Emad v. The Boeing Company Doc. 45

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

YASSER EMAD, Plaintiff, v. THE BOEING COMPANY, Defendant.	CASE NO. C14-1233 MJP ORDER GRANTING IN PART, DENYING IN PART DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER comes before the Court on Defendant's Motion for Summary Judgment. (Dkt. No. 28.) Having considered the Parties' briefing and all related papers, the Court GRANTS in part and DENIES in part the motion.

Background

Plaintiff Yasser Emad brings suit against his employer, the Boeing Company, for employment discrimination on the basis of race, national origin, and religion in violation of Title VII of the Civil Rights Act of 1964, Section 1981 of the Civil Rights Act, and the Washington Law Against Discrimination, and for intentional and negligent infliction of emotional distress. (Dkt. No. 1.)

Dockets.Justia.com

Plaintiff, an Egyptian-born Muslim man who identifies as Arab-American and African-American, began working as an Assembler/Installer at Boeing's Everett, Washington facility in January 2012. (Dkt. No. 36 at 1.) Plaintiff alleges that since early 2012, he has been repeatedly confronted with racial and religious epithets from both coworkers and supervisors, including "camel jockey," "Achmed,"[1] "Al-Qaeda," "Osama bin Laden," "sand n-----,"[2] and "Ali-Baba terrorist." (Dkt. Nos. 34, 35.) Plaintiff alleges that coworkers asked him questions such as "why [you] walk[] and talk[] like a n-----?" and "when are you going to blow something up so you can get your seventy-two virgins?" and suggested it would be funny if Plaintiff put on a turban and took a photograph of himself on top of a Boeing plane holding a plastic rifle. (Dkt. No. 34 at 6, 8.) Plaintiff alleges that a coworker, observing Plaintiff wearing a t-shirt with the words "Major League Muslim" and depictions of a person in three prayer stances on it, commented "Oh, is that three guys fucking on your shirt? I didn't know that's how Muslims rolled." (Id. at 4.) Plaintiff alleges that on one occasion, after he began reporting the offensive conduct, someone put chlorine or bleach in his water bottle. (Id. at 10.) Plaintiff also contends that he was denied workplace opportunities by supervisors on the basis of race, religion, and national origin, and that the pervasive workplace harassment intensified when he reported the offensive conduct. (Id. at 3-13.) Plaintiff contends that although he reported multiple incidents of harassment, including the water bottle incident, to Boeing management in accordance with their policies, Boeing failed to take appropriate action. (Id.)

Defendant now moves for summary judgment on all of Plaintiff's claims. (Dkt. No. 28.)

---

[1] "Achmed" is an apparent reference to the character "Achmed the terrorist" from a comedy routine by Jeff Dunham.

[2] "N-----" is used to replace an offensive racial slur used to refer to a member of any dark-skinned people.

Discussion

I. Legal Standards

A. Summary Judgment

Summary judgment is proper where "the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the initial burden of demonstrating the absence of a genuine issue of fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). In assessing whether a party has met its burden, the underlying evidence must be viewed in the light most favorable to the non-moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

B. Title VII

Title VII provides that "[i]t shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e–2(a)(1).

Absent direct evidence of discriminatory animus, claims of employment discrimination are typically analyzed under the framework set out in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). Plaintiff bears the initial burden of establishing a prima facie case of discrimination. Once established, the prima facie case creates a rebuttable presumption that the employer unlawfully discriminated against the employee. Lyons v. England, 307 F.3d 1092, 1112 (9th Cir. 2002). The burden of production shifts to the employer to articulate a legitimate, nondiscriminatory reason for the plaintiff's rejection. Id. If the employer sustains the burden, the plaintiff must then demonstrate that the proffered nondiscriminatory reason is merely a

pretext for discrimination. Id. This burden-shifting scheme is designed to assure that a plaintiff has his or her day in court despite the unavailability of direct evidence. Enlow v. Salem-Keizer Yellow Cab Co., 389 F.3d 802, 812 (9th Cir. 2004) (citing Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 121 (1985)).

C. Section 1981, Washington Law Against Discrimination

To overcome summary judgment under the Washington Law Against Discrimination ("WLAD"), a plaintiff only needs to show that a reasonable jury could find that Plaintiff's protected trait was a substantial factor motivating the employer's adverse actions. Scrivener v. Clark Coll., 181 Wn.2d 439, 445 (2014). This is a burden of production, not persuasion, and may be proved through direct or circumstantial evidence. Id. Where a plaintiff lacks direct evidence, Washington courts use the burden-shifting analysis articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), to determine the proper order and nature of proof for summary judgment. Id.

The "legal principles guiding a court in a Title VII dispute apply with equal force in a § 1981 action." Manatt v. Bank of Am., NA, 339 F.3d 792, 797 (9th Cir. 2003) (citations omitted).

II. Disparate Treatment

"In responding to a summary judgment motion in a Title VII disparate treatment case, a plaintiff may produce direct or circumstantial evidence demonstrating that a discriminatory reason more likely than not motivated the defendant's decision, or alternatively may establish a prima facie case under the burden-shifting framework set forth in McDonnell Douglas." Dominguez-Curry v. Nevada Transp. Dep't, 424 F.3d 1027, 1037 (9th Cir. 2005) (citation omitted). Direct evidence is evidence which, if believed, proves the fact of discriminatory

animus without inference or presumption. Coghlan v. Am. Seafoods Co. LLC., 413 F.3d 1090, 1095 (9th Cir. 2005). Direct evidence typically consists of clearly sexist, racist, or similarly discriminatory statements or actions by the employer. Id. Here, Plaintiff has chosen to rely on direct evidence that a discriminatory reason more likely than not motivated Defendant's decision. (Dkt. No. 34 at 15-17.)

Defendant argues Plaintiff's disparate treatment discrimination claim fails because (1) Plaintiff did not suffer an adverse employment action because the denial of a temporary management position cannot be considered an adverse employment action, and, (2) the denial of the temporary management position was based on senior management's "concern about process issues" regarding filing the position, and "not about [Plaintiff]." (Dkt. No. 28 at 13-14.) Plaintiff argues the denial of the temporary management position was an adverse employment action that affected his wages, hours, and chances for promotion, and the denial was based on Plaintiff's manager regarding him as an "Ali-Baba terrorist." (Dkt. No. 34 at 15-17.)

Adverse employment actions include an array of disadvantageous changes in the workplace that materially affect the terms and conditions of a person's employment. Davis v. Team Elec. Co., 520 F.3d 1080, 1089 (9th Cir. 2008). Adverse employment actions are not limited to cognizable employment actions such as discharge, transfer, or demotion. See Lyons v. England, 307 F.3d 1092, 1118 (9th Cir. 2002). Some actions having been found to constitute adverse employment actions include: issuing undeserved performance ratings, negatively affecting an employee's compensation, giving an employee a more burdensome work schedule, and excluding an employee from meetings, seminars and positions that would have made the employee eligible for salary increases. See Delacruz v. Tripler Army Med., 507 F. Supp. 2d

1117, 1123-24 (D. Haw. 2007) (collecting cases); Ray v. Henderson, 217 F.3d 1234, 1243 (9th Cir. 2000).

Here, Plaintiff alleges he was denied a temporary management position in August 2012 because of his race, religion, and national origin. (Dkt. No. 34.) Plaintiff alleges that Mr. Hall, a manager with control over a temporary promotion to a team lead position, denied Plaintiff the opportunity, despite the fact he had begun training for the position, while commenting to a coworker, "I'm not going to let that Ali-Baba terrorist be a team lead." (Id. at 15.) Plaintiff contends the denial cost him a two dollar per hour raise for the hours worked as a lead, two hours of overtime pay for each day worked as a lead, and leadership experience that would have made him more competitive for future discretionary promotions. (Dkt. Nos. 34 at 16-17, 35 at 4.)

In support of his position, Plaintiff has produced a Statement Form provided to Boeing's Equal Employment Opportunity Office by Team Lead Mike Baker, in which Baker reports he overheard Hall say "I'm not going to have Ali Baba Terrorist be a Team Lead" in reference to Plaintiff's candidacy for the temporary promotion. (Dkt. No. 36-2 at 45.) Plaintiff has also put forward evidence that although certain managers claim he was denied the opportunity based on "process issues," other employees had been trained for and had acted as temporary leads without facing the same "process" he did. (Dkt. No. 36-2 at 43.)

The Court finds Plaintiff has produced evidence sufficient to preclude summary judgment on this claim. A reasonable jury could conclude, based on the evidence submitted, that the denial of the temporary management position was an adverse employment action, which affected Plaintiff's compensation, hours, and opportunity for advancement, and that the adverse action was based on a supervisor's discriminatory animus towards Arabs and Muslims. Defendant argues this denial was not a significant employment action because the monetary loss was only

$32.00, and that the denial was based on "a senior manager's concern about process issues." (Dkt. No. 28 at 13-14.) But these arguments rely on alternative interpretations of disputed facts, and are not proper on summary judgment. Summary judgment on Plaintiff's disparate treatment discrimination claim is DENIED.

III. Hostile Work Environment

To establish a prima facie case for a hostile work environment claim under Title VII or § 1981, Plaintiff must show: (1) he was subjected to verbal or physical conduct because of his race, national origin, or religion; (2) the conduct was unwelcome; (3) the conduct was sufficiently severe or pervasive to alter the conditions of employment and create an abusive work environment. Manatt, 339 F.3d at 798. The working environment "must both subjectively and objectively be perceived as abusive. Objective hostility is determined by examining the totality of the circumstances and whether a reasonable person with the same characteristics as the victim would perceive the workplace as hostile." Craig v. M & O Agencies, Inc., 496 F.3d 1047, 1055 (9th Cir. 2007) (internal quotation marks and citations omitted). In evaluating the conduct at issue, the required level of severity or seriousness varies inversely with the pervasiveness or frequency of the conduct. McGinest v. GTE Serv. Corp., 360 F.3d 1103, 1113 (9th Cir. 2004).

Under Washington law, a prima facie case requires that: (1) Plaintiff suffered unwelcome harassment; (2) the harassment was because of race, national origin, or religion; (3) the harassment affected the terms or conditions of employment; and (4) the harassment can be imputed to the employer. Washington v. Boeing, 105 Wn. App. 1, 12-13 (2000).

Defendant argues Plaintiff's hostile work environment claim fails because (1) Boeing maintains an anti-harassment policy that is a reasonable mechanism for harassment prevention and correction, and Plaintiff knew about the policy but unreasonably declined to report the

harassment according to the policy's requirements for almost a year; (2) Boeing immediately and thoroughly investigated Plaintiff's harassment complaints once they were made and took prompt corrective action with regards to each employee found to have engaged in offensive conduct; and (3) harassment by supervisors was not severe or pervasive enough to affect the terms and condition of employment. (Dkt. No. 28 at 16-20.) In other words, Defendant argues that harassment by Plaintiff's supervisors or managers was not severe or pervasive, and that neither coworker harassment nor supervisor harassment can be imputed to Boeing. The Court addresses these arguments in turn.

A. Severity and Pervasiveness of Supervisor Harassment

The Court finds Plaintiff has produced evidence sufficient to preclude summary judgment on this basis. A reasonable jury could conclude, based on the evidence submitted, that harassment by managers and supervisors was severe and pervasive enough to alter the conditions of employment and create a subjectively and objectively abusive work environment.

Plaintiff has submitted evidence that Mr. Hall, who had control over Plaintiff's wages, hours, and working conditions, removed Plaintiff from training to become a temporary lead, telling another colleague he made the decision because he would not allow an "Ali-Baba terrorist" to serve as a team lead. (Dkt. Nos. 35, 36-2 at 45.) Plaintiff has submitted evidence that a coworker, pointing to Plaintiff, commented to Mr. Hall that Boeing does not just build the best airplanes, "they also come with a terrorist." (Dkt. No. 35 at 9.) Mr. Hall laughed at the comment, and walked away. (Id.)

Plaintiff has submitted evidence that Mr. Fink, another manager with control over Plaintiff's wages, hours, and working conditions, played a video clip at the end of a crew meeting, telling his crew to pay special attention to a very funny clip which featured a young

white girl crying after her father tells her that her skin will turn black when she turns four years old. (Dkt. No. 35 at 8.) Plaintiff has submitted evidence that Mr. Fink insisted on having pork dishes as the main dish at work potluck dinners, even after Plaintiff explained that Muslims could not eat pork. (Id. at 8-9.) After that, Mr. Fink brought two hams to the Thanksgiving dinner, commenting to Plaintiff, "I know how much you like pork, so I brought you some ham." (Id.) Plaintiff has submitted evidence that Mr. Fink once brought Plaintiff a socket that had been lost from his tool box, commenting to Plaintiff that "the guy who found it said that it belonged to the crazy looking Indian guy so [I] figured that was [you]." (Id. at 9.)

Plaintiff has submitted evidence that Mr. McNeil, a supervisor, began calling Plaintiff "camel jockey" after Plaintiff complained to McNeil about other coworkers referring to him as "Achmed." (Dkt. No. 35 at 10.) Plaintiff has submitted evidence that Mr. McNeil called Plaintiff a "terrorist" and "Taliban," and was often present when other coworkers used similar language to refer to Plaintiff. (Id. at 2.) Plaintiff has submitted evidence that Mr. Turner, another supervisor, regularly used racist language to refer to Plaintiff, and made a derogatory remark about a t-shirt depicting a man in three Muslim prayer stances. (Id. at 11.)

Courts have recognized "Title VII is not a general civility code." E.E.O.C. v. Prospect Airport Services, Inc., 621 F.3d 991, 998 (9th Cir. 2010). Nevertheless, Plaintiff has put forward sufficient evidence of frequent, consistent harassment by numerous people in leadership positions so as to create a genuine issue of material fact. Summary judgment on this basis is DENIED.

/

/

/

B. Harassment Imputable to Boeing and Vicarious Liability

i. Supervisor Harassment and Affirmative Defense

Under Washington law, where an owner, manager, partner or corporate officer personally participates in the harassment, the harassment is imputed to the employer. Glasgow v. Georgia-Pac. Corp., 103 Wn.2d 401, 407 (1985). Managers are those who have been given by the employer the authority and power to affect the hours, wages, and working conditions of the employer's workers. Robel v. Roundup Corp., 148 Wn.2d 35, 48 n.5 (2002).

The Court finds that a genuine issue of material fact regarding whether a "manager" participated in harassment precludes summary judgment under Washington law because a reasonable fact finder could conclude that Mr. Hall and Mr. Fink had control over Plaintiff's wages, hours, and working conditions, and thus that their harassment is imputable to Boeing. See Glasgow, 103 Wn.2d at 407.

Under Title VII and § 1981, when harassment by a supervisor is at issue, an employer is vicariously liable, subject to a potential affirmative defense. See Faragher v. City of Boca Raton, 524 U.S. 775, 780 (1998). If the supervisor's harassment culminates in a tangible employment action, the employer is strictly liable. Vance v. Ball State Univ., 133 S. Ct. 2434, 2439 (2013). A "supervisor" is any individual empowered by the employer to take tangible employment actions against the victim. Id. A tangible employment action is "a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." Id. at 2442.

If no tangible employment action is taken, the employer may escape liability by establishing, as an affirmative defense, that (1) the employer exercised reasonable care to prevent and correct any harassing behavior and (2) that the plaintiff unreasonably failed to take

advantage of the preventive or corrective opportunities that the employer provided. Id. at 2439. "Whether the employer has a stated antiharassment policy is relevant to the first element of the defense. And an employee's failure to use a complaint procedure provided by the employer will normally suffice to satisfy the employer's burden under the second element of the defense." Nichols v. Azteca Rest. Enterprises, Inc., 256 F.3d 864, 877 (9th Cir. 2001) (citing Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 765 (1998) (internal quotation marks omitted).

The Court finds that a genuine issue of material fact precludes summary judgment under federal law because a reasonable fact finder could conclude that Mr. Hall was a "supervisor," that denying Plaintiff the temporary team lead position was a failure to promote that constituted a "tangible employment action," and, therefore, that Boeing is strictly liable. Summary judgment on this basis is DENIED.

ii. Coworker Harassment

Under Washington law, harassment by coworkers and supervisors is imputed to the employer only where the employer (1) authorized, knew about, or should have known about the harassment, and (2) failed to take reasonably prompt and adequate corrective action. Glasgow, 103 Wn.2d at 407. This may be shown by proving (a) that complaints were made to the employer through higher managerial or supervisory personnel, or by proving such a pervasiveness of harassment at the work place as to create an inference of the employer's knowledge or constructive knowledge of it, and (b) that the employer's remedial action was not of such nature as to have been reasonably calculated to end the harassment. Id.

Under Title VII and § 1981, when harassment by coworkers is at issue, the employer's conduct is reviewed for negligence. See Ellison v. Brady, 924 F.2d 872, 881 (9th Cir. 1991). In other words, "the employer may be liable if it knows or should know of the harassment but fails

to take steps reasonably calculated to end the harassment." Dawson v. Entek Int'l, 630 F.3d 928, 938 (9th Cir. 2011) (internal quotation marks and citation omitted). The reasonableness of the remedy depends on its ability to: (1) stop harassment by the person who engaged in harassment; and (2) persuade potential harassers to refrain from unlawful conduct. Nichols, 256 F.3d at 875. When the employer undertakes no remedy, or where the remedy does not end the current harassment and deter future harassment, liability attaches for both the past harassment and any future harassment. Id. at 875-76.

Here, Plaintiff has introduced evidence that coworkers harassed Plaintiff in front of several different managers beginning shortly after he began his employment in January 2012, but that the managers took no steps to correct or prevent the harassment. (Dkt. No. 35.) Plaintiff has introduced evidence that despite being told that complaining to human resources about another union member would "make him a target," Plaintiff eventually did report the harassment to human resources in August 2012 and to Boeing's Equal Employment Office in December. (Id. at 2, 5-10.) Plaintiff has introduced evidence that the harassment continued, and even worsened, during Boeing's internal investigation, which concluded in March 2013. (Id. at 2-10.) Plaintiff has submitted evidence that the harassment continued after that, resulting in Plaintiff filing a charge with the Equal Employment Opportunity Commission ("EEOC") in September 2013. (Id. at 9.) Plaintiff has submitted evidence that the harassment continues to this day, despite Plaintiff's January 2014 transfer to Boeing's Renton facility. (Id. at 9-11.) Plaintiff has submitted sufficient evidence for a reasonable fact finder to conclude Boeing knew or should have known about the harassment.

Plaintiff has also submitted sufficient evidence for a reasonable fact finder to conclude Boeing did not take steps reasonably calculated to end the harassment. Plaintiff has submitted

evidence that despite Boeing's investigation in early 2013, the harassment continued and even worsened. (Dkt. No 35.) Plaintiff has introduced evidence that Boeing declined to do any meaningful investigation, at all, following the water bottle contamination incident. (Dkt. No. 36-2 at 13-36.) Plaintiff has introduced evidence that at least one of the employees who received a corrective action memorandum from Boeing for inappropriate conduct as a result of the internal investigation was not effectively disciplined because he did not realize he had been found to have violated any policies. (Dkt. No. 36-1 at 81-82.) Plaintiff has submitted evidence that Renton coworkers continued to harass him, asking him if he was aware that "[his] people," referencing Muslims, had recently beheaded a journalist; whether or not he thought the prophet Mohammed was a pedophile; and why he would name his son Islam, an "evil name." (Dkt. No. 35 at 9-10.) Plaintiff has submitted evidence that Renton coworkers commented to Plaintiff that "with [his] beard [he] looks like Taliban now," and looks "like a terrorist." (Id.) Viewing the evidence in the light most favorable to Plaintiff, Boeing neither stopped the harassment it knew was occurring nor persuaded others to refrain from beginning to harass Plaintiff.

Defendant argues that it is "undisputed that Boeing immediately and thoroughly investigated Emad's workplace harassment complaints," and that "after Boeing granted Emad's request to be transferred to a new, higher level assignment in Boeing's Renton facility, Emad was never again subjected to workplace harassment." (Dkt. No. 28 at 17.) Defendant argues that it took sufficient corrective action against those employees who it did find had engaged in inappropriate conduct by issuing corrective action memoranda to those employees. (Id.) With regards to Plaintiff's harassment contentions at the Renton facility, Defendant argues that "no reasonable jury could find Emad's assertions to be credible." (Dkt. No. 38 at 4.) Once again, Defendant advances arguments that rely on its interpretation of disputed facts, and asks the Court

to make credibility assessments on summary judgment—assessments that are precluded by the summary judgment standard itself. See Matsushita Elec. Indus. Co., 475 U.S. at 587. Summary judgment on this basis is DENIED.

IV. Retaliation

To establish a prima facie case of retaliation under both federal and Washington law, Plaintiff must show: (1) he engaged in a protected activity, (2) he suffered an adverse employment action, and (3) there was a causal link between his activity and the employment decision. Stegall v. Citadel Broad. Co., 350 F.3d 1061, 1065-66 (9th Cir. 2003).

Defendant argues Plaintiff's retaliation claim fails because Plaintiff did not suffer an adverse employment action because any retaliatory harassment by coworkers amounted to nothing more than mere ostracism and thus was not an adverse employment action. (Dkt. No. 28 at 14-16.) Plaintiff argues he suffered a retaliatory adverse action in the form of increased harassment from coworkers, including coworkers and managers falsely accusing Plaintiff of proactively initiating the harassment in order to later entrap them by filing discrimination complaints against them. (Dkt. No. 34 at 24-25.)

Title VII's "antiretaliation provision, unlike the substantive provision, is not limited to discriminatory actions that affect the terms and conditions of employment." Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 64 (2006). To demonstrate that he suffered an adverse employment action under the antiretaliation provision, Plaintiff "must show that a reasonable employee would have found the challenged action materially adverse, which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." Id. at 68 (internal quotation marks and citation omitted). The action must be materially adverse because an employee's "decision to report discriminatory behavior cannot

immunize that employee from those petty slights or minor annoyances that often take place at work and that all employees experience." Id.

A hostile work environment may form the basis for a retaliation claim under Title VII. Ray, 217 F.3d at 1244-45. "Harassment for engaging in a protected activity . . . is the paradigm of adverse treatment that is based on retaliatory motive and is reasonably likely to deter the charging party or others from engaging in protected activity." Id. at 1245 (internal quotation marks and citation omitted).

The Court—having found that Plaintiff has produced enough evidence for a reasonable jury to conclude Plaintiff was subjected to, and continues to be subject to, sufficiently severe and pervasive harassment so as to alter the conditions of employment and create an abusive work environment—finds that summary judgment on the retaliation claim is precluded. Plaintiff has established a genuine issue of material fact as to whether he suffered an adverse employment action in the form of a hostile work environment. Summary judgment on the retaliation claim is DENIED.

V. Intentional and Negligent Infliction of Emotional Distress

Washington does not recognize claims for intentional or negligent infliction of emotional distress by an employee against his or her employer "when the only factual basis for emotional distress [is] the discrimination claim." Little v. Windermere Relocation, Inc., 301 F.3d 958, 972 (9th Cir. 2002) (citations omitted); Anaya v. Graham, 89 Wn. App. 588, 596 (1998). Citing Plaintiff's testimony regarding the source of his stress during his deposition, Defendant argues that Plaintiff's emotional distress claims are based solely on the allegedly discriminatory events that form the basis for Plaintiff's other claims. (Dkt. Nos. 28 at 20-22, 38 at 10-11.) Plaintiff does not address these claims in his Response. (Dkt. No. 34.)

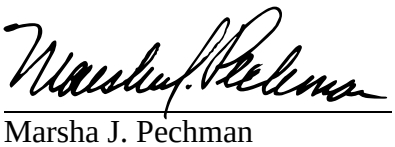
The Court concludes the emotional distress claims have the same factual basis as Plaintiff's discrimination claims. If Plaintiff prevails on his discrimination claims, he will be able to obtain emotional distress damages. Summary judgment on these claims is GRANTED.

Conclusion

The Court GRANTS in part and DENIES in part the motion. Genuine issues of material fact preclude summary judgment on Plaintiff's discrimination the basis of race, national origin, and religion claims. Because the factual basis for these claims is identical to the factual basis for Plaintiff's intentional and negligent infliction of emotional distress claims, however, summary judgment on the emotional distress claims is GRANTED.

The clerk is ordered to provide copies of this order to all counsel.

Dated this 11th day of August, 2015.



Marsha J. Pechman
Chief United States District Judge