not comparable.⁴

b. Plaintiff's generalized evidence of past racial discrimination at Troop 7

Plaintiff contends that the record supports an inference of racial discrimination from the generalized evidence of past conduct at Troop 7. In 1990, there was an Internal Affairs investigation into the work environment for minority State Troopers stationed at Troop 7. As a result of that investigation, four State Troopers were implicated as having conducted themselves improperly; two State Troopers were charged and disciplined. Trooper 2 was charged with conduct unbecoming

⁴In connection with his discussion of the white comparators, plaintiff asserts that "[w]hite officers who were accused of conduct unbecoming an officer were not subjected to extensive search and interrogation as plaintiff. For instance, the department shows no evidence that once it received a charge of inappropriate behavior involving a female with any of the white officers that it went through their arrest records and began calling female drivers to question whether they had had any problems with those officers." (D.I. 22 at 5) The record does not demonstrate that any of the other comparators had previous Internal Affairs investigations related to similarly serious citizen complaints, thus justifying further inquiry. Therefore, the court finds this argument unpersuasive evidence of discriminatory treatment.

an officer and suspended 16 hours, with the option to forfeit vacation. Trooper 3 was charged with use of poor judgment and ordered to undergo counseling. (D.I. 23 at 1543-1602)

Thereafter, in 1992, Trooper 1 was charged with conduct unbecoming an officer and suspended for 24 hours, with the option to forfeit vacation. (D.I. 23 at 1532)

The above evidence of misconduct does not constitute persuasive evidence of discriminatory treatment in the case at bar. The instances of misconduct are remote in time from the events at issue and, but for the 1992 incident, did not involve Colonel Ellingsworth as a decision maker.

2. Pretext

Even if the court were to conclude that plaintiff's evidence was sufficient to establish a prima facie case of racial discrimination, the court further concludes that plaintiff has not "cast sufficient doubt" upon defendant's proffered reasons for plaintiff's termination from employment to permit a reasonable factfinder to conclude that the reasons were fabricated. Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1072 (3d Cir. 1996) (en banc). Defendant at bar has articulated legitimate nondiscriminatory reasons for the adverse employment action it has taken against plaintiff, in particular,

the charges⁵ that plaintiff abused his position of trust by targeting young women in the capacity of a police officer and making sexual overtures to them.

A plaintiff can cast sufficient doubt on a defendant's legitimate nondiscriminatory reasons by showing "weaknesses, implausibilities, inconsistencies, incoherences, or contradictions in the employer's proffered legitimate reasons for its action [such] that a reasonable factfinder could rationally find them 'unworthy of credence.'" Id. (quoting Fuentes v. Perskie, 32 F.3d 759, 764-765 (3d Cir. 1994)).

In this case, plaintiff presents the same evidence in the pretext stage as he proffered in support of his prima facie case. Having found that the evidence of record does not establish an inference of discrimination, it follows that the same evidence does not establish a pretext for racial discrimination. Plaintiff's employment was terminated because of serious charges related to his abuse of the public trust. None of the comparator evidence demonstrates that there were similarly situated white State Troopers who were treated more leniently. Likewise, the evidence of racial remarks made in the past by co-workers does not cast sufficient doubt on the disciplinary process at issue,

⁵Although plaintiff was charged with several violations of the State Police Rules and Regulations, the court has focused on the most serious of those charges involving conduct unbecoming an officer. Plaintiff denied the allegations made against him, but did not present any evidence to rebut these allegations.

because the co-workers were "outside the chain of decision-makers who had the authority to hire and fire plaintiff." Gomez v. Allegheny Health Services, Inc., 71 F.3d 1079, 1085 (3d Cir. 1995). In sum, plaintiff has not demonstrated any "weaknesses, implausibilities, inconsistencies, incoherences, or contradictions" related to the charges lodged against him, such that a reasonable factfinder could rationally find them "unworthy of credence."

For these reasons, the court concludes that the evidence offered by plaintiff in support of both his prima facie case and the pretext stage is insufficient to withstand defendant's motion for summary judgment.

B. Title VII Retaliation Claim

To establish a prima facie case of retaliation under Title VII, a plaintiff must establish that: (1) he engaged in protected activity; (2) defendant took adverse employment action against him; and (3) a causal link exists between the adverse employment action taken by defendant and the protected activity engaged in by plaintiff. Kachmar v. SunGard Data Systems, Inc., 109 F.3d 173, 177 (3d Cir. 1997).

Plaintiff at bar alleges that, after he complained about racially disparaging remarks by co-workers in 1990 and 1991, defendant retaliated against him by making him bring in a doctor's note before required under existing policy (1990; D.I.

23 at 1556-1557); making him salute a supervising officer at Troop 7 when others were not required to do so (1991); taking away his take home vehicle privileges when a white officer was not so deprived (1994); and giving him a written reprimand for failing to file a proper accident report when a white officer was not so disciplined (1994). Plaintiff maintains that the record, taken as a whole, shows a history of antagonism directed towards him and, from this evidence, a reasonable factfinder could conclude that defendant was motivated by retaliation to discharge him. (D.I. 22 at 17)

The record demonstrates that plaintiff did file official complaints about his treatment by co-workers during the period 1990 to 1992. Further, there is no dispute that plaintiff was subject to an adverse employment action by his termination of employment in 1995.⁶ The question remains whether plaintiff has adduced any evidence of a causal connection between his complaints of discrimination in the early 1990s and his discharge in 1995.

In this regard, the court notes that discovery has closed and, aside from the incident involving the doctor's note, the remaining events cited by plaintiff in connection with his

⁶Plaintiff does not specifically allege, and the court does not consider, his other allegations of retaliation (the doctor's note, saluting, losing vehicle privileges, getting a written reprimand) to be adverse employment actions.

retaliation claim are based on his declaration alone, with no supporting documentation from defendant's records. To put the point differently, plaintiff's proof of a "pattern of antagonism" is based on the timing of his accusations and little more. Generally, in the absence of "extremely close timing between the alleged protected activity and the adverse employment action, a plaintiff cannot rely on mere temporal proximity to establish a claim of retaliation." Taylor v. Proctor & Gamble Dover Wipes, 184 F. Supp. 2d at 417 (citing Clark County School District v. Breeden, 532 U.S. 268, 273-274 (2001)). Plaintiff maintains that his first complaint in 1990 "began a series of events where the plaintiff was treated differently than similarly situated persons who had not made complaints about discrimination." (D.I. 22 at 17) See Kachmar, 109 F.3d at 178 ("[W]here there is a lack of temporal proximity, circumstantial evidence of a 'pattern of antagonism' following the protected conduct can also give rise to the inference."). However, the court has found that plaintiff's proof in this regard is legally insufficient. Assuming that the events occurred, there were different decision makers involved in the events alleged and the comparators were not otherwise similarly situated. Therefore, the court finds that plaintiff has failed to provide evidence "sufficient to raise the inference that [his] protected activity was the likely reason for the

adverse action.” Id. at 177 (quoting Zanders v. National R.R. Passenger Corp., 898 F.2d 1127, 1135 (6th Cir. 1990)).

V. CONCLUSION

For the reasons stated, the court concludes that defendant has demonstrated that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. Therefore, defendant’s motion for summary judgment shall be granted. An appropriate order shall issue.