

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

YVONNE S. BLACKMOND,)
)
 Plaintiff,)
)
 vs.) No. 02-2890 MaV
)
 UT MEDICAL GROUP, INC.,)
)
 Defendant.)

ORDER DENYING PLAINTIFF'S MOTION TO COMPEL

The plaintiff, Yvonne S. Blackmond, brought this Title VII action against defendant, UT Medical Group ("UTMG"), alleging that she was discriminated against on the basis of her race. Before the court is the October 15, 2004 motion of Blackmond, pursuant to Fed. R. Civ. P. 37, to compel UTMG to produce personnel files of certain current and past UTMG employees, as well as personnel files for those individuals that may testify at trial. This motion was referred to the United States Magistrate Judge for a determination. For the following reasons, Blackmond's motion is denied.

On May 18, 2004 Blackmond issued her Second Request for Production of Documents asking UTMG to produce the following personnel files: Yvonne S. Blackmond, Stuart Wilkinson, Francine Ball, Margie Robertson, Donald Hayes, Richard Baer, Steve Burkett, Terri Gordon, Dorothy Smith, Daphne Taylor, Monica Wilson, Vernetta

Alexander, Trina Neal and Becky Epps. In response, Blackmond contends that UTMG only produced items from her own personnel file. Blackmond has now filed this motion seeking to obtain the balance of these personnel files and the files of any UTMG employee that may be called as a witness at trial.

As the bases for her motion, Blackmond claims that the personnel files she has requested may contain information concerning disciplinary actions that may be relevant to the credibility of these witnesses. She also contends that the files would include salary and job application information that may be relevant to the testimony of the employee witnesses. Finally, she argues that it is unfair that UTMG has exclusive access to these files because they will be able to use them to its advantage.

In response to Blackmond's motion, UTMG sets forth three arguments for why the motion should be denied. First, UTMG contends that Blackmond has not demonstrated a compelling showing of relevance required for production of the personnel files. The court agrees with UTMG.

Rule 26 of the Federal Rules of Civil Procedure states that "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party" Fed. R. Civ. P. 26(b)(1). Relevancy for discovery purposes is extremely broad. The information sought need not be

admissible in court in order to be relevant. Rather, the relevancy burden is met if the party can show that the information sought "appears reasonably calculated to lead to the discovery of admissible evidence." FED. R. CIV. P. 26(b)(1). Nevertheless, discovery does have "ultimate and necessary boundaries," *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978) (quoting *Hickman v. Taylor*, 329 U.S. 495, 507 (1947)), and "it is well established that the scope of discovery is within the sound discretion of the trial court." *Coleman v. American Red Cross*, 23 F.3d 1091, 1096 (6th Cir. 1994) (quoting *United States v. Guy*, 978 F.2d 934, 938 (6th Cir. 1992)).

Because of the extremely private nature of personnel files, the court does not order production of such files except upon a compelling showing of relevance by the requesting party. *Miller v. Federal Express Corp.*, 186 F.R.D. 376, 384 (W.D. Tenn. 1999). To be compelling, the requesting party must demonstrate that the value of the information outweighs the privacy interests of the affected parties. *Onwuka v. Federal Express Corp.*, 178 F.R.D. 508 (D. Minn. 1997).

In her motion, Blackmond does not set forth any compelling reason why these files should be produced. She merely states that the files "may" contain information that is relevant to her claim. This indicates to the court that Blackmond is engaging in nothing

more than a fishing expedition into an area where privacy concerns are high and relevant material may or may not exist. According to UTMG, the persons whose files have been requested had no supervisory responsibility over Blackmond, nor were they involved in any employment decisions at issue in this case. Some of these persons never even worked at the same facility as Blackmond. Thus, the information requested by Blackmond does not appear relevant to her claims, nor does it appear reasonably likely to lead the discovery of admissible evidence. On this bases alone, Blackmond's motion is denied.

UTMG's also argues that the motion to compel should be denied as untimely because the time for discovery was completed months prior to the filing of the motion. UTMG overlooks the fact that there has been an extension in the time for discovery in this case. According to the minutes recorded at a pretrial conference held October 15, 2004 before District Judge Samuel H. Mays Jr., Docket No. 104, all discovery is to be completed as of January 31, 2005.

Finally, UTMG argues that the part of Blackmond's motion requesting personnel files for every employee who may be called as a witness should be denied because she is seeking documents that were not the subject of a request for production served pursuant to Fed. R. Civ. P. 26 or 34. UTMG contends that it should not have to produce personnel files for every potential witness because some

of the files were not requested as a part of Blackmond's Second Request for Production or any other proper request served during discovery.

Rule 37 states that where a party fails to respond "to a request for inspection submitted under Rule 34 . . . the discovering party may move for an order compelling an answer" FED. R. CIV. P. 37(a)(2)(B). The rule does not allow a requesting party to compel discovery of items not requested in accordance with discovery procedures. For this reason, the request for personnel files of other employees not listed in Blackmond's initial request is denied.¹ Furthermore, even if the court were to consider this request as proper, Blackmond still must show a compelling need in order for the personnel files to be discoverable. As stated above, she has not done so.

For the foregoing reasons, the plaintiff's motion to compel is denied.

IT IS SO ORDERED this 3rd day of November, 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE

¹ Given the fact that the time for discovery has been extended, Blackmond's request for these other files is not forbidden, however, it is not properly included in this Rule 37(a) motion to compel.