

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NATALIA TCHESKIDOVA,
Plaintiff

*

*

v.

Civil No. AMD 07-91

*

ITT FEDERAL SERVICES,
Defendant

*

MEMORANDUM OPINION

Plaintiff Natalia Tcheskidova instituted this employment discrimination action alleging that her former employer, ITT Federal Services (“ITT”), violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16 *et seq.*, when it terminated her employment in retaliation for her complaints of on-the-job gender and national origin discrimination.¹ Discovery is complete and defendant has moved for summary judgment. Oral argument is not necessary. For the reasons recited herein, the motion shall be granted.

I.

Discovery has produced a detailed summary judgment record and the facts are, as always, considered in the light most favorable to the non-movant. *Matsushita Elec. Indust. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986). While the parties have some disagreements over details, the parties do not dispute the controlling material facts, which are, by and large, evidenced by documentary exhibits.

Tcheskidova, a native of Russia, was formerly a Systems Administrator performing

¹The Clerk shall be directed to correct the misnomer in the name of the defendant.

network support services at military installments in Iraq. In early 2005, not quite six months after her tenure commenced, plaintiff began making a series of complaints about the conditions of her employment which eventually brought about the dissolution of the working relationship.

On January 3, 2005, Tcheskidova submitted her first complaint, alleging that a co-worker, Carlos Topp, had told her on December 31, 2004, that he was empowered to decide whether the plaintiff could continue working for defendant. *Dep. of Natalia Tcheskidova* (hereinafter “*NT Dep.*”) at 72-73. Topp promptly apologized to Tcheskidova who thereafter considered the issue resolved. Email from Carlos Topp to Natalia Tcheskidova (Jan. 3, 2005, 2:29 p.m.); Email from Natalia Tcheskidova to Elida Lake, ITT Middle East Office Human Resources Manager (Jan. 3, 2005, 2:34 p.m.); *NT Dep.* at 76.

Next, in late February, one of plaintiff’s superiors referred to her as a “chick” in an email discussing the possibility of transferring her to a different work location. Email from Herb Schreib to Lance Kenley (Feb. 28, 2005, 7:30 p.m.). The same email chain indicates that Tcheskidova had volunteered for the transfer and received a recommendation from her supervisor in support of her application. Email from Phillip Kimble to Mark Minor (February 28, 2005, 3:32 p.m.).

Tcheskidova next complained about her difficulties on March 2 and 3, 2005. The email of March 2 referred to her January grievance and complained that her co-workers were empowered to make significant decisions regarding her employment. Email from Natalia Tcheskidova to Elida Lake (March 2, 2005, 12:32 p.m.) (“My co-workers are trying to

emphasize that only they have power to decide can I be employee of ITT or not Management couple times mentioned that it is up to my co-workers can I get training or not, can I transfer to another position or not.”). Plaintiff characterized these assertions as discrimination based on gender and national origin because her colleagues were predominately men.² *Id.*

The next day, plaintiff sent an correspondence in which she “summarize[d] some discrimination actions” that she felt she had suffered. Correspondence from Natalia Tcheskidova to unknown recipient (March 3, 2005)(*Pl.’s Opp’n, ex. 2*). Therein, she reiterated her complaints of March 2 and further alleged that “Mulem Patric [sic] several times emphasized that ITT field is not for women.”³ *Id.* Finally, she complained of being called a “foreigner” and of colleagues’ attempts to discredit her reputation and professional experience in the company of other contractors. *Id.* Also during March 2005, plaintiff complained of an incident in February when one of her colleagues had called her a “whore.”⁴

²To bolster her complaints, Tcheskidova attached portions of email correspondence discussing generally applicable company policies, plaintiff’s possible transfer, and her assertion that she was denied access to a complaint filed against her by another employee. Email from Natalia Tcheskidova to Elida Lake (March 2, 2005, 12:32 p.m.). The details of the cited emails are not relevant. Except for the aforementioned reference to plaintiff as a “chick,” the emails do not reference Tcheskidova’s gender or national origin, nor could any part of the emails be reasonably construed as discriminatory.

³Plaintiff’s co-worker Patrick Mualem was the person alleged to have made this comment, which plaintiff later conceded occurred only once. *NT Dep. at 110-11*. It is also unclear whether Mualem said “ITT” referring to plaintiff’s employer, or “IT” referring to the information technology field.

⁴The precise date of this complaint is not readily discernable from the record. Plaintiff later told the investigating human resources officer that she was on the phone at the time the

(continued...)

NT Dep. at 98, Def.'s Answer to Interrog. No. 3.

Plaintiff next complained in April that she was asked to perform some general maintenance tasks that were not part of her job description. On April 14, plaintiff alleged that she was instructed by a superior to assemble furniture for a newly-constructed building. Email from Natalia Tcheskidova to Phillip Kimble (Apr. 15, 2005, 2:27 a.m.); *NT Dep. at 127*. Although her co-workers participated in the furniture assembly outside of plaintiff's presence, plaintiff refused, claiming that she lacked training to complete the task. *NT Dep. at 133*.

Similarly, on April 16, "everyone was instructed [to] clean up" the new building. Letter of Concern to Natalia Tcheskidova (Apr. 16, 2005). Plaintiff demanded that her supervisor provide her with a written explanation of why she was asked to perform duties outside her job description. *Id.* When her supervisor would not give her a statement, plaintiff refused to complete the chore. *Id.* This was the last incident about which plaintiff complained.⁵

⁴(...continued)
comment was allegedly made and she was not sure what was said. *NT Dep. at 98*.

⁵In addition to what she characterized as discrimination complaints, Tcheskidova complained in April 2005 about other aspects of her employment. She was aggrieved by defamatory statements and ITT's "violation of the privacy act and non-compliance with Federal laws and regulations." Email from Natalia Tcheskidova to Phillip Kimble (Apr. 16, 2005, 5:06 p.m.). Without examining the handling of each and every complaint, defendant's responses can be generally described as reasonable and professional. Defendant uniformly responded to plaintiff's emails, usually seeking additional details on which to ground an investigation. *See, e.g.*, Emails from Angela Carrigan, ITT EEO Coordinator, to Natalia Tcheskidova (Mar. 2, 2005, 6:19 p.m., Mar. 5, 2005, 8:27 p.m., Mar. 6, 8:27 a.m.). Nonetheless, the number and vagueness of plaintiff's complaints made appropriate follow up difficult for defendant, particularly because
(continued...)

ITT human resources representatives arranged a meeting with Tcheskidova for several hours on May 9, 2005, during which Elida Lake and Angela Carrigan reviewed the incidents Tcheskidova had reported. At times during this in-person meeting, plaintiff's recounting of events was inconsistent with her original email complaints. *See NT Dep. at 98* (indicating that although she had accused a co-worker of calling her a "whore," she told ITT representatives during the May 9 meeting she was not sure he had used that word). Around this time, plaintiff began voicing her concern that ITT was seeking to fire her in retaliation for her complaints. Email from Natalia Tcheskidova to Elida Lake (May 11, 2005, 5:48 p.m.).⁶ By late May, plaintiff notified Phillip Kimble, Carrigan, and Lake that she intended to pursue an EEOC complaint. *Id.*

At some point in July 2005, plaintiff returned to the United States for vacation and military training related to her reserve service. July also marked an escalation in the complaint activity, with an increased volume of emails containing progressively more extraordinary allegations. During this period, plaintiff sent correspondence alleging that ITT was attempting to terminate her employment in retaliation for her complaints and otherwise was engaging in illegal activities.⁷ Then, also in July 2005, Tcheskidova falsely reported

⁵(...continued)
the responsible ITT employees were not stationed at plaintiff's location.

⁶In response, ITT assured plaintiff that she was not being terminated. *See* Email from Elida Lake to Natalia Tcheskidova (May 11, 2005, 11:03 a.m.).

⁷Specifically, plaintiff alleged that "Phillip Kimble permanently is making allegations and involving Government and military personnel to internal matter of ITT. The company is trying retaliate against my complaint." Email from Natalia Tcheskidova to Angela Carrigan

(continued...)

that Lake, ITT's human resources manager, had attempted to kill her. *NT Dep. at 142.*

In light of plaintiff's admittedly "unusual" and "unstable" behavior, along with her wide-ranging and very serious allegations, ITT required her to complete a fitness-for-duty evaluation before returning to duty in the Middle East. *NT Dep. at 199-200*; Email from Frank Peloso, Director of Employee Relations, to Natalia Tcheskidova (July 28, 2005, 5:56 p.m.). Plaintiff was notified in the same email that "[t]his is a condition of your continued employment with ITT. A refusal to cooperate and comply with this return to work evaluation will be considered grounds [for] disciplinary action up to and including termination for cause." *Id.*

For the first step of the evaluation, ITT arranged, and plaintiff participated in, a preliminary telephone screening with Dr. Edwin Shockney, who noted a "constant underpinning of paranoia, persecutory ideation, and accusation by Natalia of which [he] could not see as a rational thought pattern." Email from Edwin Shockney to Larry Schill (Aug. 3, 2005). Dr. Shockney therefore recommended a full psychological evaluation with psychologist Dr. Arlyne Sher before plaintiff was returned to duty. *Id.*

Tcheskidova was advised to schedule an in-person meeting with Dr. Sher no later than August 12, 2005, and that failure to do so would result in the termination of her employment.

⁷(...continued)
(July 5, 2005, 11:44 p.m.). "You have time until Aug 8 to send me termination notice . . . [b]ecause I am tired from allegation that I am not working for ITT . . . I would like remind the company's liability for any such actions." Email from Natalia Tcheskidova to John Huff (July 26, 2005, 8:58 p.m.). "The company violates all Federal Law regarding Cobra coverage, regarding unemployment compensation and others." Email from Natalia Tcheskidova to James Duffy (July 28, 2005, 1:37 p.m.).

Letter from Frank Peloso to Natalia Tcheskidova (Aug. 8, 2005); Email from Larry Schill to Natalia Tcheskidova (Aug. 9, 2005). Because plaintiff was physically ill at the time, she was granted until August 17 to contact the doctor, but ultimately plaintiff never made the required appointment. Email from Frank Peloso to Natalia Tcheskidova (Aug. 10, 2005); *NT Dep. at 202*.

Peloso then reported the course of events to Robert Lehman, Vice President and Director of Human Resources, who accepted Peloso's recommendation that Tcheskidova be terminated for "insubordination and refusal to work." Email from Robert Lehman to Larry Schill (Aug. 17, 2005); Letter from Frank Peloso to Natalia Tcheskidova (Aug. 19, 2005). Faced with plaintiff's accusation that she was terminated because of illness, Peloso reiterated that she was "NOT being terminated for 1) any health issues, 2) the result of any diagnosis, nor 3) the result of any complaints you claim to have filed" but rather because of her refusal to comply with the fitness-for-duty examination. Email from Frank Peloso to Natalia Tcheskidova (Aug. 18, 2005)(emphasis in original).

After her termination, Tcheskidova filed an EEOC complaint, received a right-to-sue letter, and filed this case.

II.

Tcheskidova's sole claim is that ITT violated her rights under Title VII when it terminated her in retaliation for her complaints of gender and national origin discrimination.⁸

⁸ There is some suggestion that plaintiff intends to employ a theory that her gender or national origin motivated ITT to require a fitness-for-duty examination, *see NT Dep. at 91*

(continued...)

These claims are properly analyzed under the familiar burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). At the summary judgment stage, the *McDonnell Douglas* framework meshes with the summary judgment standard. *Hux v. City of Newport News, Va.*, 451 F.3d 311, 315 (4th Cir. 2006). Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is not genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). While the existence of a genuine issue of material fact is fatal to a motion for summary judgment, the party opposing the motion cannot generate such an issue through speculation or conclusory allegations. *See, e.g., Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

In the *McDonnell Douglas* context, a plaintiff cannot rely on a *prima facie* case of discrimination or mere assertions of opinion to survive summary judgment when her employer has asserted a legitimate reason for the adverse employment action. *Hux*, 451 F.3d at 315 (“Once an employer has provided a nondiscriminatory explanation for its decision, the plaintiff cannot seek to expose that rationale as pretextual by focusing on minor discrepancies

⁸(...continued)

(“[N]obody from males never have been requested fitness-for-duty evaluation.”), but this is clearly unavailing. As a factual matter, it is obvious that plaintiff’s conduct required any responsible employer to investigate her mental and emotional health before returning her to duty at a military installation in an area of ongoing hostilities. Furthermore, as a legal matter, this claim fails as one for “disparate investigation” under Title VII. *Hoffman v. Balt. Police Dep’t*, 379 F. Supp. 2d 778, 792 (D. Md. 2005)(citing *Benningfield v. City of Houston*, 157 F.3d 369, 376 (5th Cir. 1998)) (“[t]he few courts that have considered whether an investigation, by itself, can constitute an adverse employment action have answered that question in the negative.”).

that do not cast doubt on the explanation's validity, or by raising points that are wholly irrelevant to it."); *Conkwright v. Westinghouse Elec. Corp.*, 933 F.2d 231, 234 -235 (4th Cir. 1991) ("Having made out a *prima facie* case and being then confronted with an employer's articulated non-discriminatory reason, a claimant then has the burden to show that the articulated reason was pretext").

III.

Plaintiff contends that a reasonable jury considering the record evidence could return a verdict in her favor. Such a result is simply inconceivable. The undisputed facts indicate that, starting early in 2005, plaintiff lodged innumerable complaints with her employer, ranging in topics from coworkers who purport to be able to fire her to human resources personnel who attempt to kill her. A six-month long barrage of such wide-ranging complaints is undoubtedly detrimental to the productivity of plaintiff's work group and an entirely reasonable basis for questioning her mental and emotional fitness to perform her job. When Tcheskidova refused to submit to a full psychological evaluation, she left ITT in the unenviable position of employing someone who was clearly insubordinate, and, quite possibly, mentally unfit to work. *See NT Dep. at 53* (acknowledging insubordination); Email from Edwin Shockney to Larry Schill (July 26, 2005, 7:35 p.m.)(recommending termination absent a favorable result of psychometric testing). The record simply does not plausibly support the suggestion that it was not these circumstances, but one or more of plaintiff's many complaints (specifically one that could be reasonably understood as reporting a potential violation of Title VII) that motivated her termination.

Plaintiff's claims fail as well because, assuming that somewhere in her string of complaints and allegations she engaged in protected activity, she is unable to show a causal link between that activity and defendant's decision to terminate her employment. Furthermore, assuming Tcheskidova was able to make the required *prima facie* showing, she has utterly failed to demonstrate that ITT's reasons for terminating her are mere pretext.

In order to make out a *prima facie* case of retaliatory discharge under Title VII, a plaintiff must demonstrate that she engaged in a protected activity, was subjected to an adverse employment action, and that the adverse action was causally connected to the employee's protected conduct. *Holland v. Washington Homes, Inc.*, 487 F.3d 208, 218 (4th Cir. 2007); *Beall v. Abbott Labs.*, 130 F.3d 614, 619 (4th Cir. 1997). The causality requirement is a substantial stumbling block for Tcheskidova, who acknowledges that Lehman made the discharge decision and indeed, no one else at ITT was empowered to terminate her employment. *NT Dep. at 53, 338*. Importantly, she agrees that there is no evidence suggesting that Lehman even knew of any harassment or discrimination complaints asserted by plaintiff. *Id.*; *Cf. Dowe v. Total Action against Poverty*, 145 F.3d 653, 657 (4th Cir. 1998)(observing that the decision maker's knowledge of protected activity is "absolutely necessary" to establish a causal link to later adverse action).

To avoid these factual difficulties, plaintiff asserts that subordinates' awareness of her complaints can be imputed to Lehman, and that causation can be inferred from the amount of time elapsed between plaintiff's last complaint and her termination. Accepting that the decision maker's lack of knowledge of protected activity is quite logically fatal to her claim,

Tcheskidova asks this court to ignore the only record evidence pertaining to Lehman's state of knowledge. *Decl. of Robert Lehman*, ¶ 5. Lehman asserts that he did not know of any protected activity in which plaintiff was engaged and plaintiff has not made any evidentiary showing, direct or circumstantial, to the contrary. Under these circumstances, the court declines Tcheskidova's invitation to impute to Lehman the knowledge of his subordinates.

Furthermore, assuming that the July 5 grievance, wherein plaintiff stated "[t]he company is trying retaliate against my complaint," constituted protected activity, her termination coming six weeks later does not, as plaintiff would have it, automatically give rise to a causal relationship. Some cases have permitted "very close" temporal proximity, without more, to raise sufficient inference of causation for the *prima facie* showing. *Clark County School Dist. v. Breeden*, 532 U.S. 268, 273 (2001). And, in a case where the employment relationship has been consistently positive and the otherwise well-regarded employee is terminated shortly after filing an EEOC complaint, a reasonable inference of causation might be drawn solely from the timing. However, such an inference cannot be reasonably drawn where, as here, the employment relationship has been consistently troubled and the employee's conduct in the six week window between complaint and termination includes erratic behavior, paranoid accusations, and inexplicable refusals to comply with the employer's expressed conditions of employment.

Finally, even if plaintiff had made a sufficient *prima facie* showing, she offers nothing to demonstrate that ITT's stated reasons for her termination are mere pretext. She agrees that she was insubordinate when she refused to submit to a fitness-for-duty evaluation as

instructed. *Id.* at 56. Plaintiff also admits that “[she is] absolutely sure that [she] was kind of unstable” in the time period shortly before ITT demanded that she submit to a psychological evaluation. *NT Dep. at 242.* These circumstances drove ITT’s decision to discharge Tcheskidova and her general, conclusory assertions that retaliation was the true motivation, absent any supporting evidence, do not suffice to demonstrate pretext.

IV.

For the reasons set forth above, plaintiff has failed to make out a *prima facie* case of retaliation, and she has utterly failed to generate a genuine dispute of material fact as to whether ITT’s articulated reasons for her termination are mere pretext. Accordingly, the motion for summary judgment shall be granted, subject to the court’s continuing jurisdiction over the pending motion for sanctions. An order follows.

Date: August 1, 2008

/s/
Andre M. Davis
United States District Judge