UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Anna Takkunen,

Plaintiff,

v.

Civ. No. 08-1454 (RHK/RLE)
MEMORANDUM OPINION AND ORDER

Sappi Cloquet LLC,

Defendant.

James W. Balmer, Falsani Balmer Peterson Quinn & Beyer, Duluth, Minnesota, for Plaintiff.

Holly M. Robbins, Littler Mendelson, PC, Minneapolis, Minnesota, for Defendant.

INTRODUCTION

Plaintiff, Anna Takkunen, claims that she was discriminated and retaliated against by her former employer, Defendant Sappi Cloquet LLC ("Sappi"), in violation of federal and state law. Currently pending before the Court is Sappi's Motion for Summary Judgment. For the reasons set forth below, the Court will grant the Motion.

BACKGROUND

Sappi is a producer of coated fine paper. (Cyril C. Porwall Aff. ¶ 2.) On May 22, 2006, Takkunen applied for employment at Sappi and was hired as a General Mill Reserve worker in the Coating Department. (Takkunen Dep. Tr. at 45, Ex. 1.) In the fall of 2006, Takkunen was transferred to a position on the "B shift" where Jeremy Doesken

served as her supervisor. (Id. at 54.) While on Doesken's crew, Takkunen admittedly had some performance issues and was often coached on the job. (Id. at 75-76, 123-26, 142, 146, 246-47, 254, Ex. 13.)

In May 2007, Takkunen asserts that a co-worker, Peter Began, repeatedly tugged on her shorts, patted his lap for her to sit down, ran his fingers through her hair, once commented on her breast size, mentioned that there were places in the mill they could go to be alone, once pretended to unzip his pants in front of her, and often asked whether she was having sexual relations with a co-worker, Wes Schiller. (Id. at 152-55, 164-70.) She complained to Doesken about this behavior on two occasions. (Id. at 178-85.) When Doesken took no remedial action, Takkunen went to HR manager Cyril C. Porwall to report the harassment. (Id. at 194-96.)

Porwall immediately launched an investigation that included interviews with Takkunen, Began, Doesken, Schiller, and other co-workers on Takkunen's crew. (Porwall Aff. ¶ 7; Rod Petron Aff. ¶ 3.) Began admitted to most of the behavior reported by Takkunen. (Petron Aff. ¶ 3; Ex. B.) As discipline, Began was placed in a "consultation step," was warned that further inappropriate behavior would lead to more severe discipline or discharge, and a permanent record was placed in his personnel file. (Id. at ¶ 4, Ex. A.) After these actions were taken, Began's inappropriate behavior ceased. (Takkunen Dep. Tr. at 202-03, 224.) Takkunen was informed that Began's behavior was inappropriate and being addressed by management. (Petron Aff. Ex. B.) Takkunen was also informed that her performance issues would continue to be monitored.

(Id.)

Soon after the harassment investigation, Doesken had a meeting with his supervisors and was advised that he needed to improve his performance regarding sexual-harassment issues within his crew and that he needed to document employee performance problems. (Porwall Aff. Ex. A.) He was also told that despite the sexual-harassment complaint, he needed to continue to manage Takkunen's job performance. (Id.). Doesken then began documenting instances in which Takkunen's job performance was insufficient. (Doesken Dep. Tr. at 40.) In total, Doesken documented eight incidents. (Balmer Aff. Exs. H1-H9.) Takkunen was only made aware of one documented performance issue because it was the only issue that resulted in a formal written reprimand. (Doesken Dep. Tr. at 23-26.) Takkunen claims that she felt increased scrutiny at Sappi after the sexual-harassment investigation. (Takkunen Dep. Tr. at 200-01, 241.)

In November 2007, Takkunen transferred out of Doesken's crew to the "back end" of the mill, a transfer she had requested prior to her sexual-harassment complaint. (Id. at 84-85, 89.) Takkunen asserts she took this transfer to get away from the stress of her post-investigation work environment. (Id. at 240.) Before taking this transfer, Takkunen turned down other transfer offers made after her harassment complaint. (Porwall Aff. ¶ 9.) Because of this transition, Takkunen lost her "B-pay." (Takkunen Dep. Tr. at 240.) A Sappi employee is entitled to B-pay (an additional 50 cents per hour) when she completes her training in a new position and is qualified to perform the job "above [her]

regular position." (Porwall Aff. ¶ 5.) Such B-pay is lost when an employee switches positions but is reinstated when training is complete. (Id.) Sue Obeidzinski trained Takkunen in her new position. (Takkunen Dep. Tr. at 90.) Takkunen claims that Obeidzinski "continued the pattern of persecution and nit-picking" that she suffered on Doesken's crew. (Mem. in Opp'n at 25 (citing Takkunen Dep. Tr. 90-94, 100-01, 140, 215-20).)

Mandatory sexual-harassment prevention training was conducted by Sappi in January and February 2008. (Porwall Dep. Tr. at 21.) Sappi has a sexual-harassment policy and conducts sexual-harassment prevention training every two or three years. (Porwall Aff. ¶ 3.) Sappi offered Takkunen a choice of two dates for this training. (Margi Sloan Aff. ¶ 2.) Takkunen attended the same training session as Began, despite her request to attend separate sessions. (Takkunen Dep. Tr. at 203.) The record is unclear as to how this occurred. During the training, members of Doesken's crew asked questions that Takkunen felt were directed at her, but Began himself asked no questions. (Id. at 204-05, 211.) Takkunen found this experience to be upsetting and she was allowed to take the rest of the day off. (Id. at 206-07.) She then took an extended leave of absence. (Sloan Aff. ¶ 6.) At oral argument, the parties informed the Court that this leave was initially a paid medical leave of absence that then became unpaid. After being on leave for a year, Takkunen informed Sappi she would be unable to return to work. (Holly Robbins Aff. ¶ 2; Ex. A.) Sappi interpreted this as a voluntary resignation and so informed her counsel. (Id.)

On May 27, 2008, Takkunen filed the instant action. She claims gender discrimination and retaliation in violation of Title VII, 42 U.S.C. § 2000e *et seq.*, and the Minnesota Human Rights Act, Minn. Stat. § 363A *et seq*., ("MHRA"). Sappi now moves for summary judgment.

STANDARD OF REVIEW

Summary judgment is proper if, drawing all reasonable inferences in favor of the nonmoving party, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). The moving party bears the burden of showing that the material facts in the case are undisputed. Celotex, 477 U.S. at 322; Mems v. City of St. Paul, Dep't of Fire & Safety Servs., 224 F.3d 735, 738 (8th Cir. 2000). The Court must view the evidence, and the inferences that may be reasonably drawn from it, in the light most favorable to the nonmoving party. Graves v. Ark. Dep't of Fin. & Admin., 229 F.3d 721, 723 (8th Cir. 2000); Calvit v. Minneapolis Pub. Schs., 122 F.3d 1112, 1116 (8th Cir. 1997). The nonmoving party may not rest on mere allegations or denials, but must show through the presentation of admissible evidence that specific facts exist creating a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986); Krenik v. County of Le Sueur, 47 F.3d 953, 957 (8th Cir. 1995).

ANALYSIS

I. The discrimination claim

Takkunen claims she was subjected to sexual harassment while employed at Sappi

that created a hostile work environment in violation of Title VII and the MHRA. To establish a hostile-work-environment claim, a plaintiff "must show (1) [she] belonged to a protected group; (2) [she] was subjected to unwelcome harassment; (3) the harassment was based upon [protected group status]; (4) the harassment affected a term, condition, or privilege of [her] employment; and (5) the employer knew or should have known of the harassment and failed to take proper remedial action." Green v. Franklin Nat'l Bank of Minneapolis, 459 F.3d 903, 910 (8th Cir. 2006) (internal quotation marks and alteration omitted).[1]

A. The alleged sexual harassment did not affect a term, condition, or privilege of Takkunen's employment

To prevail on her hostile-work-environment claim, Takkunen must demonstrate that the alleged sexual harassment "was sufficiently severe or pervasive as to affect a term, condition, or privilege of employment by creating an objectively hostile or abusive environment." Meriwether v. Caraustar Packaging Co., 326 F.3d 990, 993 (8th Cir. 2003). The harassment at issue must be both subjectively and objectively offensive such that a reasonable person would find it to be hostile or abusive. Erenberg v. Methodist Hosp., 357 F.3d 787, 792 (8th Cir. 2004). In determining this issue, a court may look to factors such as the frequency of the discriminatory conduct; its severity; whether it is

[1] While Takkunen brings her gender discrimination claim under both Title VII and the MHRA, the Court looks to federal case law to analyze claims under both statutes. See Riser v. Target Corp., 458 F.3d 817, 820 n.2 (8th Cir. 2006); Mems, 224 F.3d at 738. Minnesota courts addressing claims of sexual harassment brought under the MHRA often look to Title VII cases for guidance. See Goins v. W. Group, 635 N.W.2d 717, 724 n.3 (Minn. 2001).

physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. Id. "Simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment." Id. (internal quotation marks and citation omitted).[2]

Takkunen cannot demonstrate harassment that affected a term, condition, or privilege of her employment.[3] While Began tugged on Takkunen's shorts, ran his fingers through her hair, asked inappropriate questions about her sex life and breasts, and made improper sexual gestures and invitations, Began's comments were "neither severe nor pervasive enough to create a hostile work environment." Woodland v. Joseph T. Ryerson & Son, Inc., 302 F.3d 839, 844 (8th Cir. 2002) (internal quotation marks omitted). Nor was the behavior "sufficiently derogatory or demeaning to permit a finding that [it] altered the terms of [Takkunen's] employment." Breeding v. Arthur J. Gallagher & Co., 164 F.3d 1151, 1159 (8th Cir. 1999). Takkunen was not physically threatened and was

[2] Takkunen asserts that "Defendant has admitted that Mr. Began's conduct violated its prohibitions against sexual harassment on the job, as well as Federal and state law" and therefore, this "conclusion is a binding admission by Defendant under Fed. R. Evid. 801(d)(2)(A)." (Mem. in Opp'n at 15.) This statement is erroneous. Sappi does not deny that the behavior of Began was inappropriate, but Sappi has not admitted a violation of state or federal law.

[3] In her brief, Takkunen discussed only the behavior of Began in support of her hostile-work-environment claim. However, at oral argument, Takkunen's counsel hinted that other behavior occurred at Sappi that contributed to the discriminatory work environment. Nevertheless, because this other behavior was not briefed or addressed in any detail, the Court will not consider it.

reasonably able to perform her job responsibilities. While Began may have been "boorish, chauvinistic, and decidedly immature," his actions did not create "an objectively hostile work environment." Duncan v. Gen. Motors Corp., 300 F.3d 928, 935 (8th Cir. 2002).[4]

The Eighth Circuit has rejected hostile-work-environment claims based on facts more egregious than those presented here. For example, in LeGrand v. Area Resources for Community and Human Services, the Eighth Circuit determined that the plaintiff did not suffer from severe or pervasive sexual harassment when he was asked to watch pornographic movies with a board member and "jerk off," was kissed on the mouth, had his buttocks and thigh grabbed, and experienced a suggestive reach toward, and brush-up against, his genitals. 394 F.3d 1098, 1100-03 (8th Cir. 2005). In finding that this behavior was not severe or pervasive, the court noted that "[n]one of the incidents [were] physically violent or overtly threatening." Id. at 1102.

The hostile-work-environment cause of action "is limited to extreme work conditions," Gipson v. KAS Snacktime Co., 171 F.3d 574, 579 (8th Cir. 1999) (citing cases), and Takkunen has failed to raise a genuine issue of material fact with respect to hers. Accordingly, Takkunen's hostile-work-environment claim fails.

[4] At oral argument, Plaintiff's counsel contended that Doesken's failure to respond to Takkunen's sexual-harassment complaints expressed his acceptance of the behavior, and therefore, contributed to the severe and pervasive nature of the sexual harassment. Counsel, however, failed to cite any case law supporting this assertion. In the Court's view, Doesken's response, or lack thereof, cannot make Began's behavior more (or less) severe or pervasive.

B. Sappi took prompt remedial action

Even if the alleged sexual harassment affected a term, condition, or privilege of Takkunen's employment, dismissal of the hostile-work-environment claim would nevertheless be required because Sappi took prompt remedial action. An employer is not liable for sexual harassment unless it "knew or should have known about the harassment and failed to take prompt and remedial action reasonably calculated to end the harassment." Stuart v. Gen. Motors Corp., 217 F.3d 621, 633 (8th Cir. 2000) (citation omitted). Factors the Court may consider when assessing the reasonableness of Sappi's remedial measures are:

> [T]he amount of time elapsed between the notice of harassment, which includes but is not limited to a complaint of sexual harassment, and the remedial action, and the options available to the employer such as employee training sessions, disciplinary action taken against the harasser(s), reprimands in personnel files, and terminations, and whether or not the measures ended the harassment.

Id. In this case, Takkunen does not dispute that Sappi's response to her sexual-harassment complaint was prompt, but rather contends that Sappi "did not take appropriate corrective action." (Mem. in Opp'n at 21.)

In the Court's view, Sappi's remedial measures were reasonable and appropriate. After the sexual harassment was reported, an investigation was immediately commenced and several Sappi employees were interviewed. Began was placed in a consultation step and warned that continued inappropriate behavior would lead to more severe discipline or discharge. Takkunen admits that after these actions were taken, the sexual harassment

ceased. See Scusa v. Nestle U.S.A. Co., 181 F.3d 958, 968 (8th Cir. 1999) (noting that an employer's response was an adequate remedial action because "after management took action, the incidents were not repeated"). Moreover, the Eighth Circuit has held that a written warning can be a sufficient remedial measure. See Zirpel v. Toshiba Am. Info. Sys., Inc., 111 F.3d 80, 81 (8th Cir. 1997). In fact, no punitive action is needed at all as long as a chosen remedy is reasonably calculated to prevent future harassment. Knabe v. The Boury Corp., 114 F.3d 407, 414 (3d Cir. 1997).[5]

In sum, Takkunen cannot establish a genuine issue of material fact with respect to her hostile-work-environment claim. Viewing the evidence in the light most favorable to her, the alleged sexual harassment was not sufficiently severe or pervasive as to affect a term, condition, or privilege of her employment. Moreover, Sappi's response to her complaint was effective, reasonable, and appropriate. Accordingly, Takkunen's hostile-work-environment claim must be dismissed.

II. The retaliation claim

Takkunen asserts that Sappi retaliated against her for making the sexual-harassment complaint. (Mem. in Opp'n at 22-32.) Because Takkunen presents no direct evidence of retaliation, the familiar McDonnell Douglas burden-shifting framework governs the order and analysis of proof for this claim. Kasper v. Federated Mut. Ins. Co.,

[5] Takkunen also claims that Sappi failed to take any remedial action after Takkunen was "forced to sit through the [sexual-harassment] seminar with Mr. Began and his friends." (Mem. in Opp'n at 22.) However, Takkunen does not explain how the events that occurred at the training can be characterized as harassment based on her protected group status. See Green, 459 F.3d at 910.

425 F.3d 496, 502 (8th Cir. 2005).[6] Under this analysis, the plaintiff bears the initial burden of establishing a prima-facie case of retaliation. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). After the plaintiff has met this burden, the defendant must articulate a legitimate, nondiscriminatory reason for its actions. Id. Finally, the burden shifts back to the plaintiff to establish that the defendant's proffered nondiscriminatory reason was a pretext. Id. at 804.

Sappi argues that Takkunen has failed to establish a prima-facie case of retaliation. (Def. Mem. at 28-34.) To establish a prima-facie case, an employee must show: (1) statutorily-protected conduct by the employee; (2) an adverse action by the employer; and (3) a causal connection between the two. Jackson v. United Parcel Serv., Inc., 548 F.3d 1137, 1142 (8th Cir. 2008).

Sappi does not dispute that Takkunen engaged in protected conduct. Rather, it argues that she cannot establish an adverse employment action. The Court agrees.

Takkunen claims she endured an escalating pattern of retaliatory measures that qualify as adverse employment actions. (Mem. in Opp'n at 22.) These alleged retaliatory measures were: (1) a transfer that resulted in reduced pay; (2) "nit-picking" by Doesken and Obeidzinski and several "write-ups;" (3) a directive instructing employees not to talk with Takkunen during the sexual-harassment investigation; (4) Sappi's refusal to

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Moreover, Began, the alleged harasser, did not speak at all during the training.

[6] MHRA retaliation claims are analyzed in the same fashion as Title VII retaliation claims. See Fletcher v. St. Paul Pioneer Press, 589 N.W.2d 96, 101 (Minn. 1999).

meaningfully discipline Began or Doesken; and (5) mandatory sexual-harassment training. (Id. at 22-32.)[7]

To establish an adverse employment action, an employee "must show that a reasonable employee would have found the challenged action materially adverse." Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 68 (2006). The employer's conduct must be sufficiently severe that it "well might have dissuaded a reasonable worker from" engaging in the protected conduct. Id. (internal quotation marks and citation omitted). An adverse employment action must be "material" because "it is important to separate significant from trivial harms." Id. Moreover, a plaintiff "must do more than allege that actions taken by her employer created the potential for harm; rather, she must show some tangible harm flowing from the employer's actions." Black v. Indep. Sch. Dist. No. 316, 476 F. Supp. 2d 1115, 1123 (D. Minn. 2007) (Kyle, J.).

Takkunen has failed to raise a genuine issue of material fact with respect to whether she suffered an adverse employment action. First, Takkunen's transfer and pay reduction was not an adverse employment action. While Takkunen claims that she felt forced to take this transfer, Takkunen had requested it prior to her sexual-harassment

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7 Takkunen also refers in her brief to the presence of Sappi's legal team and a private investigator after the sexual-harassment investigation. (Mem. in Opp'n at 30-32.) The Court fails to see how the presence of the legal team or the private investigator could constitute a retaliatory measure. Sappi certainly has the right to retain legal counsel when charges of sexual harassment are made. Moreover, the parties indicated at oral argument that the investigator was hired as a result of Takkunen's workers' compensation claim, not her sexual-harassment claim. Finally, "investigations into employee complaints are not adverse employment actions when they do not result in any change in form or condition to the employee's employment." Altonen v. City of Minneapolis, 487 F.3d 554, 560 (8th Cir. 2007).

complaint. In fact, during her deposition, Takkunen explained that she wanted this transfer because the work in the "back end" was easier. (Takkunen Dep. Tr. at 85.) Moreover, Takkunen was not required to take the transfer when offered. See Johnson v. Runyon, 137 F.3d 1081, 1082 (8th Cir. 1998) (holding that voluntary early retirement was not an adverse employment action). Takkunen did not feel pressure to take an undesired transfer, as she refused transfers subsequent to her sexual-harassment complaint that did not appeal to her. With regard to Takkunen's pay decrease, this action was only temporary, as her B-pay would have been reinstated as soon as she was properly trained in her new position and able to perform the job above her. Such a temporary change in pay was not materially adverse.

Second, the several "write-ups" and "nitpicking" do not constitute adverse employment actions. The "write-ups" constitute trivial, rather than significant harms, see White, 548 U.S. at 67, because there is no indication that Takkunen suffered any tangible harm from having received them. In fact, negative evaluations are an adverse employment action only when used "as a basis to detrimentally alter the terms or conditions of the recipient's employment." Spears v. Mo. Dep. of Corr. & Human Res., 210 F.3d 850, 854 (8th Cir. 2000); see also Montandon v. Farmland Indus., Inc., 116 F.3d 355, 359 (8th Cir. 1997).[8] Similarly, Takkunen's complaint of "nit-picking" does not

[8] One of the eight "write-ups" was a written reprimand placed in Takkunen's personnel file. (Takkunen Dep. Tr. Ex. 13.) However, as a result of this reprimand, Takkunen suffered no loss in pay or benefits and her job responsibilities were not altered. (Id. at 44-45.) Therefore, this reprimand was not a materially adverse employment action.

constitute an adverse employment action. Feeling "overly scrutinized" does not change a term or condition of employment. Henthorn v. Capitol Commc'ns, Inc., 359 F.3d 1021, 1029 (8th Cir. 2004). Moreover, Takkunen admits that Doesken had "nit-picked" her long prior to her sexual-harassment complaint (Takkunen Dep. Tr. at 82), and therefore, no condition of her employment changed.

Third, the fact that employees were told not to speak to Takkunen during the sexual-harassment investigation was not an adverse employment action. "[O]stracism and disrespect by supervisors [does] not rise to the level of an adverse employment action." Scusa, 181 F.3d at 969. Moreover, there is no evidence that Sappi management told its employees to stop *all* interaction with Takkunen, as was the case in Moore v. Kuka Welding Systems & Robot Corporation, 171 F.3d 1073, 1079-80 (6th Cir. 1999) (finding an adverse employment action when "[e]mployees were instructed not to talk to plaintiff and to remove their tool boxes from his area so they would have no reason to go back there."). Here, it appears that Sappi employees were told not to talk with Takkunen during the pendency of the investigation only and were not told to ostracize her. (Takkunen Dep. Tr. at 198-99; Balmer Aff. Ex. D.)

Fourth, Sappi's discipline of Began and Doesken cannot be considered adverse employment actions. As discussed above, Sappi's response to Began's inappropriate behavior was a reasonable remedial measure, and therefore is not an adverse employment action. Similarly, Sappi's response to the alleged conduct of Doesken is not an adverse employment action. Takkunen claims that Sappi did not address Doesken's alleged

failure to report her complaints of sexual harassment. However, the record indicates that Doesken was counseled on how to properly address sexual harassment occurring in his crew. (Porwall Aff. ¶ 8; Ex. A.) Moreover, the alleged failure of Sappi to discipline Began and Doesken more harshly did not cause Takkunen to suffer any tangible harm, and therefore, such inaction was not materially adverse.

Finally, the mandatory sexual-harassment training was not an adverse employment action. All employees were required to attend this training every few years and there is no evidence indicating that Sappi planned it in order to harm or embarrass Takkunen. In fact, Takkunen's counsel admitted at oral argument that he cannot prove that the sexual-harassment prevention training had anything to do with the sexual-harassment complaint. Additionally, "[t]he law only protects employees from retaliation by their employers and not 'hostility or retaliation from co-workers.'" Sandoval v. Am. Bldg. Maint. Indus., Inc., 552 F. Supp. 2d 867, 913 (D. Minn. 2008) (Kyle, J.) (quoting Kipp v. Mo. Highway & Transp. Comm'n., 280 F.3d 893, 897 (8th Cir. 2002)). Thus, the questions asked by employees during the training, which may or may not have been directed at Takkunen, cannot be construed as Sappi retaliation.

In sum, Takkunen has failed to raise a genuine issue of material fact with respect to her prima facie case of retaliation because she suffered no adverse employment action. Looking at the evidence in the light most favorable to her, the allegations of retaliation do not rise to the level of "a material employment disadvantage, such as a change in salary, benefits, or responsibilities." Sallis v. Univ. of Minn., 408 F.3d 470, 476 (8th Cir. 2005)

(internal quotation marks and citation omitted). Even when considered in their totality, the Court finds that these actions were not materially adverse. Accordingly, Takkunen's retaliation claim fails.

CONCLUSION

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS ORDERED** that Defendant's Motion for Summary Judgment (Doc. No. 51) is **GRANTED** and Plaintiff's Amended Complaint (Doc. No. 3) is **DISMISSED WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: May 6, 2009

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge