

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

TINA L. MANLOVE,)
)
 Plaintiff,)
)
 vs.) Case No. 01-0620-CV-W-ODS
)
 UNITED STATES POSTAL SERVICE,)
)
 Defendant.)

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pending is Defendant's Motion for Summary Judgment (Doc. # 27). For the following reasons, Defendant's motion is granted.

I. BACKGROUND

Plaintiff Tina L. Manlove ("Plaintiff") began working for the United States Postal Service ("Defendant") in July 1981. In late 1999, Plaintiff was working as a non-supervisory clerk working on Tour 3 (the afternoon shift) when she received a promotion as a temporary supervisor on Tour 2 (the morning shift) because of the increase in mail during the holiday season. A few months prior to Plaintiff's temporary promotion, Tawnya Cox ("Cox") received a promotion as a temporary supervisor on Tour 3 and was later assigned to Tour 2. Cox and Plaintiff worked together as temporary supervisors on Tour 2.

On December 31, 1999, Defendant decided that after the holiday mailing season Tour 2 needed only one temporary supervisor due to staffing and budgetary reasons. Gary Davis, Cox's and Plaintiff's supervisor, determined that Cox, not Plaintiff, would

remain as the temporary supervisor on Tour 2 because of Cox's job performance and experience. Plaintiff was moved back to her prior position as a non-supervisory clerk on Tour 3.

In January 2000, Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC) alleging that Defendant had discriminated against her on the basis of race and sex. Specifically, Plaintiff alleged that she was not allowed to remain in a temporary supervisory position and she was denied the opportunity to receive training based on her race, gender and her sexual orientation. The EEOC subsequently issued a Right to Sue letter, and, on June 12, 2001, Plaintiff filed her Complaint alleging that Defendant had discriminated against her on the basis of race, gender, and sexual orientation pursuant to Title VII.¹ Defendant filed its Motion for Summary Judgment on January 17, 2003.

II. DISCUSSION²

A. Standard

A moving party is entitled to summary judgment on a claim only if there is a

¹ The Court previously granted Defendant's Motion to Dismiss Counts II, III, IV, V and VI of Plaintiff's Complaint. The sole remaining claim is Count I, which alleges race and gender discrimination in violation of Title VII.

² In Plaintiff's Response to Defendant's Motion for Summary Judgment, she argues that the this case involves multiple complaints and claims of hostile work environment; therefore, she contends that the Court should utilize the "continuing violation" theory. However, Plaintiff exhausted her administrative remedies with regard to only her claims of (1) failure to remain as a temporary supervisor, and (2) denial of training. The failure to exhaust administrative remedies divests this Court of jurisdiction over those claims. Bailey v. United States Postal Serv., 208 F.3d 652, 654 (8th Cir. 2000). Therefore, the Court has limited its analysis to the two claims enumerated above.

showing 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." See generally Williams v. City of St. Louis, 783 F.2d 114, 115 (8th Cir. 1986). "[W]hile the materiality determination rests on the substantive law, it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); see also Get Away Club, Inc. v. Coleman, 969 F.2d 664 (8th Cir. 1992). In applying this standard, the Court must view the evidence in the light most favorable to the non-moving party, giving that party the benefit of all inferences that may be reasonably drawn from the evidence. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 588-89 (1986); Tyler v. Harper, 744 F.2d 653, 655 (8th Cir. 1984), cert. denied, 470 U.S. 1057 (1985). However, a party opposing a motion for summary judgment "may not rest upon the mere allegations or denials of the . . . pleadings, but . . . by affidavits or as otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

B. Temporary Supervisor Position

Plaintiff alleges that she was subject to gender and race discrimination when she was not retained as a temporary supervisor after the holiday season and Cox was retained as a temporary supervisor. These allegations are based on circumstantial evidence. In the absence of direct evidence of gender or race discrimination, the burden-shifting analysis of McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973), applies. See also Calvin v. Yellow Freight Sys., 218 F.3d 904, 907 (8th Cir. 2000). To establish a prima facie case of gender or race discrimination in regard to a failure to promote claim, a plaintiff must show that (1) she is a member of a protected group; (2)

she was qualified for the promotion; (3) she did not receive the promotion; and (4) a similarly situated employee, not a part of the protected group, was promoted. Gentry v. Georgia-Pacific Corp., 250 F.3d 646, 650 (8th Cir. 2001) (citing Shannon v. Ford Motor Co., 72 F.3d 678, 682 (8th Cir. 1996)).

It is undisputed that Plaintiff, an African-American female, is a member of a protected class, she was qualified for the temporary supervisor position, and she did not continue to hold the temporary position as a temporary supervisor after the holiday season. Instead of Plaintiff, Defendant retained Cox, a Caucasian female, as the sole temporary supervisor for Tour 2. Because Cox was a member of the same protected group as Plaintiff in that they were both females, Plaintiff's claim of gender discrimination fails and summary judgment must be granted in favor of Defendant with regard to this claim. See Gilmore v. AT&T, 319 F.3d 1042, 1046 (8th Cir. 2002); Williams v. Ford Motor Co., 14 F.3d 1305, 1308-1309 (8th Cir. 1994).

However, Plaintiff has established a prima facie claim of race discrimination with regard to Defendant's failure to retain her as a temporary supervisor. Once the plaintiff has met the burden of establishing a prima facie case of discrimination, the burden shifts to the defendant to articulate a legitimate, non-discriminatory reason for its action. Id. Defendant claims that after the holiday mailing season it was unnecessary to employ more than one temporary supervisor on Tour 2. Because Cox had more experience as a temporary supervisor and had performed better than Plaintiff, Cox was retained as the temporary supervisor on Tour 2 while Plaintiff was sent back to the position at which she worked before her temporary promotion.³ To select an employee with the better

³ In Plaintiff's response to Defendant's Motion for Summary Judgment, she states that she "does not take issue with [Defendant's] selection based on performance." Pl.'s

qualifications or an employee with the better performance records are legitimate non-discriminatory reasons for retaining one employee over another. Therefore, Defendant has met its burden.

If the defendant meets its burden, the burden shifts back to the plaintiff, and she must show that the reason suggested by the defendant is merely a pretext for discrimination. Id. Plaintiff has not asserted any evidence suggesting Defendant's reasons are a pretext for discrimination. Therefore, Defendant's Motion for Summary Judgment is granted with regard to Plaintiff's claim that she was subjected to race and gender discrimination when Defendant failed to retain her as a temporary supervisor.

C. Denial of Training

Plaintiff alleges that she was subjected to race discrimination when she was deprived of training opportunities.⁴ Because these allegations are based on circumstantial evidence, the burden-shifting analysis of McDonnell Douglas applies. 411 U.S. at 802. To establish a prima facie case of race discrimination with regard to a claim based on the denial of training opportunities, the plaintiff must show (1) she was a member of a protected group; (2) she was performing her job at a level that met her employer's legitimate expectations; (3) she suffered an adverse employment action; and (4) facts exist that permit an inference of discrimination. Taylor v. Southwestern Bell Tel.

Resp. to Def.'s Mot. for Summ. J. 14. Additionally, Plaintiff admitted that Cox had more experience than Plaintiff as a temporary supervisor. Pl.'s Dep. 21:3-5.

⁴ In Plaintiff's Complaint, she alleges she was discriminated against on the basis of both race and gender when she was denied training. However, in Plaintiff's deposition, she conceded that the denial of training was on the basis of her race. Pl.'s Dep. 35:25 - 36:10. Therefore, the Court will only address Plaintiff's race discrimination claim with regard to the denial of training.

Co., 251 F.3d 735, 740 (8th Cir. 2001) (citing Ghane v. West, 148 F.3d 979, 981 n.3 (8th Cir. 1998)).

It is undisputed that Plaintiff is a member of a protected group and Plaintiff was performing her job at a level that met her employer's expectations. However, Plaintiff is unable to meet her burden of establishing a prima facie case of race discrimination because she is unable to prove that she suffered an adverse employment action. An adverse employment action "must have a 'materially adverse impact' on the plaintiff's terms or conditions of employment." Saulsberry v. St. Mary's Univ. of Minn., 318 F.3d 862, 868 (8th Cir. 2003) (quoting Sowell v. Alumina Ceramics, Inc., 251 F.3d 678, 684 (8th Cir. 2001)).

The Eighth Circuit has not specifically addressed whether the denial of training should be considered an adverse employment action. However, the federal courts that have analyzed the issue have found that the denial of training is not an adverse employment action. See e.g., Shackelford v. Deloitte & Touche, LLP, 190 F.3d 398, 407 (5th Cir. 1999) (finding no adverse employment action when the plaintiff did not produce significant evidence that the denial of training would affect her employment status or benefits); Richardson v. Blue Cross/Blue Shield of Kan., Inc., 196 F. Supp.2d 1174, 1184 (D. Kan. 2002) (finding no adverse employment action when the plaintiff failed to present evidence that the training she desired had an impact upon her position or her ability to retain the position).

While Plaintiff was employed as a temporary supervisor, she requested training in the areas of safety and sexual harassment. Pl.'s Dep. 31:5-13. Plaintiff argues that the denial of this requested training excluded Plaintiff from the pool of potential candidates

for the temporary supervisor position and “there is no question that the denial of supervisor training adversely impacted her potential for future employment.” Pl.’s Resp. to Def.’s Mot. for Summ. J. 17. Aside from pure speculation as to the effect safety and sexual harassment training might have had on Plaintiff’s ability to retain her temporary supervisor position, Plaintiff has not produced any evidence to demonstrate that the denial of the requested training would have affected her employment terms or conditions. Hence, Plaintiff has not established that she suffered an adverse employment action and, therefore, is unable to present a prima facie case of race discrimination.

Even if Plaintiff could establish a prima facie case of race discrimination with regard to her denial of training, Defendant has proffered a legitimate, non-discriminatory reason for its actions. Defendant stated that it could not permit Plaintiff to attend training because it was necessary to have Plaintiff working during her shift, which was during the busy holiday mailing season, rather than training. The necessity to have an employee working during her shift rather than participating in extra training is a legitimate, non-discriminatory reason for denying training.

Because Defendant has presented a legitimate, non-discriminatory reason for its actions, the burden shifts back to Plaintiff, who must show that the reason suggested by Defendant is merely a pretext for discrimination. Calvin v. Yellow Freight Sys., 218 F.3d 904, 907 (8th Cir. 2000). Plaintiff has not presented any evidence to suggest that Defendant’s reasons for denying her training were a pretext for discrimination. Therefore, Defendant’s Motion for Summary Judgment is granted with regard to Plaintiff’s claim of denial of training.

D. Sexual Orientation Claim

Finally, Plaintiff alleges that she was not retained as a temporary supervisor because of her sexual orientation in that she was not a lesbian. Title VII does not provide for a private right of action based on sexual orientation discrimination. Schroeder v. Hamilton Sch. Dist., 282 F.3d 946, 951 (7th Cir. 2002); Bibby v. Philadelphia Coca Cola Bottling Co., 260 F.3d 257, 261 (3d Cir. 2001); Rene v. MGM Grand Hotel, Inc., 243 F.3d 1206, 1209 (9th Cir. 2001); Simonton v. Runyon, 232 F.3d 33, 35-36 (2d Cir. 2000). Therefore, as a matter of law, summary judgment is appropriate with regard to Plaintiff's claim of discrimination on the basis of sexual orientation.

III. CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment is granted.
IT IS SO ORDERED.

DATE: March 26, 2003

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT