

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

CORNELIA Y. JACKSON,)	
)	
Plaintiff,)	
)	
v.)	No. 03-2452M1V
)	
GALLAWAY INDUSTRIES, LLC,)	
)	
Defendant.)	

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This is an action brought pursuant to Title VII of the Civil Rights Act of 1964 by the plaintiff, Cornelia Jackson, a black female, against the defendant, Gallaway Industries, LLC ("Gallaway"), for employment discrimination based on race and sex. Before the court is defendant Gallaway's motion for summary judgment. The parties have consented to the trial of this matter before the undersigned United States Magistrate Judge. Because there are no undisputed issues of material fact and Jackson cannot prove as a matter of law that her race and sex were factors in her termination, Gallaway's motion is granted.

I. UNDISPUTED FACTS

For purposes of summary judgment, the following facts are undisputed. Gallaway is a Tennessee corporation in the business of fabricating steel parts, such as handrails, ladders, and frames for larger steel companies. (Def.'s Statement of Undisputed Facts, Ex.

5, Aff. of John Temple at ¶2.) In July of 1998, Jackson was interviewed and hired on the same day for the position of receptionist at Gallaway by John Temple, President of Gallaway. (*Id.* at ¶4.) Temple was the only person to interview Jackson before she was offered the position. (Def.'s Statement of Undisputed Facts, Ex. 5, Dep. of Cornelia Jackson at 20/17-21.)¹ During the interview, Temple outlined Jackson's duties as answering the phone, taking messages, doing light typing and filing, sending and receiving faxes, and light typing for the shipping department. (*Id.* at 20/5-13.)

Jackson received additional duties over the course of her employment, however, her understanding of her duties always came from what Temple told her. Jackson reported directly to Temple or to Gallaway's controller, Lee Hood, during her employment. (*Id.* at 21/6-15;22/15-19;22/20-23;21/16-24.) Occasionally, Jackson's job duties sometimes required her to leave her desk, but just for short periods at a time to do such things as distribute faxes, go to the supply room for paper, or tell an employee who was on the phone that a customer was on another line. (Def.'s Statement of Undisputed Facts ("U.F.") at ¶8.)²

¹Citations to depositions are in a page/line format. E.g., at 20/17-21 is read as page 20, lines 17 through 21.

² Although Jackson filed no response to the motion for summary judgment, she did file a written response to the defendant's

During Jackson's first week of employment, she and Temple began having conflicts regarding how she handled some of her job duties. (U.F. at ¶9.) Temple observed Jackson spending extensive periods of time on personal phone calls and away from her desk visiting with other employees. (U.F. at ¶10.) Jackson also put personal phone calls through to other employees in disregard of Temple's instructions not to do so except at break or lunch unless the call was an emergency. (*Id.*) Temple's instructions to Jackson also included the policy that the receptionist should simply answer the phone and transfer the call. Jackson disregarded this policy, as well, by engaging in conversations with callers for as long as fifteen minutes before transferring calls. (*Id.*) Jackson also disregarded the rule required of all employees that she put other callers on hold and speak to Temple when he beeped her line twice, actively ignoring Temple when he would come to her desk to see why she had not picked up the phone to speak to him. (U.F. at ¶¶10, 17.) Additionally, Jackson failed to log all incoming phone calls per Gallaway's policy.

In addition to conflicts over the execution of Jackson's job, Jackson and Temple had personality conflicts. (U.F. at ¶ 9.)

statement of undisputed facts. Even though she did not state that she agreed with the defendant's undisputed facts in paragraphs 8, 10, 13, 14, 18, 24, 28, 33, her written response does not refute the facts set forth in these paragraphs. Therefore, the court treats these facts as undisputed.

Temple told Jackson that she was "too nice" and "too happy." (*Id.*) Temple told Jackson numerous times that she was not handling her duties in the manner that he wanted. (U.F. at ¶10.) Jackson responded that she thought it was rude to callers to answer Temple's beeps and that she did not have the authority or duty to screen calls. (U.F. at ¶¶15, 29.) Temple told her to follow procedure despite her reservations. (U.F. at ¶10.)

In order to achieve the working environment he desired, Temple repeatedly gave Jackson increasingly specific instructions regarding her job duties. In the spring of 2000, Temple told Jackson that if a caller said a personal call for an employee was an emergency, Jackson was to ask what the nature of the emergency was. (U.F. at ¶21.) Jackson told Temple she was not comfortable doing this, but Temple told her that he wanted Jackson to do it anyway. (*Id.*) When these instructions didn't work, Temple tried meeting with all the employees to tell them Jackson would be screening personal calls per his instruction. (U.F. at ¶25.) Jackson still did not follow Temple's instruction, so in January 2001, Temple told Jackson to put emergency calls for employees through to him. (U.F. at ¶27.) Nevertheless, Jackson continued at times to put calls directly through to employees. (U.F. at ¶28.) Temple gave Jackson a written reprimand in July of 2000 regarding her own personal phone calls and her putting personal phone calls

through to other employees in violation of his instructions. (U.F. at ¶10.)

On the day that Jackson was fired by Temple, September 27, 2001, Temple had been away from work at a doctor's appointment. (U.F. at ¶33.) Temple spoke with Faye Temple, his wife and fellow employee, and also with Gallaway's purchasing manager by phone that afternoon and discovered that Jackson had spent a lot of time away from her desk that day and, during most of the time she was at her desk, she had taken personal phone calls. Temple then spoke to Lee Hood who confirmed these accounts. (*Id.*) Temple called Jackson later that afternoon and told her to go home until he returned the next day. (*Id.*)

When Jackson reported to work the next day, Temple called her into his office and advised her she was terminated. (U.F. at ¶34.) He told Jackson the reasons for termination were her continuing failure to follow his instructions regarding personal phone conversations, personal phone calls to other employees, and placing callers on hold when he beeped in. (*Id.*)

III. ANALYSIS

The standards governing the decision on a motion for summary judgment are well-established. Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgement is proper "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 a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *LaPointe v. United Autoworkers Local 600*, 8 F.3d 376, 378 (6th Cir. 1993); see also *Osborn v. Ashland County Bd. of Alcohol, Drug Addiction and Mental Health Servs.*, 979 F.2d 1131, 1133 (6th Cir. 1992) (per curiam). The party who moves for summary judgment has the burden of showing that there are no genuine issues of material fact at issue in the case. *Celotex*, 477 U.S. at 323; *LaPointe*, 8 F.3d at 378.

Upon meeting this burden, the burden shifts to the nonmoving party, who cannot rest on its pleadings but must present some "specific facts showing that there is a genuine issue for trial." *Celotex*, 477 U.S. at 324. In response, the nonmoving party must present "significant probative evidence" to demonstrate that "there is [more than] some metaphysical doubt as to the material facts." *Moore v. Phillip Morris Co.*, 8 F.3d 335, 339-40 (6th Cir. 1993). In ruling on a summary judgment motion, the court must draw all inferences in favor of the nonmoving party and must consider the facts in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

A person charging disparate treatment based on sex or race

must prove "by a preponderance of the evidence that the defendants intentionally discriminated" against her. *Grano v. Dept. of Development*, 637 F.2d 1073, 1081 (6th Cir. 1980). Because it can be a difficult task to prove discriminatory intent, it is "incumbent upon a court to analyze allegations of discrimination in light of all the surrounding facts" of the case. *Id.*

Gallaway moves for summary judgment on the grounds that Jackson cannot establish a *prima facie* case for race or sex discrimination. The general rule in Title VII discrimination cases is that a *prima facie* case is made by proving that the plaintiff "is a member of a class entitled to protection of Title VII, and that he [or she] is accorded treatment different from that accorded persons otherwise similarly situated who are not members of the class." *Potter v. Goodwill Industries of Cleveland*, 518 F.2d 864, 865 (6th Cir. 1975); *Hall v. Ledex*, 669 F.2d 397, 399 (6th Cir. 1982).

In support of its motion for summary judgment, Gallaway first relies on the "same actor" theory because Temple made both the decision to hire Jackson and to terminate her. Under this theory, Gallaway argues that it is entitled to a presumption that Temple did not fire Jackson on account of her race and sex because "[a]n individual who is willing to hire a person of a certain class is unlikely to fire them simply because they are a member of that

class". *Buhrmaster v. Overnite Transportation Company*, 61 F.3d 461, 464 (6th Cir. 1995). It is undisputed that Temple alone made both the decision to hire Jackson and the decision to terminate Jackson. Therefore, the "same actor" theory applies and Temple is entitled to the unrebutted presumption that he did not fire Jackson because of her race or sex. Jackson has failed to come forward with any evidence to rebut the presumption. Indeed, Jackson has not filed a formal response to Gallaway's motion for summary judgment but merely has responded to Gallaway's numbered statement of undisputed facts, admitting most of them.

Gallaway also argues that Jackson was terminated for a legal, nondiscriminatory reason. Jackson's failure to follow work-related instructions led to both a verbal and a written warning. Gallaway maintains that Jackson's continued failure to follow instructions after the warnings necessitated her termination.

Additionally, in support of its motion for summary judgment, Gallaway relies on the fact that the employees Jackson named as comparators were not similarly situated. Gallaway states that Jackson was not terminated for disruptive behavior such as the comparators exhibited, but for failure to follow instructions. Gallaway points out that when Jackson was disruptive in the manner the comparators were disruptive, that Temple took no action against her.

As its final ground, Gallaway argues that Jackson has offered no evidence that she would not have been terminated but for her race and sex. Gallaway points out that Jackson admits that Temple never made any offensive racial remarks during plaintiff's employment, that she knew he treated all his former receptionists who were white females in the same manner as he treated her, and that although Jackson had on two occasions addressed concerns about her employment, Jackson had never suggested that racial or sexual discrimination were of concern to her.

As previously stated, Jackson failed to file a response to Gallaway's motion for summary judgment but merely responded to Gallaway's statement of undisputed facts. In her response to Gallaway's undisputed facts, she states that other employees were disruptive in the workplace and were not given written reprimands; that on one occasion a white female employee cursed Temple in the office and was not sent home or written up for her behavior; and that a black male employee was on the phone for an extended period in a heated argument with his wife and was not sent home or written up for his behavior.

Analyzing Jackson's allegations in light of all the surrounding facts and circumstances, the court finds that Jackson does not make a *prima facie* case for discriminatory termination. Jackson has failed to come forward with any evidence that refutes

Gallaway's other grounds for summary judgment. Jackson has failed to respond to Gallaway's arguments that there was a legal, nondiscriminatory reason for termination, that there is no evidence that Jackson would have not been terminated but for race and sex, and that there are no proper comparators in this case, and has failed present any specific facts showing there is a genuine issue for trial. Therefore, there is no genuine issue as to any material facts, Jackson has not made a *prima facie* case for discrimination, and Gallaway is entitled to judgment as a matter of law.

IV. CONCLUSION

For the foregoing reasons, defendant's motion for summary judgment is granted and plaintiff's claims against defendant Gallaway are dismissed with prejudice.

IT IS SO ORDERED this 5th day of October, 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE