Date: November 9, 1989

Subject: Federal District Court Decision in Pabarue v. PHRC, Civil Action No. 88-1772

To: All Commissioners, Executive Director, Regional Directors, Division Directors and PHRC Attorneys

From: Elisabeth S. Shuster
Chief Counsel

I. BACKGROUND AND HOLDING

Commission employee Pearl Pabarue brought suit in federal court against PHRC, charging discrimination based on race and sex in violation of Title VII. She alleged harassment by her supervisor because of her race and sex, transfer to the Intake Unit for the same reasons and retaliation for filing her EEOC complaint. On October 16, 1989, the federal court for the Middle District of Pennsylvania granted defendant PHRC's Motion for Summary Judgment and entered judgment in favor of PHRC.

II. SUMMARY OF RATIONALE

In rendering his decision, Judge Caldwell looked to McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981) for the applicable presumptions and shifting burdens of proof. (Slip op. at 3-5). The Court broadens the application of Meritor Savings Bank v. Vinson, 477 U.S. 57, 66, 106 S.Ct. 2399, 2405, 91 L.Ed.2d 49, 59 (1986), to clearly apply to a hostile or abusive work environment based on sex or race (Slip op. at 5), and then adopts the elements of a prima facie harassment case as set forth in Henson v. City of Dundee, 682 F.2d 897, 903-05 (11th Cir. 1982) (sexual harassment) (Slip op. at 5-7). McDonnell Douglas was also used as the authority for a prima facie case of discrimination based on a job transfer (Slip op. at 7-11), and the modified version of the shifting burdens of proof in retaliation claims (Slip op. at 11-15). Finally, the Court holds that: "Plaintiff's subjective suspicion of discrimination is not sufficient to establish pretext." (Slip op. at 15).

III. RATIONALE

A. Claims of Discrimination - Applicable Presumptions and Shifting Burdens of Proof

(Slip op. 3-5).

1. Burdine - Shifting burden:

"[1. T]he plaintiff has the burden of proving by a preponderance of the evidence a prima facie case of discrimination.

[2. I]f the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the employee's rejection.

[3. S]hould the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.

Burdine, at 252-53, 101 S.Ct. at 1093-94, 67 L.Ed.2d ____." (Slip op. at 3-4).

2. McDonnell Douglas elements of a prima facie case, which "should be tailored to the particular circumstances of the case:

The plaintiff must prove

(i) that he belongs to a racial minority;

(ii) that he applied for and was qualified for a job for which the employer was seeking applicants;

(iii) that despite his qualifications he was rejected; and

(iv) that, after his rejection the position remained open and the employer continued to seek applications from persons of complainant's qualifications.

McDonnell Douglas, 411 U.S. at 802, 93 S.Ct. at 1824, 36 L.Ed.2d at 677." (Slip op. 4, n.2).

B. Harassment

(Slip op. at 5-7).

1. "'[A] plaintiff may establish a violation of Title VII by proving that discrimination based on sex [or race] has created a hostile or abusive work environment.' Meritor Savings Bank v. Vinson, 477 U.S. 57, 66, 106 S.Ct. 2399, 2405, 91 L.Ed.2d 49, 59 (1986)." (Slip op. at 5) (parenthetical in original).

2. "To establish a prima facie case, the plaintiff must show that

   (1) she belonged to a protected class;

   (2) she was subject to unwelcome harassment;

   (3) the harassment complained of was based upon her protected status;

   (4) the harassment complained of affected a term, condition or privilege of employment; and,

   (5) respondeat superior would apply.

Henson v. City of Dundee, 682 F.2d 897, 903-05 (11th Cir. 1982)." (Slip op. at 5-6).

3. [F]or harassment to be actionable, it must be "sufficiently severe or pervasive 'to alter the condition of [the plaintiff's] employment and create an abusive working environment.' Meritor Savings Bank v. Vinson, 477 U.S. 57, 67, 106 S.Ct. 2399, 2406, 91 L.Ed.2d 49, 60 (1986), (quoting Henson v. Dundee, 682 F.2d 897, 904 (11th Cir. 1982)." (Slip op. at 6) (parenthetical in original).

4. "[W]hether [discriminatory] harassment at the work place is sufficiently severe and persistent to affect seriously the psychological well being of employees is a question to be determined with regard to the totality of the circumstances. ... It is clear, however, that offensive remarks alone are not sufficiently significant to affect employment. ... And, that a single incident of harassment does not establish a Title VII violation." (Slip op. at 6) (citations omitted) (parenthetical in original).

C. Transfer

(Slip op. 7-11).

1. McDonnell Douglas "prima facie case of discrimination based on a job transfer would require plaintiff to show that

   (1) she is a member of a protected class;

   (2) she was qualified for the job she was performing;

   (3) she was satisfying the normal requirements of the job; and

   (4) she was treated differently than those not within her protected class.

See Payne v. Heckler, 604 F.Supp. 334, 339 (E.D. Pa. 1985)." (Slip op. at 7-8).

2. "'Barring any attempt to hide discrimination, the Company has the right to make business judgments on employee status ... .' Healey v. New York Life Ins. Co., 860 F.2d 1209, 1220 (3d Cir.) cert. denied, ____ U.S. ____, 109 S.Ct. 2449, 104 L.Ed.2d 1004 (1988)." (Slip op. at 9-10).

D. Retaliation

(Slip op. 11-15).

1. "In claims of retaliation, a modified version of the shifting burdens of proof, set forth in McDonnell Douglas Corp. v. Green, supra, is applied." (Cite omitted).

   1. The plaintiff must first establish a prima facie case of retaliation.

   2. Once established, the burden shifts to the defendant to articulate some legitimate, non-retaliatory reason for the adverse actions.

      a. "[... The defendant need not prove the absence of retaliatory intent or motive; it simply must produce evidence sufficient to dispell the inference of retaliation raised by the plaintiff." (Cite omitted).

3. When defendant meets this burden, the plaintiff must establish that the proferred reason is a pretext for retaliation. (Cite omitted).

(Slip op. at 11-12).

2. "Plaintiff must establish her prima facie case by showing that

   1) she engaged in an activity protected under the Act;

   2) she was the object of an adverse action; and

   3) there exists a casual connection between the participation in the protected activity and the adverse action.

See Payne v. Heckler, 604 F.Supp 334, 339 (E.D. Pa. 1985." (Slip op. at 11).

3. "It is essential that the plaintiff show a retaliatory intent or motive on the part of the employer. (Cite omitted)." (Slip op. at 13).

4. "Plaintiff's subjective suspicion of discrimination is not sufficient to establish pretext. See Sherrod v. Sears, Roebuck & Co., 785 F.2d 1312, 1316 (5th Cir. 1986); Holley v. Sanyo Mfg., Inc., 771 F.2d 1161, 1168 (8th Cir. 1985)." (Slip op. at 15).

ESS:mkb

Attachment

cc: Louise Oncley

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PEARL F. PABARUE, Plaintiff	:	
vs.	:	CIVIL ACTION NO. 88-1772
PENNSYLVANIA HUMAN RELATIONS COMMISSION, an agency of the COMMONWEALTH OF PENNSYLVANIA, Defendant	:	

M E M O R A N D U M

I. Introduction

Defendant, Pennsylvania Human Relations Commission (PHRC), has moved for summary judgment in an action charging it with discrimination based on race and sex, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment shall be rendered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

II. Background

Plaintiff, Pearl F. Pabarue, is a black female and has been employed by defendant, Pennsylvania Human Relations Commission (PHRC) since 1978. Since 1979 she has held the position as a Human Relations Representative II (HRRII). In 1984 plaintiff was assigned to a compliance unit in the Harrisburg office.

In April, 1986, plaintiff met with her supervisor, Israel Borges, to discuss new performance standards. On the advice of her union, plaintiff, along with all other members of the unit, advised her supervisor that she would not sign the form indicating that she had been informed of the objectives. In response, Borges reprimanded her and threatened discipline. Plaintiff filed a grievance and requested a transfer to another "compliance" unit. This request was denied but in July, 1986, Howard Tucker, Jr., Harrisburg Regional Director, transferred plaintiff to the "intake" unit.

Plaintiff sustained a work related back injury and on August 4, 1986, began a period of disability leave that lasted over a year. Plaintiff went from full disability, to partial disability, to full disability, then back to partial disability. During October and November, 1987, plaintiff experienced certain salary problems which included passing three pay periods without a paycheck.

Plaintiff filed a charge of race and sex discrimination and retaliation against PHRC with EEOC and in August, 1988, received a notice of right to sue. Plaintiff seeks to enjoin and restrain defendant from further discrimination and retaliation, and to recover lost wages, and benefits, along with damages for loss of income, and emotional and physical distress, etc., as well as attorney's fees, costs, and expenses.[1]

III. Discussion

A. Claim of Discrimination

In a Title VII discrimination case, the applicable presumptions and shifting of burdens of proof were set forth by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), and summarized in Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981):

> First, the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the employee's rejection. Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the

---

1. We note that plaintiff is entitled only to limited recovery under Title VII.

> defendant were not its true reasons, but were a pretext for discrimination.

Burdine, at 252-53, 101 S.Ct. at 1093-94, 67 L.Ed.2d at (citations omitted). The defendant may prevail on the summary judgment motion if it can show either that the plaintiff has no prima facie case, or that defendant can introduce evidence of a nondiscriminatory basis for its action and show that the plaintiff can raise no genuine issue of fact that the reason offered is a pretext for discrimination. See Spangle v. Valley Forge Sewer Authority, 839 F.2d 171, 173 (3d Cir. 1988) (citing Chipollini v. Spencer Gifts, Inc., 814 F.2d 893 (3d Cir. 1987)).

McDonnell Douglas, a discrimination case based on failure to hire, provided four elements necessary to establish a prima face case.[2] The court noted that they should be tailored to the particular circumstances of the case. McDonnell Douglas, 411 U.S. at 802 n.13, 93 S.Ct. at 1824 n.13, 36 L.Ed.2d at 677-78 n.13.

Plaintiff's complaint alleges two separate acts of discrimination: (1) that the actions of plaintiff's supervisor on

---

2. In McDonnell Douglas, the Court provided that the plaintiff must prove

> (i) that he belongs to a racial minority; (ii) that he applied for and was qualified for a job for which the employer was seeking applicants; (iii) that despite his qualifications he was rejected; and (iv) that, after his rejection the position remained open and the employer continued to seek applications from persons of complainant's qualifications.

McDonnell Douglas, 411 U.S. at 802, 93 S.Ct. at 1824, 36 L.Ed.2d at 677.

April 16, 1986, when he "harassed and threatened" plaintiff, were "motivated by hostility to Plaintiff on account of her race and sex" and that the incident created intolerable conditions which forced plaintiff to request a transfer, and, (2) that her transfer to the intake unit was "unlawful and discriminatory."[3]

1. Harassment

It is not clear from plaintiff's complaint or brief what her precise claim against her supervisor is but we presume that she is arguing discriminatory harassment. For discriminatory harassment the Supreme Court has held "that a plaintiff may establish a violation of Title VII by proving that discrimination based on sex [or race] has created a hostile or abusive work environment." Meritor Savings Bank v. Vinson, 477 U.S. 57, 66, 106 S.Ct. 2399, 2405, 91 L.Ed.2d 49, 59 (1986). To establish a prima facie case, the plaintiff must show that

(1) she belonged to a protected class;

(2) she was subject to unwelcome harassment;

(3) the harassment complained of was based upon her protected status;

(4) the harassment complained of affected a term, condition or privilege of employment; and,

(5) respondeat superior would apply.

---

3. Plaintiff's complaint suggests that her work related injury was related to the discrimination since the director allegedly failed to respond to her request for assistance with her change of offices, however plaintiff did not pursue this claim in her brief.

Henson v. City of Dundee, 682 F.2d 897, 903-05 (11th Cir. 1982). Focusing on the fourth element, we conclude that the single incident which plaintiff refers to is insufficient to effect the nature of her employment.

The Supreme Court has held that for harassment to be actionable, it must be "sufficiently severe or pervasive 'to alter the condition of [the plaintiff's] employment and create an abusive working environment.'" Meritor Savings Bank v. Vinson, 477 U.S. 57, 67, 106 S.Ct. 2399, 2406, 91 L.Ed.2d 49, 60 (1986), (quoting Henson v. Dundee, 682 F.2d 897, 904 (11th Cir. 1982). In Henson, the Eleventh Circuit held that "[w]hether [discriminatory] harassment at the work place is sufficiently severe and persistent to affect seriously the psychological well being of employees is a question to be determined with regard to the totality of the circumstances." Henson, 682 F.2d at 904. (citations omitted). It is clear, however, that offensive remarks alone are not sufficiently significant to affect employment. See Meritor at 67, 106 S.Ct. at 2405, 91 L.Ed.2d at 60 (1988); Henson, 682 F.2d at 904; Rogers v. EEOC, 454 F.2d 234, 238 (CA5 1971), cert. denied, 406 U.S. 957, 92 S.Ct. 2058, 32 L.Ed.2d 343 (1972). And, that a single incident of harassment does not establish a Title VII violation Clayton v. White Hall School District, 875 F.2d 676, 680 (8th Cir. 1989) (citations omitted).

In her brief, plaintiff refers to the confrontation with Borges as a "race-and-sex based conflict." She argues that

"Borges, a hispanic male, had publicly berated [plaintiff] and a white female co-worker ... for refusing to sign new performance objectives. All six employees in Borges' unit refused to sign, but only the women were berated. Only [plaintiff], the black woman, was threatened by Borges with discipline." Additionally, in her complaint, plaintiff alleges that this incident made her work conditions intolerable and forced her to request a transfer. Plaintiff stated, however, that Borges had never before spoken to her in this manner. Plaintiff also admits that Borges berated a white female over the same issue and that had spoken to other employees, black, white, male and female, in the same manner and tone on other occasions. (Deposition of Pabarue pp. 51-53.)

2. Transfer

To establish a prima facie case of discrimination based upon a job transfer, McDonnell would require the plaintiff show that

(1) she is a member of a protected class;

(2) she was qualified for the job she was performing;

(3) she was satisfying the normal requirements of the job; and

(4) she was treated differently than those not within her protected class.[4]

---

4. The prima facie elements of a transfer case have not been established by the Third Circuit. The court has noted, however, that "[u]sually ... some showing must be made that plaintiff was (continued...)

See Payne v. Heckler, 604 F.Supp. 334, 339 (E.D. Pa. 1985). Plaintiff does not attempt to satisfy the elements of a prima facie case, and a review of her arguments leaves us unconvinced that plaintiff was treated differently from those not within her protected classes. Furthermore, plaintiff has failed to establish any basis upon which it could be concluded that the employer's explanation for her transfer was pretextual.

Plaintiff asserts that because of her race and sex she was "singled out for transfer to a job in the intake unit described [by her supervisor Borges] as a 'dumping ground' ...." (Plaintiff's Brief at 17). Borges stated in his deposition that he believes that the intake unit has been "used as a dumping ground by regional directors who wanted to punish people." (Deposition of Borges p. 30). It is significant that plaintiff is not asserting a retaliation claim arising from her transfer by Tucker, and she contends his act was an act of racial/sexual discrimination.[5] Plaintiff's argument is contradicted by evidence that (1) she was replaced by a member of a protected class; (2) protected class members were retained in the compliance unit after plaintiff's transfer; and, (3) individuals that were not protected

---

4. (...continued)
treated differently from similarly situated individuals of [unprotected] groups." Whack v. Peabody and Wind Engineering Co., 595 F.2d 190, 193 n.11 (3d Cir. 1979).

5. Plaintiff specifically denies Borges' involvement by stating "The decision to transfer was made solely by Regional Director Howard Tucker." (Brief of plaintiff p. 17).

class members were, on previous occasions, placed in or transferred to the intake unit.

Even if it could be found that plaintiff has established a prima facie case, the defendant has expressed a legitimate, nondiscriminatory reason for its decision, which plaintiff has failed to show is a pretext for discrimination. Defendant asserts that it made a business decision based on maintaining and exercising management's ability to direct the work force effectively. More specifically, Howard Tucker, a black male, in his position as Regional Director, determined that the intake unit was in great need of a person with an HRR II job classification with good skills at organizing work materials and a good record of productivity. Tucker believed that Ms. Pabarue met this criteria. (See Deposition of Tucker pp. 66-68, Declaration of Tucker ¶¶ 13, 14). Other factors set forth by defendant in support of this decision include plaintiff's previous request for a transfer (although not to the intake unit), a back log in the intake unit, problems between an intake worker and his supervisor, plaintiff's manageable caseload, which made it more efficient to transfer her, and the desire to familiarize workers with all phases of the operation.

Defendant's articulation of nondiscriminatory reasons shifts the burden of production to plaintiff, to show that the reasons are a pretext for discrimination. The Third Circuit has held that "[b]arring any attempt to hide discrimination, the

Company has the right to make business judgments on employee status ...." Healy v. New York Life Ins. Co., 860 F.2d 1209, 1220 (3d Cir.), cert. denied, ___ U.S. ___, 109 S.Ct. 2449, 104 L.Ed.2d 1004 (1988). As defendant correctly points out, the court should not question the wisdom or judge the acuity of an organization's employment decisions, and may only determine if the decision was related to a protected or impermissible factor. There is no basis for finding that these business decisions are out of the ordinary or that they have any relationship to plaintiff's race or sex.

Plaintiff points out that Tucker did not consult anyone regarding her transfer and that it occurred shortly after the incident with Borges. Mr. Tucker, as the Regional Director, makes job assignments and the fact that he did not consult plaintiff's supervisor, Borges, lends additional support to defendant's argument that the transfer was a legitimate business decision unrelated to the incident with Borges.

Plaintiff argues that defendant's justifications are questionable because (1) Tucker had no policy of shifting workers; (2) other workers in plaintiff's compliance unit also lacked experience in intake; and, (3) a worker in plaintiff's compliance unit had requested a transfer to intake but plaintiff was transferred instead. These arguments are easily reconciled since it is clear that other individuals have been transferred and that plaintiff had requested a transfer because she was having problems with her supervisor.

Plaintiff argues that the individual with whom she switched positions did not agree with Tucker regarding the backlog in intake work. We will not address this contention because the differing opinion of a single employee regarding one aspect of defendant's explanation is insufficient to raise an inference of discrimination.[6]

Plaintiff argues that in light of her outstanding performance in the compliance unit, her transfer did not make sense. Yet, plaintiff contradicts herself by arguing that she was similarly situated with other employees in the compliance unit who would have been equally qualified to meet defendant's alleged needs in the intake department.

Finally, plaintiff avers that Tucker himself was the subject of disciplinary inquiry regarding other accusations of racial and sexual discrimination. We cannot find that defendant's inquiry into the actions of its employee, with regard to collateral accusations of discrimination, should subject the defendant to claims that otherwise have no foundation.

B. Claim of Retaliation

In claims of retaliation, a modified version of the shifting burdens of proof, set forth in McDonnell Douglas Corp. v. Green, supra, is applied. See Ferguson v. E. I. duPont deNemours

6. Plaintiff's statement that this individual had not requested a transfer out of the intake unit does not contradict defendant's argument.

and Co., 560 F.Supp. 1172, 1200 (D. Del. 1983).[7] The plaintiff must first establish a prima facie case of retaliation. Once established, the burden shifts to the defendant to articulate some legitimate, non-retaliatory reason for the adverse actions. It has been held that "'[T]he defendant need not prove the absence of retaliatory intent or motive; it simply must produce evidence sufficient to dispel the inference of retaliation raised by the plaintiff.'" Id. (quoting Cohen v. Fred Meyer, Inc., 686 F.2d 793, 796 (9th Cir. 1982)). When the defendant meets this burden, the plaintiff must establish that the proffered reason is a pretext for retaliation. Id.

Plaintiff alleges retaliation based upon her filing a complaint with the EEOC (along with ongoing discrimination), asserting that defendant's employees have

> (1) withheld pay due to Plaintiff for hours worked; (2) altered Plaintiff's payroll records to prevent Plaintiff from receiving pay for work performed; (3) refused to pay Plaintiff for work performed at rates required by union contract and by the Fair Labor Standards Act; and (4) repeatedly forced plaintiff to perform work in violation of her medical restrictions.[8]

---

7. Retaliation is a form of discrimination by an employer against an employee or applicant because the employee or applicant opposed an unlawful employment practice or made a charge, testified etc ... under Title 42. Section 704(a) of Title VII of 1964, 42 U.S.C. §2000e-3(a).

8. Plaintiff has failed to respond to defendant's assertion that this final claim is precluded because plaintiff failed to bring it before the EEOC. We agree that this court lacks jurisdiction to (continued...)

Plaintiff must establish her prima facie case by showing that

1) she engaged in an activity protected under the Act;

2) she was the object of an adverse action; and,

3 there exists a causal connection between the participation in the protected activity and the adverse action.

See Payne v. Heckler, 604 F.Supp. 334, 339 (E.D. Pa. 1985). "It is essential that the plaintiff show a retaliatory intent or motive on the part of the employer." Ferguson, 560 F.Supp. at 1200 (citations omitted).

Subsequent to filing her charge with the Equal Employment Opportunity Commission (EEOC), a protected activity, plaintiff experienced problems with the amount of her paychecks, and on three occasions received no money at all. Again plaintiff's complaint does not set forth the elements establishing her prima facie case but merely lists allegations of abuse by her employer.

Plaintiff states that defendants violated the Fair Labor Standards Act and Commonwealth regulations, and argues that she was the only employee ever treated in this way. Plaintiff further makes reference to alleged inconsistencies in the

---

8. (...continued)
review an act unrelated to the original EEOC charge. Ostapowicz v. Johnson Bronze Co., 541 F.2d 394 (3d Cir.), 398-99, cert. denied, 424 U.S. 1041, 97 S.Ct. 741, 50 L.Ed.2d 753 (1976). We decline, therefore, to review plaintiff's final assertion.

statements of Mr. Billy and Ms. Kern but fails to point to specific contradictory testimony. Having reviewed these exhibits, we find no inconsistencies sufficient to raise questions of material fact.

Additionally, plaintiff sets forth actions by PHRC Personnel Director Iris Cooley, claiming that Cooley

> (1) [f]ailed to give Pabarue advance notice of payroll deductions as required by Management Directive 315.8 §3b, (2) failed to give Pabarue opportunity to question the overpayment and method of recoupment under §3B, (3) failed to give written (or oral) notice of the amount of overpayment under §5b2, (4) failed to provide her with the option of payroll deduction or lump sum payment under §5b3; (5) failed to resolve her questions regarding recoupment under §5b4; (6) altered Pabarue's reported hours without notice to her (7) changed sick leave status to unpaid leave without pay, also without notice.

While plaintiff experienced problems relating to her pay, the record clearly indicates that they did not arise from actions by plaintiff's employer but from the Office of the Budget. (Declaration of Billy ¶¶ 5-39). Plaintiff has not provided sufficient evidence to infer that she was the object of intentional adverse actions taken by her employer.

Even if the plaintiff was the object of adverse employment action, to establish her prima facie case she must show a causal connection between the filing of her EEOC claim and the employment action. Plaintiff sets forth a chain of events superficially connecting these actions to her protected activity;

her injury was a result of her discriminatory transfer and her salary problem was related to her injury. Plaintiff simply concludes that retaliation was the only possible explanation for the compensation dispute. This unsupported conclusion is not sufficient to satisfy plaintiff's burden of proof.

Even if it were found that plaintiff had established a prima facie case of retaliation, the defendant has made a reasonable explanation for the confusion over her income, and plaintiff has failed to show that it is pretextual.

Plaintiff's subjective suspicion of discrimination is not sufficient to establish pretext. See Sherrod v. Sears, Roebuck & Co., 785 F.2d 1312, 1316 (5th Cir. 1986); Holley v. Sanyo Mfg., Inc., 771 F.2d 1161, 1168 (8th Cir. 1985). The confusion over the proper amount of plaintiff's pay was attributed to computer related problems coupled with frequent changes in plaintiff's working schedule. The detailed explanation in the record of how plaintiff's problem evolved is reasonable and straightforward, and plaintiff has offered nothing except her suspicion to show that it is not genuine and real. (See Declaration of Billy ¶¶ 29, 30). Additionally, the salary alterations made by personnel in plaintiff's own unit were initiated by directions from the Budget Office. (Declaration of Billy ¶¶ 35-37; Declaration of Cooley ¶¶ 6-11; Deposition of Kern pp. 53-55).

IV. Conclusion

Because of plaintiff's failure to establish the prima facie elements of her discriminatory and retaliation claims, and/or her failure to demonstrate that defendant's proffered reasons are a pretext for discrimination, there are no issues of fact upon which plaintiff could prevail. Defendant's motion for summary judgment, therefore, will be granted.

We will issue an appropriate order.

William W. Caldwell
United States District Judge

Date: October 16, 1989

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PEARL F. PABARUE, :
Plaintiff
:
vs. : CIVIL ACTION NO. 88-1772
:
PENNSYLVANIA HUMAN RELATIONS :
COMMISSION, an agency of the
COMMONWEALTH OF PENNSYLVANIA,
Defendant :

ORDER AND JUDGMENT

AND NOW, this 16th day of October, 1989, defendant's motion for summary judgment is granted, and judgment is hereby entered in favor of defendant and against plaintiff.

The Clerk of Court shall close this file.

William W. Caldwell
United States District Judge

Certified from the record
Date 10/16/89
Donald R. Berry, Clerk
Per
Deputy Clerk