HOANG v. SEAGATE TECHNOLOGY

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MEMORANDUM OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Hieu Hoang ("Hoang"), who is Vietnamese, filed thisaction against his former employer, Seagate Technology, LLC("Seagate"), alleging racial and national origin discriminationin violation of 42 U.S.C. § 2000e. Defendant moves for summaryjudgment. For the following reasons, the Court grants defendant'smotion.[1] BACKGROUND

Hoang was employed by Seagate for twe nty-one years and, beforehis termination, worked the night shift at Seagate's facility inBloomington, Minnesota. (Dep. of Hieu Hoang ("H.D.") at 7, 11,14-16, 37-39.) Hoang's long-time girlfriend, Ngoc-Hue Nguyen("Nguyen"), who Hoang lived with, also worked for Seagate at itsBloomington facility. (H.D. at 32-33.)

In the summer of 2001, Hoang's and Nguyen's relationshipdeteriorated, and Nguyen told Hoang to move out. (H.D. at 38-42.)Hoang became suicidal, and told Nguyen that he would "rather die"than live without her. (H.D. at 68; July 22, 2004 Affidavit ofNgoc-Hue Nguyen ("Nguyen Affidavit") at ¶ 4.) Nguyen asked Hoangif it was "easy to die," and Hoang responded that it was easy tobuy a gun for $200. (H.D. at 68; Nguyen Affidavit at ¶ 4.)

Also in the summer of 2001, Nguyen developed a friendship withanother man. (Dep. of Jim Curry ("C.D.") at 37-53.) This otherman was Jim Curry ("Curry"), another Seagate employee who workedat Seagate's Riverbluff facility. (C.D. at 37-53.) Hoang did notknow who this other man was, but became jealous and upset thatanother man was trying to break up his family. (H.D. at 51-52, 54; July 23,2004 Aff. of Hieu Hoang ("Hoang Affidavit") at 1.)

Hoang confronted Nguyen about the relationship. (H.D. at 35-46,57-58.R.S.F. at 3.) Nguyen denied that the relationship withCurry was romantic or sexual. (H.D. at 35-58.) Despite Nguyen'sstatements, Hoang installed eavesdropping equipment in Nguyen'sbasement and began recording her phone calls in early September.(H.D. at 43-49.) On September 11 or 12, Hoang recorded aconversation between Nguyen and Curry in which Curry encouragedNguyen to end her relationship with Hoang. (H.D. at 51, 53-54.)In this recorded conversation, Curry told Nguyen that if he evermet Hoang, he would identify himself as "the man [Hoang]threatened to kill" and punch him. (Ex. B Hoang Affidavit; H.D.at 51, 53-54.) Curry also told Nguyen that he could call thepolice and have Hoang arrested for threatening Curry. (Ex. B toHoang Affidavit.)

After listening to the conversation between Nguyen and Curry,Hoang found Curry's phone number and called him at home. (H.D. at58-59, 61, 65-66.) Hoang left two messages on Curry's answeringmachine, the first of which was threatening and the second ofwhich was, if not threatening, at least vulgar.[2] (H.D. at58-59, 61, 65-66.) Curry retrieved the messages while at work, and then calledHoang. (C.D. at 53-57.) Hoang recalls that Curry threatened to"turn Hoang in to the police," swore at him and called him a"little punk." (H.D. at 71-73.) Curry reported the conversationto his supervisor, Milo Holsten ("Holsten"), and told Holstenthat he felt unsafe at work because Hoang had threatened him.(C.D. 57-59, 65-66, 76, 82-87.)

Douglas Engelke ("Engelke"), a representative from Seagate'sHuman Resources Department, and another Seagate employee,Marianne Moreno, interviewed Curry about the concerns Curry hadvoiced to Holsten. (C.D. at 59-60.) Curry played the phonemessages for Engelke and Moreno. (C.D. at 60.) Engelke told Currythat Seagate would ensure his safety at work, and advised Curryto contact his local police department if he thought he was indanger at home. (Dep. of Douglas Engelke ("E.D.") at 53.)

Engelke and Moreno also interviewed Nguyen. (E.D. at 54; NguyenAffidavit at ¶ 8.) Nguyen confirmed her relationship with Hoang,and that the relationship was not going well. (Nguyen Affidavitat ¶ 8.) Nguyen also told them that Hoang had told her that hecould buy a gun easily and that it was not hard to find a gun for$200. (Nguyen Affidavit at ¶ 8.) Nguyen reported that she had spoken to Hoangthat morning, and that Hoang was very depressed. (NguyenAffidavit at ¶¶ 7,8.)

Seagate has a company policy and code of employee conductprohibiting violent or threatening conduct by employees whetheron or off company property. (E.D. at 44-45.) Engelke discussedthe situation with the legal department. (E.D. 59-60.) Based onEngelke's interviews of Curry and Nguyen, Hoang was suspended andhis access to the facility was disabled. (E.D. at 59-61.)

Early in the morning of September 13, Hoang and Nguyen arguedover Nguyen's relationship with Curry. (H.D. at 85-89.) Duringthe argument, Hoang called Curry. (H.D. at 86.) The argumentescalated, and Curry, listening over the telephone, called thepolice. (C.D. at 61-62; H.D. at 89-90.) Hoang was arrested forassault. (H.D. at 90.)

Engelke learned of Hoang's arrest later on September 13. (May25, 2004 Aff. of Douglas Engelke; Ex. 7 to July 23, 2004 Aff. ofAmy Flom ("Flom Affidavit").) Engelke spoke to Curry aboutHoang's call to Curry that had led to Hoang's arrest. (C.D. at66.) Curry told Engelke that Hoang had been threatening Nguyenand had made mention of a gun. (C.D. at 66; Engelke Affidavit at¶ 3.)

On September 14, Hoang called and spoke with Engelke, whoinformed him that he had been suspended pending furtherinvestigation. (H.D. at 114; E.D. 62, 66-67.) At that time, Hoanglearned Curry's identity, and that Curry was also a Seagateemployee. (H.D. at 115; Hoang Affidavit at 2; E.D. at 63-64.)Hoang told Engelke that he was angry with Curry and that he hadthreatened to "kick

[Curry's] ass, fuck with [him]." (H.D. at 114-15; E.D. at 63-64.) Hoang also told Engelke that hewould "fight back like the [September 11] bombing." (H.D. at 119;E.D. at 64-65.) Engelke recalls Hoang volunteering that he hadnot purchased a gun, and telling Engelke that he was "not aviolent person." (E.D. at 67, 88.) Hoang indicated to Engelkethat he had evidence that Curry had threatened Hoang. (H.D. at119-121; E.D. at 65.) Hoang asked Engelke if he could meet withEngelke to present this evidence, but Engelke refused. (H.D. at120-22.)

Hoang and Engelke spoke again on September 17. (H.D. at 122;E.D. at 68-69.) Hoang again stated that he had evidence thatCurry had harassed him, and asked to meet with Engelke. (H.D. at122.) Hoang asserted that Curry should also have been suspended,and that Seagate "didn't treat [him] right." (H.D. at 124-25;E.D. at 69.)

Engelke terminated Hoang on September 18 for violatingSeagate's workplace violence policy. (E.D. at 75.) Hoang toldEngelke that he felt he was being treated differently than Curry,and that "this isn't fair; I'm As ian and you're American." (H.D.at 125-127; Ex. 9 to Flom Affidavit; E.D. at 98.)

ANALYSIS

I. Summary Judgment Standard of Review

Rule 56(c) of the Federal Rules of Civil Procedure providesthat summary judgment "shall be rendered forthwith if thepleadings, depositions, answers to interrogatories, andadmissions on file, together with the affidavits, if any, showthat there is no genuine issue as to any material fact and thatthe moving party is entitled to a judgment as a matter of law."Only disputes over facts that might affect the outcome of the suit under the governing substantive law will properlypreclude the entry of summary judgment. Anderson v. LibertyLobby, Inc., 477 U.S. 242, 248 (1986). Summary judgment is notappropriate if the dispute about a material fact is genuine, thatis, if the evidence is such that a reasonable jury could return averdict for the nonmoving party. Id. Summary judgment is to begranted only where the evidence is such that no reasonable jurycould return a verdict for the nonmoving party. Id.

The moving party bears the burden of bringing forwardsufficient evidence to establish that there are no genuine issuesof material fact and that the movant is entitled to judgment as amatter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322(1986). The nonmoving party is entitled to the benefit of allreasonable inferences to be drawn from the underlying facts inthe record. Vette Co. v. Aetna Casualty & Surety Co.,612 F.2d 1076, 1077 (8th Cir. 1980). In considering a motion forsummary judgment, the Court properly considers all evidencebefore it that will be admissible at trial. Mays v. Rhodes,255 F.3d 644, 648 (8th Cir. 2001). The Court is not limited tothe evidence presented by the non-moving party. Id. Howe ver,the nonmoving party may not merely rest upon allegations ordenials in its pleadings, but it must set forth specific facts byaffidavits or otherwise showing that there is a genuine issue fortrial. Forrest v. Kraft Foods, Inc., 285 F.3d 688, 691 (8thCir. 2002). The non-moving

party's mere denial or disagreementwith otherwise admissible evidence presented by the moving partyis insufficient to create an issue of material fact. Mays,255 F.3d at 648. II. Discrimination

Hoang alleges that Seagate discriminated against him on thebasis of his race and national origin in violation of42 U.S.C. § 2000e-2(a). Specifically, Hoang contends that Seagatesuspended[3] and ultimately terminated him because he isAsian and Vietnamese.

At the summary judgment stage, claims of racial or nationalorigin discrimination are addressed according to the three-stepburden shifting analysis initially articulated in McDonnellDouglas Corp. v. Green, 411 U.S. 792, 802 (1973). Hannoon v.Fawn Eng'g Corp., 324 F.3d 1041, 1046 (8th Cir. 2003). Atthe first step, plaintiff must establish a prima facie case bypresenting evidence (1) that he is a member of a protected class,(2) that he was qualified for the relevant position, (3) thatthere was an adverse employment action, and (4) that someevidence of record supports an inference of improper motivation.Id. If the plaintiff fails to establish a prima facie case,summary judgment is properly granted to the defendant.

Hoang is Vietnamese, and thus is a member of a protected class.Additionally, the Court is satisfied the Hoang's twenty-one yearhistory of satisfactory work at Seagate demonstrates that Hoangwas, until the events in question, qualified for the positionfrom which he was terminated. Termination is the quintessentialadverse employment action, and the Court assumes for purposes ofthis motion that Seagate's suspension of Hoang pendinginvestigation of the events also constituted an adverseemployment action. See Fenney v. Dakota, Minnesota & Eastern R.Co., 327 F.3d 707, 716 (8th Cir. 2003) (adverse employmentaction is one that causes a material change in the terms orconditions of employment). However, Hoang cannot satisfy thefourth element of his prima facie case.

Construed in the most favorable light possible, Hoang arguesthat discriminatory animus can be inferred from the differingtreatment that he and Curry, a Caucasian, received. Essentially,Hoang contends that while he was suspended and then terminatedfor having threatened Curry, Seagate knew that Curry hadthreatened Hoang but chose not to suspend or terminate Curry."Instances of disparate treatment can support a claim of[discrimination], but [plaintiff] has the burden of proving thathe and the disparately treated [employees] were similarlysituated in all relevant respects." Equal Employment OpportunityComm'n v. Kohler Co., 335 F.3d 766, 776 (8th Cir. 2003)(internal quotation and citation omitted). "For discriminatorydiscipline claims, `[e]mployees are similarly situated when theyare involved in or accused of the same offense and aredisciplined in different ways." Id. "To be probative evidenceof [discrimination], the misconduct of the more lenientlydisciplined employees must be of comparable seriousness." Id.(internal quotations and citations omitted). In this case, Hoang and Curry were not similarly situated atthe time of either the suspension or the termination. At the timeof the suspension, Engelke had been informed that Hoang hadthreatened to physically harm another Seagate employee, Curry.Engelke had no corresponding information about Curry's behavior.Thus, Hoang and Curry were not similarly situated and theallegedly disparate treatment of the two at that time isirrelevant.

Hoang emphasizes that Engelke testified that he "only talk[ed]to Mr. Curry" before deciding to suspend Hoang. This argument isof no moment. "It is not unlawful for an employer to makeemployment decisions based upon poor job performance, erroneousevaluations, personal conflicts between employees, or evenunsound business practices, as long as these decisions are notthe result of discrimination based on an employee's membership ina protected class." Evers v. Alliant Techsystems, Inc.,241 F.3d 948, 959 (8th Cir. 2001) (internal quotation omitted).The relevant inquiry is whether the employer believed that theemployee had engaged in conduct justifying the disciplinaryaction taken. See Harvey v. Anheuser Busch, Inc., 38 F.3d 968,972 n. 2 (8th Cir. 1994) (citation omitted). Whether theinformation that Seagate had regarding Hoang's behavior wasaccurate or not, it was certainly a sufficient basis upon whichto suspend Hoang pending further investigation. Hoang has simplyfailed to present any evidence indicating that his race ornational origin played any part in Seagate's decision to suspendhim. At the time of Hoang's termination, Seagate knew that Hoang hadcalled Curry at home and threatened Curry physically, had againthreatened Curry over the telephone while Curry was at work, wasdepressed and potentially violent,[4] and had been arrestedfor assaulting another Seagate employee, Nguyen. In contrast,Curry had told Nguyen that if he were to meet Hoang he wouldpunch him, had threatened to report Hoang to the police, andultimately had reported Hoang to the police. Hoang's directthreat to physically harm Curry is of an entirely differentcharacter than Curry's assertion that he would report Hoang'sperceived dangerous conduct to the proper authorities. Hoang'sbehavior is also substantially different from Curry's comment toa third party that in the event of a hypothetical meeting, hewould punch Hoang. Seagate was not obligated to respond toHoang's and Curry's behaviors in the same manner because theyinvolved objectively different conduct. See Wheeler v. AventisPharms., 360 F.3d 853, 858 (8th Cir. 2004) (citationomitted). That Hoang was terminated while Curry was notterminated does not support an inference of discrimination.

Beyond the allegedly disparate treatment that Hoang and Curryreceived, Hoang points only to his own statement that "This isn'tfair; I'm Asian, you're American" as evidence of discrimination.Hoang has not, either to Engelke at the time that he made this statement or to the Court, elaborated on or provided anysupport for this assertion. Hoang's perception of how he wastreated, without at least some statement or action on Seagate'spart, or some other supporting evidence, does not give rise to aninference that Hoang was suspended or terminated based onunlawful considerations. See Griffin v. Super Valu,218 F.3d 869, 872 (8th Cir. 2000) (citation omitted) (plaintiff'sunsupported assertions of unfair treatment or discriminatorytreatment are not sufficient to support a claim fordiscriminatory treatment).

III. Conclusion

"Federal courts do not sit as super-personnel departmentsreviewing wisdom or fairness of employer's judgments, unless theywere intentionally discriminatory." Edmund v. MidAm. EnergyCo., 299 F.3d 679, 686 (8th Cir. 2002). It is in all casesthe plaintiff's burden to demonstrate that the employerintentionally discriminated against him. St. Mary's Honor Centerv. Hicks, 509 U.S. 502,

507 (1993). As Hoang has presented noevidence indicating that Seagate's actions were intentionallydiscriminatory, defendant's motion for summary judgment isgranted.

ORDER

Based on the foregoing, all the records, files, and proceedingsherein, IT IS HEREBY ORDERED that defendant's Motion forSummary Judgment [Docket No. 9] is GRANTED. IT IS FURTHER ORDERED that plaintiff's Motion to Strike AllInadmissible Evidence Submitted by Defendant, Re: Motion forSummary Judgment and Motion in Limine to Preclude AllInadmissible Evidence Submitted by Defendant, Re: Motion forSummary Judgment [Docket No. 22] is DENIED AS MOOT.

LET JUDGMENT BE ENTERED ACCORDINGLY.

1. Plaintiff moves the Court to strike "all inadmissibleevidence submitted by defendant in connection with [defendant's]motion for summary judgment." The Court is cognizant of its dutyto consider only evidence that would ultimately be admissible attrial. Mays v. Rhodes, 255 F.3d 644, 648 (8th Cir. 2001).The Court notes that Hoang's statements to either Curry orEngelke are not hearsay, and their testimony as to any suchstatements would be admissible at trial. Fed.R. Evid.801(d)(2)(A). Additionally, Curry, as well as any other witness,may testify to his own statements. Fed.R. Evid. 602. The Courtbases its decision on defendant's motion for summary judgment onthe deposition testimony of plaintiff, Engelke, and Curry, andaffidavits of Hoang, Nguyen, and Engelke. Additionally, the Courthas considered Engelke's hand-written notes submitted byplaintiff. Having determined, based solely on the abovedescribed, admissible evidence, that defendant's motion forsummary judgment must be granted, the Court need not considerplaintiff's motion further and will deny it as moot.

2. The first message said: Hey, asshole. It's ah [Hoang]. Motherfucker, you leave my woman alone, ok? If you keep, keep popping her, I come fucka your head, ok, you remember that, you know that, asshole?The second message said: Hey, motherfucker, pick up the phone, you at home, you hear me do ya, talk to me asshole.(H.D. at 58-59, 61, 65-66 and ex. 8 to H.D.)

3. Hoang also seems to argue that the manner in which Seagateinvestigated the incident — namely, interviewing Curry and thensuspending Hoang based solely on Curry's statements withoutobtaining Hoang's version of events, listening to Hoang'sevidence of Curry's threatening behavior, or also suspendingCurry — was discriminatory. "An adverse employment action is onethat causes a material change in the terms or conditions ofemployment." Fenney v. Dakota, Minnesota & Eastern R. Co.,327 F.3d 707, 716 (8th Cir. 2003). While the manner ofinvestigation may indicate that the resulting suspension wasdiscriminatory, the manner of investigation is not itself anadverse employment action.

4. Plaintiff and Nguyen, in her affidavit, contend that Hoangwas not dangerous or violent, that Nguyen had not told Curry thatHoang was dangerous or violent, and that Curry's statements toEngelke about Hoang were exaggerated and untrue. It is notdisputed, however, that Curry told Engelke that Hoang presented adanger to either Curry or Nguyen. As noted above, the accuracy ofthe information that defendant had is irrelevant. The relevantquestion is whether the information that defendant had wassufficient to warrant defendant's action.