IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SARAH C. TAYLOR, Plaintiff, v. JOHN E. POTTER, Postmaster General, U.S. Postal Service, Eastern Area, Defendant.	)	Civil Action No. 02-1552-KAJ CONSOLIDATED
SARAH C. TAYLOR, Plaintiff, v. JOHN E. POTTER, Postmaster General US Postal Service, Defendant.	)	Civil Action No. 02-1619-KAJ
SARAH C. TAYLOR, Plaintiff, v. JOHN E. POTTER, Postmaster General, US Postal Service, Defendant.	)	Civil Action No. 03-1105-KAJ

MEMORANDUM OPINION

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Wilmington, Delaware
August 18, 2004

JORDAN, District Judge

I. INTRODUCTION

Presently before me is a Motion for Summary Judgment (Docket Item ["D.I."] 53; the "Motion") filed by defendant John E. Potter, Postmaster General, United States Postal Service (the "Defendant"), pursuant to Federal Rule of Civil Procedure 56(c).[1] Jurisdiction in this case is proper under 28 U.S.C. § 1331. For the reasons set forth, the Defendants' Motion will be granted.

II. BACKGROUND

A. Procedural Background

On October 18, 2002, Sarah C. Taylor ("Plaintiff"), an African-American female, filed a complaint[2] pursuant to Title VII of the Civil Rights Act of 1964, alleging that Defendant discriminated against her on the basis of race, color, sex, disability, and retaliation for "EEO activity."[3] (Docket 02-1552-KAJ Item 2; "1552 #2" ¶ 9.) On November 8, 2002, Plaintiff filed two separate complaints, one pursuant to the Family and Medical Leave Act of 1993 ("FMLA"), 29 U.S.C. §§ 2601 et. seq. (Docket 02-1619-KAJ Item 3; "1619 #3"), and the other pursuant to the Privacy Act of 1974, 5 U.S.C. §

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[1]The Defendant states that the Motion is brought is pursuant to Fed. R. Civ. P. 56(b), but quotes from the language of Rule 56(c).

[2]This action is an appeal from an October 4, 2002 decision of an Administrative Law Judge ("ALJ") for the Merit Systems Protection Board ("MSPB") that denied Plaintiff's claims of discrimination based on retaliation for EEO activity, race, and harassment. (*Id.*)

[3]Specifically, filing several equal employment opportunity complaints. (*See* D.I. 53, Ex. A at 21.)

552a (Docket 02-1620 Item 3; "1620 #3"). On December 4, 2003, Plaintiff filed another complaint pursuant to Title VII of the Civil Rights Act of 1964, alleging that "[m]anagement conspired with employees to circumvent the Judges [sic] order to reinstate my position. It was a decision based on retaliation, & rase [sic] to discriminate, harass, intimidate, and cause injury."[4] (Docket 03-1105-KAJ Item 2; "1105 #2.")

On April 4, 2003, I issued an order consolidating Civil Action Nos. 02-1552-KAJ, 02-1619-KAJ and 02-1620-KAJ. On March 4, 2004 I issued an order granting Defendants' Motion for Judgment on the Pleadings or in the Alternative for Summary Judgment in Civil Action No. 02-1620-KAJ. On May 6, I entered an Order granting Plaintiff's motion to consolidate cases 02-1552-KAJ, 02-1619-KAJ, and 03-1105 KAJ. The Defendant moves for summary judgment on those actions.

B. Factual Background[5]

Plaintiff worked at the Hockessin, Delaware Post Office from 1997 until June 2003.[6] (D.I. 72 at 3.) At the time of the alleged discriminatory action, Plaintiff was a

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[4]Civil Action 03-1105-KAJ is an appeal from a September 3, 2003 U.S. Postal Service decision that closed Plaintiff's case with a finding of no discrimination based on race, color, sex, disability, and retaliation. (See 1105 #2, Attachment 1.)

[5]The following rendition of the background information for my decision is cast in the light most favorable to the nonmoving party, Plaintiff, and does not constitute findings of fact.

[6]From October 23, 2000 to on or about September 30, 2002, Plaintiff was absent from duty. (D.I. 53 at 4-5, Ex. A at pp. 2-3, 29.) Plaintiff did not return to work after October 23, 2000 because of anxiety and depression. (*Id*.) Thereafter, she was not permitted to return to work until she obtained a fitness for duty exam conducted by a Board Certified Psychiatrist. (*Id*.) Plaintiff underwent the examination, but failed to follow the Psychiatrist's instructions, and was subsequently terminated. (*Id*.) After a series of appeals, Plaintiff returned to work with full back pay. (*Id*.) On June 5, 2003, the Plaintiff stopped working because her doctor prescribed that she no longer work at

clerk assigned to the computer forwarding system ("CFS") unit. (D.I. 53, Ex. A at 2.) In April, 2000, Dawn Podsiad ("Podsiad") became the permanent supervisor of the CFS unit. (*Id.*, Ex. B at 44.) Prior to Podsiad's arrival, the CFS unit "had experienced performance deficiencies, as well as turnover of supervisory personnel." (*Id.*, Ex. A at 27.) According to Plaintiff, "[w]ith the arrival of Dawn Podsiad came a difference in treatment of the minority employees at the Hockessin office." (D.I. 72 at 3.) Plaintiff alleges that Podsiad treated black employees differently than white employees by allowing white, but not black, employees time off, delegating different assignments based on race, allowing white, but not black employees to talk, and following black employees, but not white employees, into the restroom in order to monitor their activities. (*Id.*)

A hearing was held on May 5-8, June 14, and June 21, 2002 by an ALJ for the MSPB. (D.I. 53, Ex. A at 2.) Addressing nearly identical claims of disparate treatment on the basis of race, the ALJ found credible Podsiad's testimony that she did not show favoritism to white employees with respect work assignments. (*Id.* at 26.) Podsiad explained that Mary Miller ("Miller") was given the change of address assignment and placed in a separate area away from the Plaintiff because of a conflict between the Plaintiff and Miller and because Miller was concerned about feeling intimidated and threatened by Plaintiff. (*Id.*)

The ALJ also believed Podsiad's statements that she did not care if the clerks talked as long as they continued to work and remained productive, but would admonish

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the post office due to psychological and medical concerns. (D.I. 54 at Ex. F.) She has not returned from work since that time. (*Id.*)

them if they were talking and not performing their work. (*Id*. at 27.) The ALJ also noted that Podsiad admitted that "she may have gone into the bathroom when [Plaintiff] was there because ... it was reported to her that [Plaintiff] was going to the bathroom to use the cell phone and to talk with other employees." (*Id*. at 26)

Furthermore, the ALJ noted that the witnesses who testified that Podsiad treated black employees differently than the white employees "were, like [Plaintiff], poor performing employees who were either terminated or resigned." (*Id.* at 27). The ALJ also found that several employees observed that Podsiad's strict management style initially brought change to the work unit, and, as a result, many employees had difficulty adjusting to the change. (*Id*.) Finally, the ALJ found that Podsiad's denial of any effort to get rid of the black employees to be credible, and noted that the "agency offered evidence, which shows that the racial composition of the [Plaintiff's] work unit has remained constant from the time Podsiad became the supervisor until now." (*Id*.)

III. STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 56(c), 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 that 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).

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). Accordingly, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

IV. DISCUSSION

A. Discrimination based on race, color and sex

The United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973), set forth a three-step burden shifting analysis for Title VII employment discrimination claims. First, the plaintiff has the initial burden of establishing a *prima facie* case of discrimination. *See McDonnell Douglas*, 411 U.S. at 802. This is done by showing that the plaintiff: 1) is a member of a protected class; 2) was qualified for the position; 3) suffered an adverse job action; and 4) was treated differently than employees who are not members of his protected class. Whether the plaintiff has established a *prima facie* case of discrimination is a question of law for the court. *Sarullo v. United States Postal Service*, 352 F.3d 789, 798 (3d Cir. 2003).

If the plaintiff establishes a *prima facie* case of discrimination, the burden shifts to the defendant-employer to articulate a legitimate, nondiscriminatory reason for the employment decision. *McDonnell Douglas*, 411 U.S. at 802. "The employer satisfies its burden of production by introducing evidence which, if taken as true, would permit the conclusion that there was a non-discriminatory reason for the unfavorable employment decision." *Fuentes v. Perskie*, 32 F.3d 759, 763 (3d Cir. 1994). If the employer meets its "relatively light" burden by articulating a legitimate reason for the employment decision, the burden shifts back to the plaintiff to show "by a preponderance of the evidence" that the nondiscriminatory reason offered by the employer was a mere pretext for racial discrimination. *See id.* (citing *McDonnell Douglas*, 411 U.S. at 802*).*

The Defendant does not dispute that Plaintiff is a member of a protected class, was qualified for her job at the United States Postal Service, or that she suffered an adverse job action.[7] Only the fourth prong of the *McDonnell Douglas* test, Plaintiff's claim of race, color, and sex discrimination based on disparate treatment is disputed. (D.I. 53 at 10; D.I. 72 at 6.) The Third Circuit has stated that "[a] disparate treatment violation is made out when an individual of a protected group is shown to have been

[7]Plaintiff alleges that she has suffered an adverse employment action because she was subjected to a hostile work environment. (D.I. 72 at 5) (quoting *Schwapp v. Town of Avon*, 118 F.3d 106, 110 (2d Cir. 1997)). Although the Defendant alleges that Plaintiff did not suffer an adverse action because she "has not alleged or presented any evidence that she suffered any loss of pay or benefits through any of her supervisor's actions" (D.I. 53 at 10), Defendant did not address the specific argument advanced by Plaintiff that "a hostile work environment may be considered an adverse employment action" and that the workplace was "permeated with discrimination so 'severe [and] pervasive' as to support a Title VII claim" (D.I. 72 at 5).

singled out and treated less favorably than others similarly situated" on the basis of race. *E.E.O.C. v. Metal Serv. Co.*, 892 F.2d 341, 347 (3d Cir. 1990).

Plaintiff alleges that "[t]he depositions of [Plaintiff] and her coworkers show that Dawn Podsiad treated black employees differently than white employees. Both black and white employees held the same job titles and were responsible for identical tasks, thereby making them similarly situated." (D.I. 72 at 6.) However, other than this conclusory allegation, the Plaintiff has utterly failed to identify similarly situated employee's outside of her protected group who were treated more favorably. *See Weldon v. Kraft*, 896 F.2d 793, 797 (3d Cir. 1990) (a plaintiff must show that "others not in the protected class were treated more favorably"). Therefore, Defendant's Motion must be granted on Plaintiff's claims of racial and sexual discrimination.

B. Retaliation

A plaintiff alleging that an unfavorable job action is based upon an illegal retaliatory motive in violation of Title VII must first establish that "(1) he was engaged in protected activity; (2) he was [subject to an adverse job action] subsequent to or contemporaneously with such activity; and (3) there is a causal link between the protected activity and the [subsequent adverse job action]." *Sarullo,* 352 F.3d at 800; *Woodson v. Scott Paper Co.,* 109 F.3d 913, 920 (3d Cir. 1997). That Plaintiff engaged in protected EEO activity is not in contention.[8] (D.I. 53 at 11.)

[8]Plaintiff alleges that "she informed Salvatore Balan how to contact Veterans Affairs in order to be restored to his job and also ... wrote a statement for an EEOC hearing for Denise Jones." (D.I. 72 at 7.)

However, Plaintiff's attempt to establish a prima facie case of retaliation fails because even assuming Plaintiff's only example of retaliatory treatment[9] constitutes an adverse action, it was not subsequent to or contemporaneous with Plaintiff's EEO activity. Plaintiff, last engaged in EEO activity in 2000, but the actions in this complaint occurred in 2002. (1105 #2, Attachment 1.) Because of the passage of over two years, no reasonable fact finder could conclude that there was a causal connection between the EEO activity and the harassment. *See Clark Count School District v. Breeden*, 532 U.S. 268, 273-274 (2001) (the party must show that the prior protected activity and the instant event occurred very closely in tune to establish the necessary causality for a prima facie case of retaliation). Thus, Defendant's motion will be granted on Plaintiff's retaliatory discrimination claim.

C. Disability discrimination and violation of the FMLA

Plaintiff does not address the assertions in Defendant's Motion (D.I. 53 at 7-9) that Plaintiff cannot establish a prima facie case of discrimination on the basis of disability. Moreover, Plaintiff does not respond to Defendant's claims that Plaintiff has failed to state a claim under the FMLA. (*Id*. at 14.) Because unrebutted evidence and argument supports the Defendant's position that Plaintiff was not discriminated against, and that the Defendant did not violate the FMLA, summary judgment must be granted on those claims as well.

[9]The alleged retaliation is that Podsiad followed Plaintiff into the bathroom. "Podsiad following [Plaintiff] so closely to the bathroom that she almost ran into [Plaintiff's] back as she allowed another woman to exit the bathroom." (D.I. 72 at 8.)

V. CONCLUSION

Accordingly, for the reasons set forth herein, the Defendant's Motion (D.I. 53) will be granted. An appropriate order will follow.

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ORDER

For the reasons set forth in the Memorandum Opinion issued on this date,

IT IS HEREBY ORDERED that the Defendant's Motion for Summary Judgment (D.I. 53) is GRANTED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

August 18, 2004
Wilmington, Delaware