



MILES v. THE CITY OF PHILADELPHIA et al

2018 | Cited 0 times | E.D. Pennsylvania | May 31, 2018

UNITED COURT FOR OF PENNSYLVANIA

Plaintiff,

OF PHILADELPHIA,

ACTION

FILED MAY 31 2018

BARKMAN, Clerk By Clerk

MEMORANDUM OPINION

30, 2018 U.S.

Plaintiff October 2015. She Police

"City"),

Protection

See S.J.

2014

Opportunity ("EEOC");

Protection IN THE STATES DISTRICT THE EASTERN DISTRICT JAMIE MILES,

v. THE CITY et al.,

CIVIL

No. 17-414



MILES v. THE CITY OF PHILADELPHIA et al

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KATE Defendants. Dep.

Timothy R. Rice May

Magistrate Judge

Jamie Miles was terminated from her position as a Philadelphia police officer in

has sued Defendants, the City of Philadelphia and former Philadelphia Commissioner Charles Ramsey (collectively, the for: (1) discrimination, retaliation, and the creation of a hostile work environment in violation of Title VII of the Civil Rights Act; and (2) violation of the Equal Clause of the Fourteenth Amendment. The City seeks summary judgment, asserting Miles's claims are barred by a prior settlement agreement and release, time-barred, or not supported by the evidence. Mot. (doc. 22).

The City's motion is granted. Miles's Title VII claims are dismissed because: (1) any claims for discrete discriminatory or retaliatory acts that occurred before December 24, are barred by Miles's prior settlement agreement and release and Miles's failure to file a timely claim with the Equal Employment Commission and (2) she has failed to present sufficient evidence to enable a reasonable jury to find that the City fired her for discriminatory reasons or subjected her to a hostile work environment. Miles's Equal

"there

oflaw."

See 170, 2010).

See U.S. "reasonable party"

210 2010).

2003 See S.J. 2008, Unit ("CRU"),

S.J.

CRU, 2011,

See S.J. ii ii 11-cv-4040 ("2011 Case"),

See claims are dismissed because: (1) she has failed to show was fired because of a discriminatory



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policy or custom by the City; and (2) Commissioner Ramsey is entitled to qualified immunity.

I. Legal Standard

Summary judgment is appropriate where is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter Fed. R. Civ. P. 56(a). The evidence and any inferences from the evidence must be viewed in the light most favorable to the non-moving party. Ray v. Warren, 626 F.2d 173 (3d Cir. If reasonable minds could conclude that there are sufficient facts to support a plaintiffs claims, summary judgment should be denied. Anderson v. Liberty Lobby, Inc., 477 242, 248 (1986). It should be granted if no jury could return a verdict for the nonrnoving based on the evidentiary record. Reedy v. Evanson, 615 F.3d 197, (3d Cir.

II. Facts Most Favorable to Miles

Miles began working for the Philadelphia Police Department in April and was initially assigned to the 23rd Police District. Mot., Ex. 3, Miles Service Record. In March Miles was transferred to the Community Relations where she was responsible for educating Philadelphia school students about the dangers of drugs and gangs. Id.; see also Mot., Ex. 1, 5/8/2013 AAA Award at 2-3.

While working in the Miles alleged that she was sexually harassed by a supervisor and in June Miles sued the City, Commissioner Ramsey, and several other City employees for sexual discrimination and retaliation. Mot., Statement of Facts 1; 1

Resp. to Undisputed Fact (doc. 23-1) 1; Miles v. City of Phila., E.D. Pa.

Although the City has not numbered the paragraphs in its statement of facts, Miles has responded to each paragraph according to their order and I refer to them in the same way. Resp. to Undisputed Facts at 1 n.1.

2

2013. 2

See S.J. Statement if if Op.

2011 Police

Philadelphia if

Police ("PBI")



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"transferred dismissed." 2011, Order Police, ("FOP")

On 2013,

"stealing time" "After

circumstances," "shall pay." 10.

"reinstatement

position."

See 2011 Op. Sandra Compl. (doc. 1). The case settled and Miles agreed to release the defendants from any claims she had as of July 24, Mot., of Facts 4; Resp. to Undisputed Fact 4; 12/31/2013

Around the same time Miles filed the Case, the Department charged her with conduct unbecoming an officer and neglect of duty for falsifying records about providing drug and gang avoidance programs at a school on various dates. Compl. 7; 5/8/2013 AAA Award at 1-4. Following a hearing, the Board of Inquiry concluded Miles was guilty and recommended she be dismissed or if not 5/8/2013 AAA Award at 4. In November Commissioner Ramsey dismissed Miles. Id.

The Fraternal of Lodge No. 5 grieved Miles's dismissal as being unfair, inequitable, and disparate. Id. at 7. May 8, an arbitrator determined Miles committed serious misconduct by deliberately falsifying records and lying about her whereabouts. Id. at 8. The arbitrator, however, also found that the City did not have just cause to terminate Miles because there was no evidence that the City had ever terminated a police officer for a single instance of falsifying records or similar conduct, such as by leaving work shifts early. Id. at 9. considering the totality of the circumstances [and] balancing the seriousness of the misconduct and the extenuating the arbitrator concluded that Miles be reinstated to service with her time off treated as a disciplinary suspension without Id. at The arbitrator noted that the parties should confer about the best position for Miles and that Miles' s [was] conditioned upon her satisfying all of the applicable certifications and requirements of her Id.

2

After settling, Miles refused to sign the release and claimed her attorney lacked authority to settle the case. Case, 12/31/2013 (doc. 76) at 3-4. Magistrate Judge Carol

Moore, however, found that the settlement agreement and release were enforceable and Miles never appealed that decision. Id. at 4-7; see also Resp. (doc. 23) at 4.

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On 2013,

See Service

2011 iii! 10-21. She "a fear"

for." S.J. 10/26/2017

("AWOL"), 2011 See AWOL

"sick checked." 19-20.

20-21. 2013 "sick violation"

S.J.

See 10/26/2017 June 26, the Police Department reinstated Miles as a police officer in the 18th Police District. Miles Record. Miles contends that, following her return, she was subject to gender discrimination and retaliation as a result of her Case. Compl.

testified that she had general of going to work every day because [she] did not know what she was going to be charged with [or] written up Mot., Ex. 4, Miles Dep. at 75-76.

Miles explained that, shortly after her reinstatement, she was charged with being absent without leave a disciplinary action previously imposed by a defendant in the Case. id. at 54-57. Although she retained an attorney to represent her on the charge, it was dismissed before a PBI hearing was held. Id. at 57-58.

Miles also testified that her 1 gth District supervisor, Lieutenant Michael Reilly, sent officers to her home to check on her when she called out sick and had her sign two counseling memoranda stating she was not home when Id. at 5-9, Miles said that, on one occasion, the Department knew she was sick because she was sent home sick the previous day. Id. at 6-8. The second time, she said she had called the Police Department and obtained permission to leave her home for an appointment. Id. at 13-14. Miles testified that she noted objections on at least one of the counseling forms, but she has not presented that form or any other evidence to support her claim that the sick checks were unwarranted. Id. at The City has presented a December leave memorandum signed by Miles, without any written objections, and Captain Bellamy, rather than Lieutenant Reilly. Mot., Ex. 18, 12/14/13 Memorandum. Miles testified that she was never disciplined for the two sick leave violations. Miles Dep. at 9.

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FOP Show,

10-11,

See 10/26/2017

Show October 2013,

October 30, 2013,

See S.J. 10/30/2013 October 30,

See S.J. DARS 10/26/2017

Officer

See 10/26/201 She "conversations

day." 2013 2013, See S.J. DARS

2013,

See S.J.

gth Miles said Reilly continuously checked on her while she was on duty, denied her overtime for not buying tickets to the Thrill marked her late when she had received approval to use vacation time for her delay, and threatened to ticket her car for an expired inspection sticker. Id. at 15-16, 23-24. Miles has not presented any evidence of this conduct beyond her testimony and inadmissible hearsay statements by others. Miles Dep. at 14 (she was told by another officer that Reilly had said he was going to ticket her car for an expired inspection), 15 (someone told her that Reilly said she was denied overtime for not buying Thrill tickets).

In Sergeant McCoy presented Miles with a counseling memorandum that stated she was late on nine dates between August 6 and and explained that her attendance needed to be rectified immediately or formal discipline could result. Mot, Ex. 17, Counseling Form. Miles was marked late numerous times after but she did not receive another counseling memorandum or any discipline for being late.

Mot., Ex. 5, Miles Listing; Miles Dep. at 25.

Miles contends that Burns, a male officer in the 18th District, was frequently late, but not marked late like she was. 7 Miles Dep. at 31. believed this based on



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with him, other co-workers, and just knowing the-the common practice that's that's applied every single Id. Burns's attendance records for June 26, to August 16,

show he was marked late once during that time period. Mot., Ex. 6, Burns Listing. There is no evidence, other than Miles' s testimony, that these records are inaccurate.

In November Miles submitted a hardship memorandum to her Commanding Officer, requesting a new work shift. Mot., Ex. 16, Hardship Memorandum. Miles explained that she was experiencing problems traveling the 25 miles from her home in the

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See S.J. 20. ("IAD") 2014

See S.J. 20; 10/26/2017

10/26/2017 She

On 2014,

See S.J. On 2014, See S.J.

10/26/2017 Police District to work in the 1 gth District and she believed that a different work shift would resolve the issue. Id. This request was denied with a notation that Miles did not meet the criteria for a shift change after the bidding had ended. Id.

Around the same time, Miles was involved in an incident while she was off-duty that resulted in a civil rights lawsuit being filed against her. Mot., Exs. 19, The Internal Affairs Department investigated the matter and notified Miles in September that: (1) she was exonerated from allegations of false arrest by the complainant; (2) the complainant's allegations of missing property were unfounded; and (3) the Department violations for not calling 911 regarding the situation based on her off-duty status were sustained. Mot., Exs. 19, Miles Dep. at 72. Miles testified that she later received a letter from IAD sustaining the complainant's allegations of false arrest and missing property. Miles Dep. at 72-7 5. called IAD and was told that the letter may be a mistake and never received any other information or discipline about the matter. Id.

January 24, Miles suffered a work-related injury and was placed on injured-on duty status for approximately four months. Mot., Statement of 6; Resp. to Undisputed 6. June 2, Miles returned to unrestricted duty in the 2nd Police District. Mot., Statement of 6; Resp. to Undisputed 6. Around that time, she tried to make a citizen complaint against her boyfriend, fellow police officer Michael Winkler, for domestic abuse. Miles Dep. at 42-43. An officer in the IAD told Miles that he could not



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accept her complaint because she was a police officer and needed to go through her captain and supervisors. Id. at 43-44.

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September 2014,

See 10/26/2017 2015,

2013 EEOC See S.J.

See S.J. 10/02/15 103

See October 2015,

September 2015, PBI

See S.J.

20 See PBI Upon

30-day See October 2015. See S.J. Statement , -i , -i

FOP

See In Miles reported the domestic issues with Winkler to her supervisor, who referred the matter to the IAD. Id. at 47-49. was interviewed by the IAD, but they limited the interview to one incident. Miles Dep. at 47-48, 64.

In March Miles sent a memorandum to her Commanding Officer, alleging she had been retaliated against and subject to a hostile work environment since returning to work in and seeking permission to file claims. Mot., Ex. 14 at CITY2441. After interviewing Miles about her allegations that same month, the IAD initiated an investigation into her claims against Winkler. id.; Mot., Ex. 7, Internal Investigation IAD #15-

8 at CITY2249. The investigation included a review of evidence produced by Miles, interviews with Miles and Winkler, and attempts to obtain information from other potential witnesses. id. In the IAD concluded that Miles's allegations against Winkler could not be sustained because they could not be proved or disproved. Id. at CITY2258-2259.

In a hearing was held on charges that Miles had again engaged in conduct unbecoming a policy



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officer by knowingly and willingly making a false entry on a department record or report and abusing her authority. Mot., Ex. 8, 12/5/2016 AAA Award at 2. The Board found Miles not guilty of abusing her authority, but guilty of knowingly and willingly making a false entry on a department record or report, and recommended she be suspended for days. Resp., Ex. E, 9/8/2015 Hearing Findings. review, Commissioner Ramsey found Miles guilty of both charges and imposed a suspension followed by a dismissal. id. Commissioner Ramsey terminated Miles on 15,

Mot., of Facts 18; Resp. to Undisputed Fact 18. The grievant Miles's termination, asserting the Department did not have just cause to terminate her. 12/5/2016 AAA Award at 2. During an arbitration hearing, the parties

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"fender bender" 2014. See

gth Police

See 8 1 h Police

See

See

Police See FOP's "was

"

"been twice," "she trust."

EEOC 20, 2015. See , -r Undisputed , -r EEOC, See , -r

2013

2013, 2011 presented evidence showing that Miles's boyfriend and daughter were involved in a minor

with a neighbor on May 28, id. at 3. Miles was not present at the time and shortly after the accident, a police officer filed a report in the District, where the accident occurred, stating that Miles's boyfriend struck the neighbor's car. id. at 4. Four days later, Miles went to the l District and presented the on-duty officer with a police report stating that the neighbor struck her boyfriend's car. id. at 4, 8. This conduct violated police policy requiring reports to be filed in the District where they occurred. id. at 5-6. Deputy Commissioner Richard Ross recommended that Commissioner



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Ramsey terminate Miles because her conduct jeopardized the credibility of the Department and she had already been found guilty of similar misconduct. *id.* at 5-6.

The arbitrator denied the grievance. *Id.* at 14. He explained Miles in violation of departmental policy, with regard to falsification of an accident report and with respect to her abuse of authority *Id.* at 13. The arbitrator also found Commissioner Ramsey had just cause to terminate Miles as she had found to have falsified public documents demonstrating that is no longer worthy of the public's *Id.* at 14.

Miles filed a formal charge against Defendants on October S.J. Mot., Statement of Facts 18; Resp. to Fact 18. After receiving a right-to-sue letter from the she initiated this lawsuit. Compl. 21.

III. Discussion

A. Claims Related to Conduct Before July 25, The City argues, and Miles agrees, that she cannot bring any claims against the City for conduct before July 25, based on her settlement of the Case and agreement to release

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See 2013

2014

EEOC 300 EEOC 300 "after occurred." 3

U.S.C. 2000e-5(e)(l). EEOC 300

See Passenger U.S. 101, (2002) ("discrete charges").

300 EEOC See ("Provided

liability."). EEOC 20,

300 2014.

2014 See U.S.

180 300 Pennsylvania, U.S.C. Phila., 2009 Pa. Sept. 10, 2009). the City from any such claims. Resp. at 4.



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Therefore, any claims concerning conduct before July 25, are dismissed.

B. Claims Related to Conduct Before December 24, The City argues that Miles' s claims for conduct that occurred before December 24, 2014, are time-barred because she did not file her charge within days of such conduct.

A plaintiff must file a charge with the within days the alleged unlawful employment practice 42 §
When a plaintiff fails to file an

claim within days of an alleged discriminatory act, she cannot maintain a cause of action based on that discrete act. Nat'l R.R. Corp. v. Morgan, 536 113

discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed A plaintiff, however, may rely on that discrete act to support a hostile work environment claim that includes an act that occurred within days of the filing. id. at 115-18 that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment claim may be considered by a court for the purposes of determining

Because Miles filed her charge against the City on May 2015, she can bring claims only for discrete acts of discrimination or retaliation that occurred within days of that date, i.e., on or after December 24, Any claims based on discrete acts of discrimination or retaliation that occurred before December 24, are time-barred. Morgan, 536 at 113. Thus, to the extent Miles is bringing independent claims for discrimination based on

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The charge of discrimination must be filed within days of the alleged unemployment practice or within days if the claim is made in a state, like with an entity with the authority to grant or seek relief with respect to the alleged employment discrimination. 42

§ 2000e-5(e)(1); Johnson v. City of No. 08-1894, WL 2914364, at *5 (E.D.

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8 1 h 2013

October 2015 300-day

See 2008). "an

See



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October See S.J. 10/30/2013

EEOC 300

2013

See

See 2001) ("an

120 1300

10 Lieutenant Reilly's actions while she worked in the 1 District between June and January 2014, 4

or the IAD's failure to investigate her complaints against Winkler between June and December 2014, those claims are dismissed. 5

Miles, however, may rely on such actions to support her hostile work environment claim because that claim includes her termination, which was within the window.

C. Gender Discrimination The City contends it is entitled to summary judgment on Miles's claim that she was fired because of gender discrimination.

To establish a prima facie case of discrimination, Miles must show: (1) she is a member of a protected class; (2) she was qualified for the position she sought to retain; (3) she suffered an adverse employment action; and (4) the action occurred under circumstances giving rise to an inference of intentional discrimination. *Makky v. Chertoff*, 541F.3d205, 214 (3d Cir.

If Miles establishes such a prima facie case, inference of discriminatory motive arises and the burden shifts to [the City] to articulate a legitimate, non-discriminatory reason for the

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Miles contends that she did not know Lieutenant Reilly marked her late numerous times until she received printouts of the late markings in June 2014. Resp. at 5-6. Miles, however, received a counseling memorandum that notified her about many of her late markings in 2013. Mot, Ex. 17, Counseling Form. Further, even if Miles did not know about the additional late markings until June 2014, she still failed to file her claim within

days of that date.



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Miles also asserts that the City had notice of her claims against Lieutenant Reilly based on her November hardship memorandum. Resp. at 5. Miles, however, solely requested a different shift in her hardship memorandum; she did not notify the City of any improper discipline by Lieutenant Reilly. Hardship Memorandum. 5

It also is unlikely that Miles could show that these actions constituted adverse employment actions to support her discrimination and retaliation claims. Cardenas v. Massey, 269 F.3d 251, 263 (3d Cir. adverse employment action is one which is 'serious and tangible enough to alter an employee's compensation, terms, conditions, or privileges of employment') (quoting Robinson v. City of Pittsburgh, F.3d 1286, (3d Cir. 1997)).

action." "If

discrimination."

See S.J.

See 8-10,

See 10/26/207 S.J.

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10/26/2017

See See 10/26/207

Police See Police adverse employment Id. [the City] does so, the inference of discrimination drops and the burden shifts back to [Miles] to show that the defendant's proffered reason is merely a pretext for intentional Id.

The City argues that Miles cannot establish that her termination occurred under circumstances that raise an inference of gender discrimination. Mot. at 17. Miles contends she has established such an inference based on evidence showing that male officers were not terminated for conduct unbecoming an officer or worse actions. 6

Resp. at Exs. F, G, H, K, I, J. This evidence, however, does not show that those male officers previously had been found guilty and disciplined for the same or similar conduct as Miles. Resp., Exs. F, G, H, K, I; id., Ex. J, Ramsey Dep. at 31-32; Mot., Ex. 13, G. Malkowski Dep. at 338-39, 347-48.



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Absent this important factor, those male comparators cannot be deemed substantially similar to her, and Miles cannot establish that her termination was for

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Miles has presented evidence showing that: (1) Vincent Testa was suspended for days without pay and transferred for failing to report or take action against another officer for weapons tampering, covering up the conduct, directing others to falsify reports, and lying during the Internal Affairs investigation, see Resp., Ex. G; (2) Joseph Connerton was suspended for days without pay, transferred, and ordered to pay restitution for regularly leaving work early with his squad and improperly using a police vehicle; see id., Ex. H; (3) the officers who left early with Connerton were reprimanded and ordered to pay restitution, see id., Ex. K; and (4) a police inspector was demoted and denied a promotion for having sexual contact in a police vehicle, see id. Ex. J, Ramsey Dep. at 31-32.

Although Miles has shown two other male officers were charged with conduct unbecoming an officer, she does not show how the charges were resolved. id., Ex. F. Miles also has presented evidence suggesting that allegations of sexual misconduct were made against two male officers. id. Ex. J, Ramsey Dep. at 30-31, 33-34. The evidence, however, does not show whether the allegations were ever found to warrant discipline. Thus, those four officers cannot be deemed substantially similar comparators. Miles also has identified several officers who were terminated by the Department for felony charges, but reinstated with back pay based on an arbitration award. id., Ex. I. Because the Department was required to reinstate those officers, they are not substantially similar to Miles.

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See 2015) "plaintiff

similarity");

"engaged

it")

See S.J. 10/26/2017 12/5/2016

See 8-10.

See

See 10/26/2017 12/5/2015 discriminatory reasons. 7



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Taylor-Bray v. Del. Dep't of Servs. for Children, 627 F. App'x 79, 82 (3d Cir. (in context of personnel actions, is not required to show she is identical to the comparator, but she must show substantial Anderson v. Haverford Coll., 868 F. Supp. 741, 745 (E.D. Pa. 1994) (to be similarly situated, the comparators must have

in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for (quoting Mitchell v. Toledo Hosp., 964 F.2d 577, 583 (6th Cir. 1992)).

Even if Miles could establish a prima facie case of gender discrimination, the City has presented a legitimate nondiscriminatory reason for firing her, i.e., her repeated conduct unbecoming an officer by falsifying police records and her improper preparation and filing of an accident report. Mot. at 18; Ramsey Dep. at 17; Arbitration Decision at 5-6. Miles asserts that the City's reasons are pretextual because: (1) she never lied; (2) the arbitrators' findings were improper because the arbitrator did not hear evidence about the discrimination and retaliation she faced; and (3) the City has not fired male police officers who engaged in similar or worse conduct. Resp. at Even if Miles did not lie, the Police Boards and Commissioner Ramsey determined otherwise after investigating the evidence and were entitled to discipline her based on those findings. Similarly, although Miles disputes the arbitrators' findings, her claims are based on the Police Department's and Commissioner Ramsey's decisions, not the arbitrators' decisions. Finally, Miles cannot show she was treated

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Miles also seems to argue that she was improperly terminated for filing a police report about the accident because her neighbor, a male officer, did the same thing. Resp. at 6. Miles's neighbor, however, did not file a police report about the accident. Rather, he called 911 to inform the police department about the accident and another police officer came to the scene to prepare a report. Ramsey Dep. at 16-17; AAA Award at 4.

12

City

City

Police See Phila. 300 Cir. 2007). City "articulate action."

City's "retaliation action."

City



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Commissioner Police

Commissioner 2015

Commanding

See Phila.

Commissioner "vaguely recalled"

10/26/2017 differently than male officers because she has not presented evidence that male officers who were substantially similar to her were not terminated.

Miles' s claim that she was fired based on her gender is dismissed.

D. Retaliation The argues that it is entitled to summary judgment on Miles's claim that she was fired in retaliation for her complaints of discrimination and retaliation.

To establish a prima facie case of retaliation, Miles must show: (1) she engaged in protected employee activity; (2) the took adverse employment action either after or contemporaneous with her protected conduct; and (3) a causal connection existed between her protected activity and the Department's adverse action. *Marra v. Hous. Auth.*, 497 F.3d 286, (3d If Miles establishes a prima facie case, the must

some legitimate, non-retaliatory reason for the adverse employment Id. Miles then must show, by a preponderance of the evidence, that the reason is false and

was the real reason for the adverse employment Id. The contends that Miles has failed to show a causal connection between her protected activity and termination. Miles contends there is a causal connection because

Ramsey fired her, despite the Board's recommendation for a 20-day suspension, knowing of her complaints of retaliation. Resp. at 11. Even assuming

Ramsey knew about Miles's complaints of retaliation in her March memorandum to her Officer, 8

he did not terminate her until almost seven months later, which is too removed in time to establish a retaliatory motive. *Williams v.*

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Although Ramsey Miles raising issues about Winkler, he said he did not remember any other complaints. Ramsey Dep. at 14.

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380 760-61 2004)

2014) EEOC

10/02/15

See

See STI 2017); U.S.

"the Hous. Auth., F.3d 751, (3d Cir. (temporal proximity alone was insufficient to establish causal connection where two months elapsed between protected activity and adverse action); Deans v. Kennedy House, Inc., 587 F. App'x 731, 735 (3d Cir. (termination that occurred two months after plaintiff filed charges was not unduly suggestive of retaliation). Further, during that time, the IAD was investigating Miles's allegations about Winkler. Internal Investigation IAD #15-1038. Nevertheless, even if Miles could establish a prima facie case of retaliation, the City has provided legitimate, non-retaliatory reasons for Miles's termination, and Miles fails to show that those reasons are false. supra at 12; Resp. at 11.

Miles's claim that she was fired in retaliation for her complaints against the City is dismissed.

E. Hostile Work Environment The City argues it is entitled to summary judgment on Miles's claims that she was subject to a retaliatory and discriminatory hostile work environment because she cannot show that she was subject to severe and pervasive conduct that detrimentally impacted her or would have detrimentally impacted a reasonable person. 9

To prove her hostile work environment claim, Miles must show that: (1) she suffered severe and pervasive discrimination or retaliation; (2) the discrimination or retaliation detrimentally affected her and would have detrimentally affected a reasonable person in her position; and (3) the discrimination and retaliation can be attributed to the City. Castleberry v. Grp., 863 F.3d 259, 263 (3d Cir. see also Morgan, 536 at 116 (plaintiff must show workplace is permeated with discriminatory intimidation, ridicule, and insult, that is

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The City addresses Miles's retaliation and hostile work environment claims together. I have



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separated the two claims for ease of discussion.

14

environment").

2013 2011 AWOL;

20-day

2011 See 5/8/2013 10.

See Police 2013,

AWOL See 10/26/2017 She

PBI See sufficiently severe or pervasive to alter the conditions of [her] employment and create an abusive working

Miles contends she was subject to severe and pervasive discrimination and retaliation because (1) the City delayed her reinstatement as a police officer following the arbitrator's May

decision; (2) she was disciplined by a defendant in her lawsuit for being (3) Lieutenant Reilly denied her overtime, sick checked her for no reason, marked her late for no reason, and otherwise harassed her; (4) the IAD changed its finding about the civil claims made against her from exonerated to sustained and repeatedly refused to take her reports about domestic abuse by Winkler; and (5) she was terminated after the Board recommended a suspension. Resp. at 6-7. Those actions, even considered in combination, did not amount to severe and pervasive discriminatory or retaliatory conduct that detrimentally affected Miles or would have detrimentally affected a reasonable person in her position.

Although the arbitrator who considered Miles's termination directed that she be reinstated, he did not order it done immediately. AAA Award at Rather, he directed the parties to confer about the best placement for Miles and stated that Miles must complete any necessary certifications and requirements before being reinstated. id. The

Department reinstated Miles on June 26, approximately one month and 18 days after the arbitrator's award. Miles has failed to present any evidence showing that the parties had agreed upon her placement and she had satisfied all of the requirements for her reinstatement substantially before that date.



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Miles testified that she had to obtain an attorney to dispute the charges brought against her after her reinstatement. Miles Dep. at 57. admitted, however, that the charges were dismissed before a hearing was even held. id. at 57-58. A

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AWOL

See 10/26/2017

See 10/20/2013

See 780-81 Pa. 2013).

See Podobnik U.S. Postal 409 2005) "party

issue"); Petrucelli 1308

"will

issue"); 704, Pa. 2015) reasonable jury could not find that the charges were severe actions that detrimentally impacted Miles or would have detrimentally affected a reasonable person in her position.

Miles also was never disciplined for any of the alleged improper actions by Lieutenant Reilly and she has failed to present any evidence other than her speculative testimony and inadmissible hearsay to show that his actions were unwarranted. Miles Dep. at 9 (she was not disciplined for sick check violations), 14 (she believed Reilly was going to ticket her car based on another officer's statements), 15 (she believed Reilly was denying her overtime based on statements of another officer), 25 (she was never disciplined for being late), 31 (she believed Officer Bums was not marked late based on conversations with him and others); see also id. at 15 (her inspection sticker was expired). Although she received at least three counseling forms, two were given by officers other than Reilly. 12/14/2013 Memorandum;

Counseling Form. Those forms also are used for training employees and cannot result in disciplinary action, such as a loss in pay, transfer, suspension, or demotion. Torres v. Deblasis, 959 F. Supp. 2d 772, (E.D. A reasonable jury could not find from this evidence that Reilly's actions constituted severe and pervasive conduct that would have detrimentally affected Miles or a reasonable person in her position. v. Serv., F.3d 584, 594 (3d Cir. (non-moving must present more than just bare assertions, conclusory allegations or suspicions to show the existence of a genuine



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v. Bohringer & Ratzinger, 48 F.3d 1298, (3d Cir. 1995) (existence of some evidence by non-moving party not be sufficient to support a denial of a motion for summary judgment; there must be enough evidence to enable a jury to reasonably find for the non-moving party on the Rosati v. Colello, 94 F. Supp. 3d 714-18 (E.D.

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See 10/26/2017 She

See

See Upon

See See 10/02/2015

See (dismissing claims of discrimination, retaliation, and hostile work environment that were supported only by plaintiffs testimony and inadmissible hearsay).

Miles testified that after being notified by the IAD that she was exonerated of the false arrest and stolen property civil charges brought against her, she received a letter stating the IAD had sustained those findings. Miles Dep. at 72-75. Miles, however, has not presented that letter. also testified that she was later told the letter may have been a mistake and she received no other information or discipline. id.

Although Miles said that the IAD initially would not accept her complaints against Winkler, the IAD advised her of the proper way to make her complaints and Miles eventually followed that advice. id. at 43-48. receiving that complaint, the IAD also formally interviewed Miles, albeit not as fully as she would have liked. id. at 47-48, 64. The IAD, however, conducted a full investigation several months later. Internal Investigation. A reasonable jury could not find from this evidence that the IAD's actions amounted to severe and pervasive misconduct that detrimentally impacted Miles or would have detrimentally impacted a reasonable person in her position.

Lastly, because the City has presented legitimate reasons for Miles's termination and Miles has failed to establish that those reasons were false or pretextual, her termination also does not support her hostile work environment claim. supra at 12.

Miles's hostile work environment claim is dismissed.

F. Equal Protection Claim Against the City The City argues that Miles's Equal Protection Claim must be dismissed because she has failed to produce any evidence showing it had a policy or practice of discrimination or retaliation towards women.



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See 520 U.S. 403-04 Soc. Servs., U.S.

See 1480

102-166, 105 Stat.

See "An incidents" "establish custom." See 2002

2002).

See She "[m]ale predators."

See

See U.S. (2009) To prove her claim against the City, Miles must show that it had a policy or custom that injured her. Bd. of Cty. Comm'rs v. Brown, 397, (1997) (citing Monell v. Dept. of 436 658, 694 (1978)). Miles can establish an unlawful policy by showing that a decisionmaker with final authority formally issued the policy through a policy statement, rule, or other means. Andrews v. City of Phila., 895 F.2d 1469, (3d Cir. 1990), superseded in part by statute, Civil Rights Act of 1991, Pub. L. No. 1072. Miles can establish a custom by showing a permanent or well-settled course of conduct or practice by municipal officials. id. isolated incident or series of alone does not a settled municipal King v. City of Phila., No. 99-6303, WL 1277329, *16 (E.D. Pa. June 4,

Miles contends she has established an extensive custom of gender-based discrimination, retaliation, and deliberate indifference by the City. Resp. at 12. explains, without citation, that officers are disciplined less harshly and several male supervisors are active sexual Id. Miles cites only herself to show how women are treated, and has failed to present any evidence that male officers are regularly disciplined less harshly than she was for committing similar misconduct on two separate occasions. supra at 11. Miles therefore has failed to show that the City had a well-settled course of conduct or practice of discriminating and retaliating against women that caused her to be terminated.

Miles's Equal Protection claim against the City is dismissed.

G. Equal Protection Claim Against Commissioner Ramsey The City also argues that Commissioner Ramsey is entitled to qualified immunity from Miles's claims because she has failed to show any constitutional violation. I agree. Pearson v. Callahan, 555 223, 231-32 (doctrine of qualified immunity protects government

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officials from liability for civil damages unless plaintiff can show that they violated clearly established constitutional right).

Miles' s Equal Protection claim against Commissioner Ramsey is dismissed. An appropriate order follows.