IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

KATHLEEN M. PERSINGER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 02-1447 JJF
	:	
DELMAR SCHOOL DISTRICT,	:	
	:	
Defendant.	:	

John M. Stull, Esquire of JOHN M. STULL, ESQUIRE, Wilmington, Delaware.
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Attorney for Defendant.

MEMORANDUM OPINION

July 8, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is Defendant's Renewed Motion For Summary Judgment. (D.I. 48.) For the reasons set forth below, the Court will grant the Motion.

BACKGROUND

On June 27, 2001, the Plaintiff, Kathleen M. Persinger, filed a charge with the Delaware Department of Labor and the Equal Employment Opportunity Commission ("EEOC") alleging that Delmar School District (the "School District") discriminated against her on the basis of race, gender, religion, and disability. Plaintiff subsequently filed suit in this Court alleging that her supervisor at the School District, Dr. Harry Hoffer ("Dr. Hoffer"), subjected her to a continuing campaign of discrimination and harassment which she contends caused her to become mentally and emotionally incapable of performing her job as a special education teacher, thus forcing her to obtain disability pension benefits and resign from her position.

Not surprisingly, the School District presents a different rendition of the events surrounding Plaintiff's resignation. On March 15, 2003, Plaintiff was proctoring a standardized state test at the School District. During this examination, the School District asserts that Plaintiff was observed by two of her fellow teachers modifying a student's answer and providing unauthorized written aids to students. The School District contends that this

conduct is proscribed by state regulations and exposed it to sanctions by the state. The School District asserts that it was this conduct that led to a final confrontation with Plaintiff, at which point Plaintiff had a panic attack and was taken to the hospital. The School District states that it subsequently advised Plaintiff that she would be terminated for her transgressions, but postponed terminating her so that Plaintiff could complete an application for disability benefits. Plaintiff subsequently received a disability pension which mooted any termination intentions of the School District.

On November 20, 2003, the Court granted Plaintiff an extension of time to respond to the School District's discovery requests and set a deadline for the completion of discovery. (D.I. 40.) Based on this extension, the Court permitted the parties to supplement their case dispositive motions. Id. By its supplemented Motion, the School District moves the Court to grant it summary judgment on all of Plaintiff's claims.

STANDARD OF REVIEW

Rule 56(c) of the Federal Rules of Civil Procedure provides that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and the moving party is entitled to judgment as a

matter of law. Fed. R. Civ. P. 56(c). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). Thus, to properly consider all of the evidence without making credibility determinations or weighing the evidence the "court should give credence to the evidence favoring the [non-movant] as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" Id. (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986)).

To defeat a motion for summary judgment, Rule 56(c) requires the non-moving party to:

> do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial." . . . Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is "no genuine issue for trial."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986)(quoting Fed. R. Civ. P. 56). Accordingly, a mere scintilla of evidence in support of the non-moving party is

insufficient for a court to deny summary judgment. Liberty Lobby, Inc., 477 U.S. at 252 (1986).

DISCUSSION

I. Whether Summary Judgment Is Appropriate On Plaintiff's Hostile Work Environment Claim[1]

A. Contentions

The School District contends that it should be granted summary judgment on Plaintiff's hostile work environment claim because Plaintiff has failed to establish a prima facie case of discrimination. The School District maintains that Plaintiff has pointed to no evidence demonstrating that she was discriminated against on the basis of religion, race, or gender. The School District also contends that, even if Plaintiff were able to demonstrate that Dr. Hoffer discriminated against her on the basis of religion, race, or gender, she could not establish respondeat superior liability for the School District because she has provided no evidence that high-level officials at the School District were aware of this alleged discrimination.

Plaintiff did not submit an opposition brief to the School District's supplemented Motion, and therefore, the Court concludes that Plaintiff intends to rely upon her prior

[1] It is not clear from the Complaint or Plaintiff's Opposition Brief what Plaintiff advances as her theories for recovery. However, based on a reading of the papers, the Court construes Plaintiff's Complaint to contend discrimination based on: 1) hostile work environment; 2) violation of the Americans With Disabilities Act (the "ADA"); and 3) constructive discharge.

submission in opposition to the School District's initial summary judgment motion. (D.I. 51.) In her papers, Plaintiff contends that she was terminated from employment at the School District due to continued harassment and pressure by Dr. Hoffer. Plaintiff asserts that the uncontested facts and documents establish the discriminatory and harassing actions of Dr. Hoffer.

B. Decision

As discussed above, the Court construes the Complaint to allege that the School District subjected Plaintiff to a hostile work environment based on her gender, religion, and race in violation of Title VII of the Civil Rights Act of 1964. (D.I. 37 at A2.) When evaluating Title VII claims, courts utilize the burden-shifting framework established by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). This burden shifting involves three steps: 1) the plaintiff has the initial burden of establishing a prima facie case of discrimination; 2) if the plaintiff meets his or her burden, the burden shifts to the defendant to articulate some legitimate non-discriminatory rationale for his or her action; and 3) if a defendant proffers a non-discriminatory reason, the burden shifts again to the plaintiff to prove by a preponderance of the evidence that the reasons proffered by the defendant are merely a prextext for illegal discrimination. See McDonnell Douglas, 411 U.S. at 801-05; Chandler v. City of Newark, 2001 WL 902209 at *2

(D. Del. July 31, 2001)(quoting Texas Dep't of Comm. Affairs v. Burdine, 450 U.S. 248, 252-53 (1973)). The School District maintains that Plaintiff cannot establish a prima facie case of discrimination in violation of Title VII.

In order to state a prima facie hostile work environment Title VII claim, Plaintiff must demonstrate that: 1) she suffered intentional discrimination because of her membership in a protected class; 2) the discrimination was pervasive and regular; 3) the discrimination detrimentally affected her; 4) such discrimination would have affected a reasonable person of the same protected class in that position; and 5) the existence of respondeat superior liability. West v. Philadelphia Elec. Co., 45 F.3d 744, 753 (3d Cir. 1995); Hall v. Bell Atlantic Corp., 152 F. Supp. 2d 543, 550 (D. Del. 2001). The School District contends that Plaintiff has failed to adduce evidence sufficient to establish elements one and five of a prima facie case.

The Court agrees with the School District that Plaintiff has failed to provide evidence sufficient to establish the first element of her Title VII hostile work environment claim. As an initial matter, the Court notes that Plaintiff has pointed to no specific facts in her Opposition Brief supporting her claim of discrimination and, that on this ground alone, summary judgment in favor of the School District is appropriate. See Matsushita, 475 U.S. at 586-87 (noting that a party opposing a motion for

summary judgment "must come forward with 'specific facts showing that there is a genuine issue for trial.'")(quoting Fed. R. Civ. P. 56).[2] Moreover, the Court is persuaded that the allegations of discrimination against the School District consist entirely of unsupported, vague, and conclusory allegations of discriminatory attitudes held by Dr. Hoffer that are not evidence of intentional discrimination.

For example, Plaintiff relies on the deposition testimony of Pamela K. Grosz in support of her allegation that Dr. Hoffer intentionally discriminated against Plaintiff because of her gender. In her deposition, Ms. Grosz was asked, "Are you aware of any . . . instances where Dr. Hoffer exhibited negative, I'll call it, attitude toward women employees of Delmar High School other than yourself?" Ms. Grosz responded, "I can't remember specific ones, but, I mean, there were times that he raised his

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[2] Instead of identifying particular passages of the Appendix accompanying her motion for summary judgment (D.I. 51), Plaintiff states that "[b]ased on the provable, admitted and established facts and relevant documents which authenticity is uncontested, as compiled in the attached Appendix material . . . [Plaintiff] has shown . . . no other result that the continual and effective harassment of her on the job has resulted in her loss of job . . . ." (D.I. 39 at 9.) Such generalized references to an appendix of compiled materials one hundred and sixty two pages in length do not qualify, in the language of the rule, as "set[ting] forth specific facts showing that there is a genuine issue for trial," and thus cannot preclude the entry of summary judgment. Fed. R. Civ. P. 56(e). The Court should not be required, although it has attempted to do so here, to "develop [a party's] argument or defense [or] augment a nonmovant's position[.]" James Wm. Moore, et al., 11 Moore's Federal Practice § 56.13[3] (3d ed. rev. 2003).

voice at some other women. I should say specifically [Plaintiff]." (D.I. 51 at 145-46.) Upon further questioning about the specifics of Dr. Hoffer's hostility toward Plaintiff, Ms. Grosz replied:

> A: [Dr. Hoffer] got upset about something that we said.
> Q: What was said?
> A: Something regarding – I don't really know. . . . I can't remember what people say. I'm sorry.

Id. at 146. Even when viewed in the light most favorable to Plaintiff, the fact that Dr. Hoffer was upset about something Ms. Grosz and Plaintiff said does not provide probative evidence of intentional discrimination.[3]

Plaintiff's responses to questions about religious discrimination during her deposition also fail to establish discrimination by the School District. The following testimony is illustrative:

> Q: Can you tell me any specific instances while you were employed at [the School District] that Dr. Hoffer discriminated against you because of your religion?
> A: Yes, I can.
> Q: Please explain.
> A: There were other people in the school that prayed with [Dr. Hoffer].
> . . .
> Q: So you attribute the fact that Dr. Hoffer did not want to pray with you or have you pray for him to be discrimination against you because of your religion.
> A: Yup.

(D.I. 48 at A58-59.) Further, when questioned if she remembered

[3] Plaintiff's responses to questions in her deposition regarding evidence of gender discrimination were similarly non-specific. Id. at 61-62.

any specific incidents where Dr. Hoffer discriminated against her because of race, Plaintiff responded, "Nope. That's pushed far back. I'm sure it will come back to me in dreams, don't worry." Id. at A60. The Court concludes that these unsubstantiated, generalized, and conclusory assertions are insufficient to establish intentional discrimination by Dr. Hoffer.[4] Thus, because Plaintiff cannot establish the initial showing of illegal discrimination by Dr. Hoffer, the Court will grant the School District summary judgment on Plaintiff's hostile work environment claim based on race, gender, and religion.[5]

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[4] The Court also observes that the deposition testimony of one of the witnesses Plaintiff relies on in support of her hostile work environment claim actually supports the School District's assertion that there is no evidence of discrimination in violation of Title VII in this case. In her deposition, Ilah Preston testified that Dr. Hoffer only cared if subordinates felt he had power over them. "He didn't care if you were [sic] man, woman, black, white, Indian. He didn't care about any of that." (D.I. 51 at 156.)

[5] Even if the Court were to find that Plaintiff established a prima facie case of discrimination, the Court would grant the School District summary judgment because Plaintiff has failed to identify evidence sufficient to overcome the legitimate non-discriminatory reason offered by the School District for its decision to terminate Plaintiff (which was never carried out because of Plaintiff's receipt of disability). The School District asserts that while Plaintiff was proctoring a state test, she impermissibly modified a student's answer and provided unauthorized aids in the testing room. (D.I. 52 at 5.) The School District contends that these actions were prohibited by state guidelines and exposed it to sanctions by the state. The record evidence demonstrates that the School District advised Plaintiff that she would be terminated based on these actions, at which time Plaintiff chose to seek a disability pension. (D.I. 37 at A44, A46, A47.)

Once the School District has identified a legitimate non-

II. Whether Summary Judgment Is Appropriate On Plaintiff's ADA Claim

A. Contentions

The School District contends that it is entitled to summary judgment on Plaintiff's ADA claim because, even if it concedes that Plaintiff has a mental illness that qualifies as a disability under the ADA, Plaintiff has provided no evidence that the School District was aware of such disability. Thus, the School District contends that it was impossible for it to discriminate against Plaintiff because of her disability.

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discriminatory reason for its employment action, for Plaintiff to survive summary judgment, she must point to some evidence that would allow a reasonable factfinder to infer that the School District's non-discriminatory reasons were "either . . . post hoc fabrication[s] or otherwise did not actually motivate the employment action." Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994)(citations omitted). Plaintiff must do more than demonstrate that the employer's promotion decision was "wrong or mistaken," id. at 765, but offer evidence sufficient to persuade reasonable minds that her evidence of pretext is more credible than the School District's justifications. See Iadimarco v. Runyon, 190 F.3d 151, 166 (3d Cir. 1999)(citing White v. Westinghouse Elec. Co., 862 F.2d 56, 62 (3d Cir. 1989), abrogated on other grounds, Hazen Paper Co. v. Biggins, 507 U.S. 604 (1993)).

The Court concludes that the evidence produced by Plaintiff consists of only generalized and unsupported allegations of discrimination. Neither Plaintiff nor her supporting witnesses could identify any specific acts by Dr. Hoffer that indicate Plaintiff was discriminated against based on race, religion, or gender. Accordingly, although Plaintiff may be able to demonstrate at trial that she had a strained relationship with her supervisor, Dr. Hoffer, the Court concludes that Plaintiff would be incapable of persuading reasonable jurors that the School District's proffered justifications for deciding to terminate her were pretextual. Sheridan v. E.I. DuPont de Nemours & Company, 100 F.3d 1061, 1067 (3d Cir. 1996).

Further, the School District maintains that Plaintiff cannot establish that she was qualified for the position she held because in her claim for a disability pension Plaintiff asserted that she was unable to perform any of the duties required of a special education teacher. Plaintiff did not respond to the School District's arguments.

B. Decision

The McDonnell Douglas burden shifting framework described above also applies to claims of discrimination in violation of the ADA. Shaner v. Synthes, 204 F.3d 494, 500 (3d Cir. 2000)(citations omitted). In order to establish a prima facie case of discrimination in violation of the ADA, a plaintiff must show that he or she : 1) is a disabled person within the meaning of the ADA; 2) is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer; and 3) has suffered an adverse employment decision as a result of discrimination. Id. (citing Gaul v. Lucent Techs., Inc., 134 F.3d 576, 580 (3d Cir. 1998); Deane v. Pocono Med. Ctr., 142 F.3d 138, 142 (3d Cir. 1998)(en banc)).

The Court concludes that the School District is entitled to summary judgment on Plaintiff's ADA discrimination claim for failure to establish a prima facie case of discrimination. First, Plaintiff provided no response to the School District's assertion that its employees were unaware of Plaintiff's

disability. Certainly, if no official at the School District was aware of Plaintiff's disability, there can be no discrimination on the basis of such disability. Further, based on the absence of any response by Plaintiff to the School District's contention that Plaintiff's application for disability benefits contradicts her present claim that she is otherwise qualified to perform the essential functions of a special education teacher, the Court concludes that Plaintiff has failed to satisfy the second element of her prima facie case of discrimination in violation of the ADA.

As the Third Circuit discussed in Motley v. New Jersey State Police, 196 F.3d 160 (3d Cir. 1999), there is an inconsistency between a plaintiff's claim that he or she is qualified for a position, but denied that position due to a disability, and a prior application for disability by the same plaintiff where the plaintiff represented that he or she qualified for disability benefits due to a "total disability." Id. at 164-66. In such cases, the Third Circuit has held that a plaintiff "'must proffer a sufficient explanation' to resolve the contradiction." Id. at 165 (quoting Cleveland v. Policy Mgmt. Sys. Corp., 526 U.S. 795, 1603 (1999)).

In the instant case, Plaintiff's application for disability benefits to the Delaware State Board of Pension Trustees represented that she "is unable to perform all educationally

related responsibilities. . . . At the present time, no duty is possible. A risk is posed that threatens the well-being of children." (D.I. 51 at A52.) Plaintiff's representation that she is wholly unable to perform her teaching duties because of a danger posed to children, in the Court's view, contradicts any claim that she is otherwise qualified, with or without reasonable accommodations, to perform the essential duties of her job as a special education teacher. And, as Plaintiff has made no attempt to explain her "apparent about-face concerning the extent of her injuries[,]" Motley, 196 F.3d at 165, the Court concludes that Plaintiff has not established the second element of a prima facie case of discrimination in violation of the ADA.[6]

CONCLUSION

For the reasons discussed, the Court will grant the School District's Motion for Summary Judgment.

An appropriate Order will be entered.

[6] Because the Court has concluded that Plaintiff's discrimination claims cannot be maintained, the Court will also grant the School District summary judgment on Plaintiff's constructive discharge claim based on these same events. See Phillips v. DaimlerChrysler Corp., C.A. No. 01-247 JJF, 2003 WL 22939481 (D. Del. March 27, 2003)(citing Gaul v. Lucent Technologies, Inc., 134 F.3d 576, 581 (3d Cir. 1998)(holding that because a disability discrimination claim failed, the constructive discharge claim based on the same events necessarily fails)).

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

KATHLEEN M. PERSINGER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 02-1447 JJF
	:	
DELMAR SCHOOL DISTRICT,	:	
	:	
Defendant.	:	

O R D E R

At Wilmington, this 8th day of July, 2004, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Defendant Delmar School District's Renewed Motion For Summary Judgment (D.I. 48) is **GRANTED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

KATHLEEN M. PERSINGER,	:	
	:	
Plaintiff,	:	
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v.	:	Civil Action No. 02-1447 JJF
	:	
DELMAR SCHOOL DISTRICT,	:	
	:	
Defendant.	:	

JUDGMENT IN A CIVIL CASE

For the reasons stated in the Court's Memorandum Opinion and Order issued on July 8, 2004;

IT IS ORDERED AND ADJUDGED that judgment be and is hereby entered in favor of Defendant Delmar School District (D.I. 48.)

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

Dated: July 8, 2004

Susan S. Baer
(By) Deputy Clerk