

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

COLLEEN SHOTZBERGER, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 03-151 JJF
 :
 STATE OF DELAWARE DEPARTMENT :
 OF CORRECTION, an agency of the :
 State of Delaware, PAUL HOWARD, :
 individually and in his official :
 capacity and STAN TAYLOR, in his :
 official capacity, :
 :
 Defendants. :

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Wilmington, Delaware.
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Attorneys for Defendants.

MEMORANDUM OPINION

January 30, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is the Motion For Summary Judgment filed by Defendants. (D.I. 31.) For the reasons discussed below, the Court will grant in part and deny in part Defendants' Motion.

BACKGROUND

I. Facts

Plaintiff initiated the instant lawsuit alleging the Defendants discriminated against her based upon her gender in violation of the Civil Rights Act of 1964, 1991, and the Fourteenth Amendment of the United States Constitution. Specifically, Plaintiff alleges that the Defendants made the decision not to promote her to the position of Inmate Classification Administrator ("Classification Administrator") based on her gender, and promoted a less qualified male employee, Anthony Redina. Plaintiff alleges that the direct and circumstantial evidence surrounding her denial of promotion reveals that the only credible rationale for the Defendants' action is that they denied her the promotion to Classification Administrator for illegal discriminatory reasons.

II. Parties' Contentions

Defendants contend that Plaintiff cannot satisfy, under a pretext theory of discrimination, her prima facie burden of discrimination. Specifically, Defendants contend that Plaintiff

cannot provide evidence that similarly situated males were treated more favorably than her because two male applicants that applied for the position Plaintiff sought were ranked less favorably than Plaintiff. Addressing Plaintiff's mixed motive claim, Defendants contend Plaintiff cannot provide direct evidence of discrimination. Defendants contend that comments made by Defendant Howard about Plaintiff's appearance are not direct evidence of discrimination. Further, Defendants contend that Plaintiff cannot establish a pattern or practice of discrimination because a similarly situated male, William Post, was not promoted to the position Plaintiff sought. In other words, Defendants contend that advancement at the Delaware Department of Corrections (the "DOC") was equally difficult for both males and females. Defendants also contend that Plaintiff's Fourteenth Amendment claim should be dismissed because Plaintiff cannot establish that she was denied substantive or procedural due process, the existence of a suspect classification, nor provide any evidence that Defendants' promotion decision was motivated by discrimination or that it evidences discriminatory results. Defendants Taylor and Howard, citing Sheridan v. EI Dupont de Numours & Co., 100 F.3d 1061, 1078 (3d Cir. 1996), contend that Plaintiff's Title VII claims against them, in their individual capacities, must fail because Congress did not intend for individual liability under Title VII. In addition,

Defendants contend that Plaintiff's Section 1983 claims against the state and its officials are barred by the Eleventh Amendment and that Defendant Howard is protected by qualified immunity.

In response, Plaintiff contends that under the standards provided by Fuentes v. Penskie, 32 F.3d 759 (3d Cir. 1994), she has established a prima facie case of discrimination. Plaintiff contends that the evidence establishes that she is a member of a protected class, that she was qualified for the position she sought, and that a male was treated more favorably than her because a male was promoted to the position she was denied. Further, Plaintiff contends that disputes over the elements of the prima facie case are properly deferred to the pretext stage of the McDonnell Douglas burden shifting analysis. Plaintiff concedes that Defendants have proffered several legitimate non-discriminatory reasons for their promotion decision; however, Plaintiff contends that evidence she has adduced demonstrates that each of the Defendants' non-discriminatory reasons for their decisions are pretextual. Plaintiff also contends that Defendants mischaracterize various aspects of her complaint. She contends that her complaint does not allege that any individual is liable under Title VII and that she only named the state as a defendant for the purpose of recovering attorneys' fees and costs. Finally, Plaintiff contends that Defendant Howard is not entitled to qualified immunity because it was not reasonable for

him to believe that it was lawful to discriminate against an individual based upon her gender.

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.

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).

DISCUSSION

By their Motion (D.I. 31), Defendants ask the Court to grant summary judgment on 1) Plaintiff's pretext and mixed motive discrimination claims; 2) Plaintiff's Title VII claims against individual defendants; and 3) Plaintiff's Section 1983 claims against the State of Delaware and its employees in their official capacities. Defendants also request the Court to conclude, as a matter of law, that Defendant Howard is entitled to qualified immunity.

I. Whether Defendants Are Entitled To Summary Judgment On Plaintiff's Pretext Discrimination Claim

When addressing pretext discrimination claims, courts utilize the McDonnell Douglas burden shifting analysis. 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 pretext for illegal discrimination. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 801-05 (1973); 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)). Defendants contend that Plaintiff has not established her prima facie case of gender discrimination and that she has failed to adduce evidence sufficient to demonstrate that their employment decision was not based on legitimate non-discriminatory reasons.

A. Whether Plaintiff Has Established Her Prima Facie Case Of Gender Discrimination

"The burden of establishing a prima facie case of [discrimination] is not onerous." Texas Dep't of Comm. Affairs v. Burdine, 450 U.S. 248, 253 (1981). The facts necessary to establish the elements of a prima facie case of discrimination will necessarily vary from case to case because of differing factual scenarios. McDonnell Douglas, 411 U.S. at 802 n. 13. In the facts of the instant case, in order to establish her prima facie case of gender discrimination, Plaintiff must provide

evidence that 1) she is a member of a protected class; 2) she applied for a position for which she was qualified; and 3) she was treated less favorably than an individual outside of her protected class. See EEOC v. L.B. Foster Co., 123 F.3d 746 (3d Cir. 1997) (citing McDonnell Douglas, 411 U.S. at 802)).

Defendants contend that Plaintiff has failed to establish the third prong of her prima facie case of discrimination because other males applying for the same position as Plaintiff were ranked less favorably than Plaintiff. Applying the quantum of proof provided by McDonnell Douglas and in construing all inferences in favor of the non-moving party, the Court disagrees.

As noted above, the burden of establishing a prima facie case of discrimination is not "onerous." Burdine, 450 U.S. at 253. A plaintiff must merely present evidence sufficient to allow a reasonable factfinder to conclude that she or he was treated less favorably than others because of their gender. Idimarco v. Runyon, 190 F.3d 151, 163 (3d Cir. 1999). The Court concludes that Plaintiff met this burden by producing evidence of her qualifications for the Class Administrator position compared to those of Mr. Redina, and, that despite her purported superior qualifications, she was denied the promotion. In addition, the Court notes that it is not persuaded by Defendants' contention that evidence of other male employees who the Defendants ranked less favorably than Plaintiff for the Classification

Administrator position defeats Plaintiff's prima facie case because Plaintiff is alleging only that she was more qualified than Mr. Redina, who according to Warden Williams (A-109) was the only comparable male employee. For these reasons, the Court concludes that Plaintiff has met her burden of establishing a prima facie case of discrimination.

B. Whether Plaintiff Has Provided Evidence To Rebut Defendants' Legitimate Non-Discriminatory Reason For Its Employment Decision

As indicated above, once a plaintiff establishes a prima facie case of discrimination, the burden shifts to the employer to proffer a legitimate non-discriminatory rationale for its employment decision. Defendants put forth various reasons for their decision to promote Mr. Redina and not Plaintiff, including: 1) Mr. Redina served more recently as Acting Classifications Administrator; 2) Mr. Redina has more extensive field and institutional experience; and 3) Mr. Redina's greater experience and success with the Point Base Classification System ("PBCS") and the Delaware Automated Computer System ("DACs"). Therefore, for Plaintiff to survive summary judgment, she must point to some evidence that would allow a reasonable factfinder to infer that Defendants' 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). In other words, a

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 his or her evidence of pretext is more credible than the employer's justifications. Iadimarco v. Runyon, 190 F.3d at 166 (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)). After reviewing the record evidence offered by Plaintiff in light of the summary judgment standard of review, the Court concludes that Plaintiff has produced evidence sufficient to raise a genuine issue of material fact as to whether Defendants' proffered justifications are pretextual and not the actual reason for their promotion decision. Sheridan v. E.I. DuPont de Nemours & Company, 100 F.3d 1061, 1067 (3d Cir. 1996).

Plaintiff directs the Court to evidentiary exhibits to rebut Defendants' justification for their promotion decision. The Court will not recite the evidence Plaintiff contends establishes pretext, but does note that if the factfinder were to accept Plaintiff's version of the facts he or she could reasonably conclude that Defendants' decision was not based on the non-discriminatory reasons they identified. Some of the evidence Plaintiff points to includes her superior qualifications,

particularly her educational achievements¹ and more than ten years of seniority over Mr. Redina, evidence that no other female employees have been promoted at DOC to positions with a pay grade of nineteen or higher, testimony that it was "difficult for a female to get a fair shake" with promotions at DOC (D.I. 35 at B-286), testimony that Defendant Howard made a sexual comment toward her during her interview and allegedly referred to female employees as "honey" and "sweetheart," and evidence potentially demonstrating inconsistencies, implausibilities, and contradictions with Defendants' justifications for their promotion decision. The Court concludes that this evidence, viewed under the summary judgment standard of review, creates a genuine issue of disputed material fact as to whether Defendants' proffered reasons were the actual reasons for their employment action. See Sheridan, 100 F.3d at 1067. Accordingly, the Court will deny Defendants' motion for summary judgment on Plaintiff's pretext discrimination theory.

II. Whether Defendants Are Entitled To Summary Judgment On Plaintiff's Mixed Motive Discrimination Claim

In their opening brief, Defendants contend that they are entitled to summary judgment on Plaintiff's mixed motive discrimination claim because Plaintiff has failed to produce evidence that "'directly reflects a discriminatory attitude.'"

¹ Plaintiff has a master's degree while Mr. Redina has a bachelor's degree.

(D.I. 32 at 19) (quoting Starceski v. Westinghouse Elec. Corp., 54 F.3d 1089, 1096 (3d Cir. 1995)). In her opposition brief (D.I. 34), Plaintiff does not oppose Defendants' contention that they are entitled to judgment on her mixed motive claim. This lack of response prompts the Defendants to conclude that Plaintiff has abandoned her mixed motive claim and that summary judgment should be granted.

The Court is unclear as to whether Plaintiff has abandoned her mixed motive claim, so the Court will grant Defendants' motion. However, if the Court has misunderstood Plaintiff's position, the Court will permit Plaintiff to provide a detailed response to Defendants' papers.

III. Whether Plaintiff's Claims Against The State Of Delaware and State Officials Are Barred By The Eleventh Amendment

Defendants contend that the State of Delaware and its employees in their official capacities are entitled to summary judgment on Plaintiff's Section 1983 claim because the Eleventh Amendment provides them immunity in such actions. However, after reviewing Plaintiff's amended complaint (D.I. 9) and the applicable law, the Court finds that Plaintiff's joinder of the State of Delaware and its employees acting in their official capacities is permitted for the limited purpose of seeking attorneys' fees and costs. As Plaintiff contends, this approach is permissible under the principles of Hutto v. Finney, 437 U.S. 678 (1978), and Missouri v. Jenkins by Agyie, 491 U.S. 274

(1989).²

IV. Whether Defendant Howard Is Entitled To Qualified Immunity

A public official is entitled to qualified immunity if the official's conduct does not violate clearly established statutory or constitutional rights that a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Good v. Dauphin County Social Servs. for Children & Youth, 891 F.2d 1087, 1092 (3d Cir. 1989). In order for a right to be clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987).

In the instant case, the parties do not contest that if Defendant Howard made the decision not to promote Plaintiff because of a discriminatory animus toward women that he would not be entitled to qualified immunity. However, the parties dispute whether Defendant Howard discriminated against Plaintiff in making his decision not to promote her. Defendants contend that Defendant Howard followed the appropriate guidelines and procedures in concluding that Mr. Redina was the better choice for promotion. Defendants also contend that the absence of a

² Defendants also contend that Plaintiff is impermissibly attempting to sue various Defendants individually under Title VII. However, a review of Plaintiff's amended complaint (D.I. 9) reveals that Plaintiff has not sued any individuals under Title VII.

discriminatory attitude toward women is demonstrated by Defendant Howard's past endorsement of Plaintiff in her petition for a pay increase in 1997. In response, Plaintiff contends that Defendant Howard's credibility on this issue is questionable because of his alleged sexist comments about women and because his purported rationale for selecting Mr. Redina over Plaintiff is inconsistent with the duties of a Classification Administrator. The disagreements about Defendant Howard's credibility and conduct are disputes concerning material issues of fact, and therefore, the Court must deny summary judgment because a determination regarding qualified immunity "depends upon the factfinder's evaluation of [Defendant Howard's] conduct." Clarke v. City of Philadelphia, 1994 WL 388559 at *6 (E.D. Pa. July 27, 1994) (citation omitted); see also Cruz v. Pennridge Reg'l Police Dep't, 2003 WL 21742015 at *10 (E.D. Pa. July 29, 2003).

CONCLUSION

For the reasons discussed, Defendants' Motion For Summary Judgment (D.I. 31) will granted in part and denied in part. An appropriate Order will be entered.

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 Defendants. :

ORDER

At Wilmington, this 30th day of January, 2004, for the
reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

- 1) Defendants' Motion For Summary Judgment (D.I. 31) is
GRANTED on Plaintiff's Mixed Motive Claim (Count II);
- 2) Defendants' Motion For Summary Judgment (D.I. 31) is
DENIED in all other respects.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE