Conner v. Oklahoma State of

2023 | Cited 0 times | W.D. Oklahoma | September 29, 2023

UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA CLAUDIA C. CONNER,) Plaintiff,) v.) Case No. CIV-22-1095-G STATE OF OKLAHOMA, d/b/a) OKLAHOMA EMPLOYMENT) SECURITY COMMISSION,) Defendant.)

ORDER Plaintiff Claudia C. Conner has brought this lawsuit against Defendant State of

in connection with the termination of her employment. See Am. Compl. (Doc. No. 7). Now before the Court is Motion to Dismiss (Doc. No. 10). Plaintiff has responded (Doc. No. 11), and OESC has replied (Doc. No. 12).

I. Summary of the Pleadings

In the Amended Complaint, Plaintiff alleges that she was employed at OESC as General Counsel and Chief of Staff. See Am. Compl. ¶ 5. Plaintiff asserts that she was wrongfully terminated from her employment on or about November 10, 2021. See id.

At the time of her termination, Plaintiff was over 60 years of age. Id. ¶ 6. Plaintiff

t the time she was terminated. Id. ¶¶ 7-8. OESC did not provide a reason for the

2 termination. Id. ¶ 9. Id. ¶ 10.

When Plaintiff was hired, the OESC Director, Shelley Zumwalt, asked Plaintiff to Id. ¶ 11. During her employment, em Id. Id. ¶ 13.

During her employment, Plaintiff worked with a state vendor, Mark Davis. Id. ¶ 16. Plaintiff became aware that Mr. Davis was making inappropriate remarks to young women and men working in the office. Id Id. Id.

10, 2021 termination, Mr. Davis was hired as an employee of OESC; a few months later with OESC. Id. ¶ 17.

Plaintiff alleges that the

Id. ¶ 21.

3 II. Applicable Standard

OESC seeks dismissal of claims pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. In analyzing a motion to dismiss under Rule 12(b)(6), -pleaded factual allegations in the complaint and view[s] Burnett v. Mortg. Elec. Registration Sys., Inc., 706 F.3d 1231, 1235 (10th Cir. 2013). Khalik v. United Air Lines, 671 F.3d 1188, 1190

(10th Cir. 2012) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

A complaint fails to state a claim on which relief may be granted when it lacks n the

Twombly, 550 U.S. at 555 (footnote and citation omitted). Bare legal conclusions in a pported by factual Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009).

III. Federal Claims

A. Sex-plus-Age Under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., it is unlawful for an employer to discharge an individual or otherwise discriminate against that individual race, color, religion, sex, or national origin. Id. § 2000e-2(a)(1). Title VII also prohibits discrimination based on a combination of a protected characteristic and a non-protected characteristic, such as age or parental status.

4 See Frappied v. Affinity Gaming Black Hawk, LLC, 966 F.3d 1038, 1045-46 (10th Cir. 2020).

Plaintiff first brings a claim that her termination from OESC constituted improper sex-plus-age discrimination under Title VII. See Am. Compl. ¶¶ 18, 21. Stated differently, Plaintiff claims that she was fired from her pos see also id. -4. Because

- age is not itself protected under Title VII, her sex-plus- Frappied, 966 F.3d at 1046.

[A] sex-plus-age claim alleges discrimination against an employee because of sex and some other characteristic. It is thus a sex discrimination claim, albeit one that alleges that the discrimination was based only in part on sex. Like any other sex-plus plaintiff, a sex-plus-age plaintiff must show unfavorable treatment relative to an employee of the opposite sex who also - Id. at 1048 (citation omitted); see also Chadwick v. WellPoint, Inc., 561 F.3d 38, 43 (1st Cir. 20 that more than simple sex discrimination must be alleged; rather, it describes the case where

not all members of a disfavored class are discriminated against. In other words, in such cases the employer does not discriminate against the class of men or women as a whole but quotation marks

omitted)).

5 OESC seeks dismissal of this claim under Rule 12(b)(6), arguing that Plaintiff has failed to adequately plead a claim upon which relief may be granted. See - -4. A plaintiff proves a violation of Title VII

either by direct evidence of discrimination or by following the burden- shifting framework of McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 (1973). Under McDonnell Douglas, a three-step analysis requires the plaintiff first prove a prima facie case of discrimination. To set forth a prima facie case of discrimination, a plaintiff must establish that (1) she is a member of a protected class, (2) she suffered an adverse employment action, (3) she qualified for the position at issue, and (4) she was treated less favorably than others not in the protected class. The burden then shifts to the defendant to produce a legitimate, non-discriminatory reason for the adverse employment action. If the defendant does so, the burden then shifts back to the plaintiff to show that the plaintiffs protected status was a determinative factor in the employment decision or that the employers explanation is pretext. Khalik, 671 F.3d at 1192 (citations omitted).

The requirement that a plaintiff establish a prima facie case is an evidentiary burden rather than a pleading requirement. See Swierkiewicz v. Sorema N. A., 534 U.S. 506, 510 (2002). In clarifying the role of the McDonnell Douglas framework on a motion to dismiss, [the plaintiff] establish a prima facie case in her complaint, the elements of each alleged

cause of action help to determine whether [the plaintiff] has set forth Khalik, 671 F.3d at 1192; see Morman v. Campbell Cnty. Mem l Hosp., 632 F. Appx 927,

McDonnell Douglas framework assist judges in resolving motions to dismiss by providing an analytical framework to sift through

6 The Court therefore considers whether Plaintiff has set forth a plausible claim in light of the relevant elements.

Plaintiff argues that she has adequately alleged her sex-plus-age claim because she has alleged: (1) she belongs to a protected class (female); (2) she was qualified for her position; (3) despite her qualifications, she was discharged; and (4) the job was not eliminated after her discharge. See Frappied, 966 F.3d at 1050-51 (identifying these as the four claim); see Am. Compl. ¶¶ 6-8, 10-13, 17. 1

But to survive a Rule 12(b)(6) motion of sex discrimination Frappied, 966 F.3d at 1053 (affirming dismissal of sex-plus-age

merely possible causes an inference of disparate treatment of ; accord Kendrick v. Penske Transp. Servs., Inc., 220 F.3d 1220, 1227 (10th Cir. 2000) The

1 The articulation of the prima facie case under the McDonnell Douglas Plotke v. White, 405 F.3d 1092, 1099 (10th Cir. 2005). As may establish a prima facie Id. at 1100 (emphasis omitted); see also Stainsby v. Okla. ex rel. Okla. Health Care Auth., No. CIV- 21-1073-D, 2023 WL 1825099, at *5 (W.D. Okla. Feb. 8, 2023). For instance, the Tenth Khalik, the actual reason for termination in a discriminatory firing case is not elimination of the former position Plotke, 405 F.3d at 1099.

7 critical prima facie inquiry in all cases is whether the plaintiff has demonstrated that the adverse employment action occurred under circumstances which give rise to an inference (internal quotation marks omitted)); see Reply at 4. Stated differently, a logical connection between each element of the prima facie case and the inference of discrimination. Plotke, 405 F.3d at 1100; see Frappied, 966 F.3d at -plus-age claim brought by an older woman addresses

The Amended Complaint contains no specific allegations related to sex or gender bias, as opposed to age bias, other than to allege female employees as dowdy and frumpy. Am. Compl. ¶ 12 therefore fail to provide a basis from which to infer See Frappied -

ch . speculative, conclusory assertions of the termination are insufficient to survive a motion to dismiss. Am. Compl. ¶ 21; see Khalik are not necessary, alteration, citation, and internal quotation marks omitted)). does not make . . . inconsistent or irrational employment practices illegal. It prohibits only

intentional discrimination based upon an employee EEOC v. Flasher Co., 986 F.2d 1312, 1319 (10th Cir. 1992) (emphasis omitted). Therefore, Plaintiffs Title VII sex-plus-age discrimination claim must be dismissed.

8 B. Retaliation s anti-retaliation provision (the opposition clause) bars an employer from Reznik v. inContact, Inc., 18 F.4th 1257, 1260 (10th

Cir. 2021) (quoting 42 U.S.C. § 2000e-3(a)). Plaintiff alleges that she was subjected to unlawful retaliation for reporting to OESC women and men working in the office Am. Compl. ¶ 16; see also id. ¶¶

18 (alleging that she filed a charge of discrimination reporting sexually inappropriate behavi , 21 (alleging that a reason she was terminated was the reporting sexual harassment of other employees). According to Plaintiff, after becoming aware of remarks, Plaintiff counseled Mr. Davis and had several conversations with . See id. ¶ 16. Id. Plaintiff was terminated

two days later without explanation. Id. ¶ 17. To establish a prima facie case of retaliation, Plaintiff engaged in protected opposition to discrimination, (2) that a reasonable employee would

have found the challenged action materially adverse, and (3) that a causal connection existed between

the protected activity and the materially Khalik, 671 F.3d at 1193 (alteration and internal quotation marks omitted). Again, while Plaintiff has no reasonable framework for evaluating whether [Plaintiff] has sufficiently alleged a claim of

9 New v. Bd. of Cnty. Comm rs for Tulsa Cnty., 434 F. Supp. 3d 1219, 1225 (N.D. Okla. 2020). The parties primarily dispute whether Plaintiff has adequately alleged the first element i.e., that she engaged in protected opposition to discrimination. See at 5- -7. OESC first objects to the lack of any allegation that Mr. Davis

was employed by OESC. See . Plaintiff dismisses this point as . actions with respect to Mr. Davis would, if shown to otherwise constitute protected

opposition to discrimination, not be excluded from that category because Mr. Davis was a vendor rather than an employee of OESC.

Title VII extends its protection not only to individuals who are in an employment relationship with their alleged harasser, but also to individuals who are subjected to harassment initiated by outsiders, customers or nonemployees. E.g., Holmes v. Utah Department of Workforce Services, 483 F.3d 1057, 1065 (10th Cir. 2007) (employer obligated to protect employees from sexual harassment initiated by outsiders, customers, nonemployees or visitors to workplace premises); Lockard v. Pizza Hut, Inc., 162 F.3d 1062, 1073 (10th Cir. 1998) (EEOC regulations provide that employer may be responsible for acts of nonemployees with respect to sexual harassment of employees in workplace). Browner v. Okla. ex rel. Univ. of Okla., No. CIV-09-896-W, 2010 WL 11607316, at *6 (W.D. Okla. Feb. 5, 2010) (denying dismissal of retaliation claim where plaintiff contended that she was discharged after complaining). the Amended

Complaint has plausibly pleaded that an unlawful employment practice. 42 U.S.C. § 2000e-3(a).

10 OESC next objects that Plaintiff has not plausibly alleged that she engaged in protected opposition to discrimination because the Amended Complaint fails to identify

remarks. See -7. Therefore, according to OESC, the VII, as required to plead this

element. Reznik, 18 F.4th at 1260; 728- , the

employee must show he had a reasonable good-faith belief that the opposed behavior was

knowledge available to the reasonable person in the same factual circumstances . . . as the

Reznik, 18 F.4th at 1263 (internal quotation marks omitted). This determination ss, and duration of the alleged Id. at 1264. Here, the broad references to provide no meaningful information about the

factual circumstances of the allegedly unlawful conduct. Am. Compl. ¶¶ 16, 21. -faith belief that Mr. to allow a Reznik, 18 F.4th at 1260; see also Culp v. Reynolds, No. CIV-19-424-PRW, 2020 WL 1663523, at *4 (W.D.

11 harassment was based on gender cf. Burlington N. & Santa Fe Ry. Co. v. White,

This claim must be dismissed.

IV. State-Law Claims

-matter jurisdiction in this matter claims. See Notice of Removal (Doc. No. 1) at 2; 28 U.S.C. §§ 1331, 1441(a). Those

OESC are premised upon violations of Oklahoma law. See Am. Compl. ¶¶ - 15. The pleading reflects that the parties are not diverse, and the record does not evince claims have been dismissed, the court may, and usually should, decline to exercise

Smith v. City of Enid ex rel. Enid City , 149 F.3d 1151, 1156 (citing 28 U.S.C. § 1367(c)(3)). Accordingly, the Court declines to proceed with the remaining state-law claims.

CONCLUSION As outlined herein, Motion to Dismiss (Doc. No. 10) is GRANTED. federal claims are DISMISSED WITHOUT PREJUDICE for failure to state a claim upon which relief can be granted. The Court declines to exercise supplemental -law claims. A separate judgment shall be entered.

12 Notably, Plaintiff requested in her briefing that the Court consider allowing her leave to amend in lieu of dismissal, but failed to adequately establish that amendment would resolve the cited deficiencies. Cf. LCvR 15.1 (requiring that the proposed pleading be submitted with a motion to amend). Notwithstanding the issuance of a judgment, Local Civil Rules.

IT IS SO ORDERED this 29th day of September, 2023.