STATE OF MICHIGAN

COURT OF APPEALS

KAREN EDWARDS,

Plaintiff-Appellant,

v

CREDIT ACCEPTANCE CORPORATION and RODNEY ARENDS,

Defendants-Appellees.

UNPUBLISHED
May 18, 2004

No. 243140
Oakland Circuit Court
LC No. 00-027615-NZ

Before: Hoekstra, P.J., and Sawyer and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendant Credit Acceptance Corporation ("CAC"). We affirm.

I. FACTS AND PROCEDURAL HISTORY

In December of 1994, Mike Knoblauch, current president of CAC North America and former vice president of collections, hired plaintiff as a collector in CAC's recovery or collections department. In October of 1995, plaintiff was promoted to the position of recovery team leader, and was again promoted to the position of recovery supervisor in February of 1996. Thereafter, sometime in 1997, Knoblauch decided to create three new management positions: recovery manager, customer service manager, and collection manager. The first of these positions to be filled was the recovery manager position, for which Rodney Arends, who was recruited from outside of CAC, was extended an offer on February 19, 1997. As the recovery manager, Arends oversaw both vehicle recovery and senior collections. The second of the positions filled was the collection manager position, which was offered to Darren Kazich, who was also recruited from outside of CAC, on October 1, 1997. The last of these positions to be filled was the customer service manager position, to which Kyle Zolman was promoted in January of 1998. According to plaintiff, all three of these positions were filled by white males, despite her contention that she is more qualified for each of the positions than the three applicants that CAC hired. Moreover, plaintiff asserts that none of these positions were posted internally so that current CAC supervisors, including her, could apply. Plaintiff, therefore, asserts that she was not promoted to a management position because of her gender.

Upon assuming the recovery manager position, Arends became plaintiff's direct supervisor. Apparently, the relationship between plaintiff and Arends was rocky at best,

spawning a series of meetings and internal memorandums in which plaintiff alleged that Arends possessed a "predisposition against women," that she felt there was discrimination within CAC because only young, white males were hired as collection department management staff, and that there were communication problems between herself and Arends.

On November 24, 1997, Arends presented plaintiff with a performance review that plaintiff apparently believed to be negative, as she signed the review but noted that her signature was merely to indicate that she had read it, and did not signify that she agreed with it. The next day, November 25, 1997, plaintiff filed a charge of discrimination against CAC with the Michigan Department of Civil Rights and the Equal Employment Opportunity Commission ("EEOC charge"), alleging that she had been denied promotion because she is a female.

On January 23, 1998, plaintiff received a memorandum from CAC's human resources department stating that CAC respected plaintiff's right to file and discuss the EEOC charge, but stating that CAC believed plaintiff had been discussing and investigating the charge with other CAC employees during working hours. Furthermore, on March 31, 1998, plaintiff received two employee misconduct forms. One of these misconduct forms relates to an occurrence that happened on March 26, 1998, wherein Crystal Riley, another supervisor, informed plaintiff that she would be monitoring customer phone calls made by one of plaintiff's subordinates that day as part of a quality review program. Thereafter, plaintiff improperly informed one of her subordinates that his calls would be monitored.

The second misconduct form given to plaintiff on March 31, 1998 concerns a collector activity report ("CAR") that Arends conducted on plaintiff on March 27, 1998. According to Arends, he had implemented a program in which supervisors such as plaintiff were supposed to review one hundred of their subordinates' accounts per day, and were supposed to add electronic notes to the files to provide guidance to the subordinates the next time they accessed the files. Arends stated that the account reviews were started as part of a bonus incentive plan for the supervisors. According to Arends, he would randomly sample supervisors each month and, over time, he eventually sampled every supervisor and compiled a list of results. Arends stated that on March 27, 1998 he pulled a random sample of thirty-three of plaintiff's accounts and discovered that they contained no electronic notes and had been reviewed in a total of ninety-five seconds. Arends stated that it was virtually impossible for plaintiff to have reviewed thirty-three files in ninety-five seconds, that he believed plaintiff was attempting to take credit for work she had not done, and that plaintiff's actions appeared to him to be a case where plaintiff was "padding" her statistics in order to get a bonus. Therefore, Arends issued the employee misconduct form and denied plaintiff a portion of her bonus.

On April 9, 1998, plaintiff presented Arends with a written two-week notice of resignation, and on November 22, 2000, she filed a two-count complaint against CAC and Arends alleging sexual discrimination and unlawful retaliation in violation of the Elliott-Larsen Civil Rights Act, MCL 37.2201 *et seq*. Plaintiff's allegations were based on her not being selected for the management positions, assertions that she had been treated disparately by both CAC and Arends because of her gender, and contention that CAC and Arends had engaged in retaliatory conduct after plaintiff lodged complaints that she was being discriminated against because she is a female.

CAC and Arends moved for summary disposition pursuant to MCR 2.116(C)(10), which the circuit court granted. As to plaintiff's claim of discrimination for failure to promote, the circuit court ruled that plaintiff had established a prima facie case, but had failed to present evidence that the legitimate, nondiscriminatory reasons stated by CAC for not promoting plaintiff were pretextual. Moreover, with respect to plaintiff's claim of disparate treatment by Arends, the trial court ruled that plaintiff had presented no argument in response to defendant's claim that plaintiff could not establish a prima facie case. With regard to plaintiff's claim of retaliatory conduct, the trial court ruled that plaintiff had engaged in protected activity by filing the EEOC charge and that defendant was aware that plaintiff had filed the charge. Moreover, although it held that the memorandum from the human resources department did not suffice, the circuit court held that defendant had taken adverse employment action against plaintiff by issuing the two employee misconduct forms and denying her the bonus. However, the trial court ruled that plaintiff had failed to establish a causal connection between plaintiff's filing of the EEOC charge and defendant's adverse action. Plaintiff appeals, challenging the trial court's grant of summary disposition as to CAC only.

II. STANDARD OF REVIEW

A trial court's decision on a motion for summary disposition is reviewed de novo. *Hazle v Ford Motor Co*, 464 Mich 456, 461; 628 NW2d 515 (2001). A motion under MCR 2.116(C)(10) tests the factual support for a claim and may be granted if, after viewing the evidence in the light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

III. ANALYSIS

A. PLAINTIFF'S DISCRIMINATION CLAIM

Plaintiff claims that CAC discriminated against her on the basis of gender by failing to promote her. Our Supreme Court has recognized that a plaintiff may show discrimination through either direct or circumstantial evidence. *Hazle, supra*, 462. Where, as here, only circumstantial evidence is present, the plaintiff must satisfy the burden-shifting analysis set forth in *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973), to avoid summary disposition. *Hazle, supra*, 462. This allows "a plaintiff to present a rebuttable prima facie case on the basis of proofs from which a factfinder could *infer* that the plaintiff was the victim of unlawful discrimination." *Debrow v Century 21 Great Lakes, Inc (After Remand)*, 463 Mich 534, 538; 620 NW2d 836 (2001) (emphasis in original).

> To establish a rebuttable prima facie case of discrimination, a plaintiff must present evidence that (1) she belongs to a protected class, (2) she suffered an adverse employment action, (3) she was qualified for the position, and (4) her failure to obtain the position occurred under circumstances giving rise to an inference of unlawful discrimination. Once a plaintiff has presented a prima facie case of discrimination, the burden then shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the adverse employment action. If a defendant produces such evidence, the presumption is rebutted, and the burden shifts back to the plaintiff to show that the defendant's reasons were not the true reasons, but a mere pretext for discrimination. [*Sniecinski v Blue Cross & Blue*

Shield of Michigan, 469 Mich 124, 134; 666 NW2d 186 (2003) (citations omitted).]

In the present case, it is undisputed that, as a female, plaintiff is a member of a protected class and that she suffered an adverse employment action when she was not promoted. On appeal, however, CAC asserts as an alternative ground for affirmance that the trial court erred in ruling that plaintiff had established the third and fourth elements of a prima facie case of discrimination. While we believe defendant's assertion is not without merit, we note that "[t]he purpose of the prima facie case is to force the defendant to provide a nondiscriminatory explanation for the adverse employment action." In the present case, because CAC has done so, we choose to presume that plaintiff has met her initial burden and address only plaintiff's assertion that the trial court erred in holding that she had failed to present evidence that the legitimate, nondiscriminatory reasons stated by CAC for not promoting her were pretextual. *Town v Michigan Bell Telephone Co*, 455 Mich 688, 699; 568 NW2d 64 (1997).

Plaintiff does not dispute that the reasons articulated by CAC for not promoting her to the management positions were legitimate and nondiscriminatory, but instead seeks to show that those reasons were pretextual. In *Feick v Monroe Co*, 229 Mich App 335, 343; 582 NW2d 207 (1998), citing *Dubey v Stroh Brewing Co*, 185 Mich App 561, 563, 565-566; 462 NW2d 758 (1990), this Court recognized that plaintiff must make such a showing by a preponderance of the evidence, and summarized the means by which plaintiff may do so:

> A plaintiff can establish that a defendant's articulated legitimate, nondiscriminatory reasons are pretexts (1) by showing the reasons had no basis in fact, (2) if they have a basis in fact, by showing that they were not the actual factors motivating the decision, or (3) if they were factors, by showing that they were jointly insufficient to justify the decision.

With respect to hiring Zolman as the customer service manager, Knoblauch stated that he did not feel plaintiff was qualified because he was looking for (1) "supervisory experience, if we could get it," (2) familiarity with the phone system and strong technical abilities, and (3) minimal collections experience because the position would entail interacting with customers who were up to date on their payments rather than delinquent. Plaintiff first argues that Knoblauch's stated reasons were pretextual because "Plaintiff-Appellant had 15 months as a supervisor of CAC, as well as prior supervisory experience and management training, compared to Zolman's 14 months of experience." We believe plaintiff's argument on this issue is insufficient to show that CAC's decision was a pretext for discrimination, however, because plaintiff's argument does not take into consideration that Knoblauch's statements show that supervisory experience was not the main criterion CAC was looking for with respect to the customer service position.

Plaintiff also asserts that familiarity with the phone system and technical abilities must be pretextual because CAC only had one phone system, and Knoblauch testified that he did not know whether plaintiff could handle the intricacies of it. Moreover, plaintiff asserts that CAC never defined what technical abilities were, stated why they were important, or showed that plaintiff did not possess them. However, plaintiff fails to realize that she bears the burden of proof. Moreover, Knoblauch testified that Zolman had spent time as CAC's predictive dialing coordinator, in which he utilized a phone system similar to the one in the customer service department, and that Zolman was more experienced with the particular subsystem used for

outbound dialing. Moreover, although Knoblauch did not state an express definition of technical abilities, he did state during his deposition that CAC was looking to make significant changes to its phone system, and that he believed Zolman's performance in that area was one of the qualifications that would enable Zolman to accomplish what CAC was looking for. Plaintiff, however, introduced no evidence to dispute this assertion.

Finally, plaintiff contends that Knoblauch's assertion that he was seeking someone with minimal collections experience because CAC was trying to separate paying customers from non-paying was pretextual, apparently on the ground that it has no basis in fact, because "Zolman's resume states that his experience in collections was spent dealing with customers in 30-90-day delinquencies – not up-to-date customers." However, Zolman's resume states that he held that collections position only from March of 1996 to May of 1997, just over a year, while plaintiff asserts that she has over eleven years of collections experience. Thus, by plaintiff's own admission, Zolman clearly had much less collections experience than she did. Finally, plaintiff has introduced no evidence that minimal collections experience would not, indeed, be beneficial to a person dealing with paying rather than non-paying customers. Instead, plaintiff cites to a 1995 performance evaluation conducted by Knoblauch, which states that plaintiff "communicates well with customers and agents." Plaintiff, however, cites this sentence out of context, as the following sentences state that plaintiff controls conversations and is often able to convince customers to relinquish their cars voluntarily rather than have them repossessed, which is apparently the type of forceful conversation habits Knoblauch sought to avoid. Thus, with respect to the customer service manager position, we believe plaintiff has not presented evidence to satisfy any of the three prongs set forth in *Feick*.

Plaintiff next argues that CAC's stated reasons for hiring Arends as the recovery manager and Kazich for the collection manager—that Knoblauch wanted someone from outside CAC and because they had managed a significant number of people—were pretextual. First, plaintiff asserts that these reasons were pretextual because she had come through the ranks of CAC's recovery department and was familiar with its policies, procedures, and computer system, and because she had reduced employee turnover rate and increased money collected as a supervisor. These factors, however, do not address Knoblauch's stated reasons for hiring Arends and Kazich. Moreover, these arguments fail to take into consideration Knoblauch's statement that he knew when he hired Arends that he would have to become accustomed to such things as CAC's computer system because it was not used where Arends had worked before. Furthermore, plaintiff's arguments do not dispute Knoblauch's assertion that Kazich "had outstanding experience in our line of work."

Plaintiff also argues that Arends had very little experience in recovery work. However, Knoblauch testified that the newly created recovery manager position would entail overseeing not only recovery, but also senior collectors. With regard to collections, Arends' resume states that he managed a collections department for approximately three years. Moreover, plaintiff has not presented any specific evidence as to what recovery entails, or how it significantly differs from the collections department of which it is apparently a subdivision.

Finally, plaintiff fails to address the fact that Knoblauch stated during his deposition that the reason he felt plaintiff was not qualified for either the recovery manager or collections manager position was because she had very little supervisory experience. Arends' resume states that he had previously managed a department of 140 people. Moreover, Kazich's resume states

that before being hired by CAC he was managing a department of over eighty employees. Plaintiff, however, has not introduced any evidence showing that she had ever supervised more than approximately twenty employees, and the evidence plaintiff has presented shows that she had only supervised that number for approximately one year. Moreover, plaintiff has not presented any evidence that Knoblauch's statements that the collections manager would have to manage approximately fifty to seventy people in 1996, and that he projected it to grow to over one hundred, were false, or that the recovery manager, which would oversee senior collectors in addition to the recovery employees plaintiff supervised, would not be required to supervise more than twenty employees.

Thus, while plaintiff's arguments may tend to show that she would have initially had an easier time coping with CAC's internal policies, procedures, and systems than Arends and Kazich, the record shows that these were not the qualifications CAC was looking for, and this Court has recognized that "[t]he soundness of an employer's business judgment, however, may not be questioned as a means to showing pretext." *Dubey*, *supra*, 565, citing *Chappell v GTE Products Corp*, 803 F2d 261, 266 (CA 6, 1986). Therefore, we conclude that plaintiff has not carried the burden of establishing by a preponderance of the evidence that CAC's reasons for not promoting her had no basis in fact, were not the actual factors motivating CAC's decision, or were jointly insufficient.

B. PLAINTIFF'S RETALIATION CLAIM

This Court has stated that in order to establish a prima facie case of retaliation under this section, plaintiff must show (1) that she was engaged in protected activity, (2) that defendant was aware that she was engaged in protected activity, (3) that defendant engaged in employment action that was adverse to plaintiff, and (4) that there is a causal connection between plaintiff's protected activity and defendant's adverse employment action. *Meyer v City of Center Line*, 242 Mich App 560, 568-569; 619 NW2d 182 (2000). Moreover, the *McDonnell Douglas* burden shifting analysis applies to retaliation claims. See *Hoffman v Sebro Plastics, Inc*, 108 F Supp 2d 757, 776-777 (ED Mich, 2000); see also *Roulston v Tendercare, Inc*, 239 Mich App 270, 280-281; 608 NW2d 525 (2000). Therefore, once a plaintiff meets the burden of establishing a prima facie case of retaliation, the burden is shifted to the defendant, who must articulate a legitimate, nondiscriminatory reason for the adverse employment action in order to rebut the presumption created by plaintiff's prima facie case. If defendant is able to make such an articulation, the presumption dissipates, and plaintiff must introduce evidence that defendant's articulated reason for the adverse employment action was a pretext for retaliation in order to survive a motion for summary disposition. See *Hazle*, *supra*, 463-466.

In the present case, it is undisputed that plaintiff engaged in protected activity by filing the EEOC charge. Moreover, CAC does not dispute having knowledge that plaintiff had filed the charge. As to the third element, in granting CAC's motion for summary disposition the circuit court ruled that the January 23, 1998, memorandum from CAC's human resources department warning plaintiff that she would be terminated if she investigated or dealt with her discrimination claims during working time did not constitute an adverse employment action. In her appeal to this Court, despite discussing the memorandum at length with regard to her argument that the trial court erred with respect to its finding of no causal connection, plaintiff has not challenged the circuit court's ruling on this issue. Under MCR 7.205(D)(4), plaintiff's

appeal is limited to the issues raised in her application and brief. Therefore, plaintiff has waived review of this issue because she did not include it in her statement of questions presented, cites no authority, and engages in no argument on the issue. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000).

As an alternative ground for affirmance, CAC asserts that the circuit court erred in ruling that the March 31, 1998, misconduct forms and CAC's denying plaintiff a portion of her bonus equated to employment action that was adverse to plaintiff. Again, while we believe CAC's assertions are not without merit, in this case we choose to presume that the circuit court was correct on this issue and, instead, limit our review to plaintiff's assertion that the circuit court erred in holding that she had not established a causal connection between her filing the EEOC charge and CAC's actions. As she did in the circuit court, plaintiff asserts that temporal proximity and her contention that similarly situated male employees were treated differently fulfill her burden. We first address plaintiff's assertions as to temporal proximity.

In reviewing retaliation claims brought under title VII of the federal Civil Rights Act[1], federal courts have recognized that " 'the proximity in time between protected activity and adverse employment action may give rise to an inference of causal connection.' " *Ford v General Motors Corp*, 305 F3d 545, 554-555 (CA 6, 2002), quoting *Moon v Transport Drivers, Inc*, 836 F2d 226, 229 (CA 6, 1987). However, they have also recognized that "temporal proximity alone is insufficient to establish a causal connection for a retaliation claim," *Little v BP Exploration & Oil Co*, 265 F3d 357, 363-364 (CA 6, 2001), and that a plaintiff must introduce other evidence of retaliatory conduct in conjunction with temporal proximity in order to present a genuine issue of material fact as to the existence of a causal connection between protected activity and adverse employment action. *Id*., 364. Moreover, while temporal proximity may raise an inference of causation, as the circuit court noted in its order, this Court has recognized that under MCL 37.2701(a), "[t]o establish causation, the plaintiff must show that his participation in activity protected by the CRA was a 'significant factor' in the employer's adverse employment action, not just that there was a causal link between the two." *Barrett v Kirtland Community College*, 245 Mich App 306, 315; 628 NW2d 63 (2001).

We believe plaintiff's assertion that the March 31, 1998, misconduct form issued after Arends ran the Collector Activity Report (CAR) was causally connected to her filing the EEOC charge is without merit. The evidence offered by plaintiff shows that the actual cause of the misconduct form was the negative CAR, and plaintiff has offered no evidence to show that her filing the EEOC charge was a significant factor leading to CAC's issuing her the misconduct form. Instead, plaintiff asserts that causation should be inferred based on the fact that it was issued to her only four months after she filed the charge. However, as noted above, temporal proximity without the introduction of other evidence will not support a finding of causation. *Little, supra*, 363-364. However, even if this Court were to conclude that plaintiff has

[1] This Court has recognized that federal case law interpreting title VII of the federal Civil Rights Act, although non-binding, is highly persuasive. *Meyer, supra,* 569 (citations omitted).

established a prima facie case on temporal proximity alone, we conclude that plaintiff has not established that CAC's stated reason for issuing her the misconduct form was pretextual[2].

In attempting to show that CAC's reason for issuing her the misconduct form was pretextual, that Arends' review showed that plaintiff had inappropriately claimed credit for ministerial account reviews, we note that plaintiff misstates the record in several respects. First, Arends did, as plaintiff asserts, admit that he had stated at a meeting that supervisors could claim credit for the type of reviews plaintiff conducted. However, he stated that his intention was for supervisors to take credit for these types of account reviews only on an occasional basis, and that the problem he saw with plaintiff's actions was not that plaintiff had reviewed the accounts so quickly, but the amount of ministerial reviews for which she had claimed credit.

Plaintiff also states that Arends admitted that he had run the wrong type of report. However, from our review of Arends' testimony on this issue, it does not appear that he did, in fact, admit to using the wrong report. Plaintiff next states that Arends did not know how many total accounts plaintiff had reviewed that day. However, what Arends stated was that he could not remember at the time of his deposition, but that he is sure he knew at the time he ran the report. Moreover, it is plaintiff who bears the burden of proof, and she has offered no evidence that she did, in fact, review more than one hundred accounts on that day. Additionally, as noted by the trial court, plaintiff has presented no evidence that other supervisors believed the ministerial reviews could be claimed to the extent plaintiff did.

Furthermore, plaintiff asserts that Arends submitted her to heightened scrutiny by stating that Arends did not run CAR reports on other supervisors. However, when asked during his deposition whether he randomly sampled other supervisors, Arends stated "[v]irtually every month because I would compile how many reviews they had done for the month, make sure that they were at their hundred per day and they would pull out samples as I was looking through that list." Again, plaintiff has offered no proof that Arends did not, in fact, run such reports on her and other supervisors on a monthly basis. The only attempt that plaintiff has made to do so is to state that Andre Jones, another recovery supervisor, testified that Arends had never run a CAR report on him. What Jones actually testified, however, is that he does not know if Arends ever ran a CAR report on him when he was a supervisor and that, if Arends ever had run one on him, Arends never spoke with Jones about it. Therefore, we conclude that plaintiff has not presented a material issue of fact warranting submission to a jury.

Plaintiff next argues that the misconduct report issued to her on March 31, 1998, after she informed her subordinate that his phone calls would be monitored establishes causation. However, as noted by the trial court, plaintiff admits that the monitoring was supposed to be

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[2] We note that, in her brief to this Court, plaintiff asserts that the trial court erred in determining that she had not established causation. However, although she does not couch her arguments in such terms, the majority of her arguments appear to be aimed at showing that CAC's stated reasons for its actions were pretextual because they had no basis in fact, were not the actual factors prompting CAC's actions, or were insufficient to justify CAC's actions. *Feick, supra,* 343.

anonymous, and does not deny that she informed her subordinate or that what she did was wrong. Moreover, although plaintiff asserts that Arends instructed the supervisor, Crystal Riley, to ask plaintiff which of her subordinates would be working that day as part of a "set up," plaintiff offers no proof on this assertion other than her own assumption. Arends testified that CAC monitors employee-customer phone calls as part of its ordinary course of business, and that he did not instruct Riley, whose general duty it was to monitor calls, to inform plaintiff that her subordinate would be monitored. Again, plaintiff has offered no evidence, such as testimony or an affidavit from Riley, to dispute this. Furthermore, although plaintiff correctly states that Jones testified that he was never informed when his subordinates were to be monitored, this does not refute plaintiff's own recognition that monitoring was supposed to be confidential, and that she knew it was wrong for her to inform her subordinate.

We also note that plaintiff's argument fails to address the fact that the direct cause of CAC's issuing plaintiff the misconduct form was plaintiff's committing the wrong. Thus, even if plaintiff's assertion that Riley asked her which of her subordinates would be working as a means of setting her up were true, it would still not refute the fact that plaintiff admits committing the wrong for which she received the misconduct report. Therefore, we conclude that plaintiff has failed to introduce sufficient evidence in addition to mere temporal proximity to establish that her filing of the EEOC charge was a significant factor in her being issued the misconduct form. Moreover, even if she had, plaintiff has not established pretext because, by admitting that she committed the wrong, she has failed to show by a preponderance of the evidence that CAC's issuing her the form based on its assertion that she committed misconduct had no basis in fact, was not the actual reason, or was not justified.

Finally, we address plaintiff's contention that retaliation by CAC can be inferred based on her assertion that she was scrutinized more carefully than other similarly situated male employees; specifically, Rod Ware and Marc Jonas. As plaintiff asserts, courts have recognized that an inference of retaliation may be gleaned from a showing that the plaintiff was subjected to an atmosphere where they were scrutinized more carefully than similarly situated employees who were not subject to legislative protection, i.e., those who have not filed EEOC charges. See *Harrison v Metropolitan Government of Nashville and Davidson County, Tennessee*, 80 F3d 1107, 1119 (CA 6, 1996). In this regard, our Supreme Court has stated that in order for disparate treatment to be inferred, the plaintiff must prove that he was "similarly situated," or that "'all of the relevant aspects'" of the plaintiff's employment situation were "'nearly identical'" to the employees they seek to compare themselves to. *Town*, *supra*, 699-700, quoting *Pierce v Commonwealth Life Ins Co*, 40 F3d 796, 802 (CA 6, 1994).

First, we believe plaintiff has failed to show that she was subjected to heightened scrutiny because she has presented no evidence that Riley did not randomly monitor employee-customer phone calls on a regular basis or that Riley did not monitor the calls of other supervisors' subordinates. Nor has plaintiff introduced any evidence that Arends did not ordinarily conduct random reviews of her accounts or those of other supervisors. Second, we do not believe the evidence introduced by plaintiff tends to show, as plaintiff asserts, that her fellow supervisors, Ware or Jonas, were treated differently.

With respect to Ware, the employee misconduct forms plaintiff presents do not show, as plaintiff asserts, that Ware received written misconduct forms only after repeated misconduct and verbal warnings. The first misconduct form Arends issued to Ware begins, "[r]ecently, it has

come to my attention, that several female employees have complained about unwanted comments . . . from Mr. Ware." Thus, this tends to show that Arends issued the form to Ware not after repeated verbal warnings, but upon learning of Ware's misconduct. The second form states that Arends overheard Ware calling someone an inappropriate name on December 31, 1997, reprimanded him, and then suspended Ware for three days on January 8, 1998, immediately upon learning that Ware had done it again. Finally, the last misconduct form outlines a series of instances which begin on February 18, 1998, but which do not appear to have become known for certain to Arends until February 25, 1998. As stated on the form, Arends apparently learned of Ware's actions on February 23, 1998, conducted an investigation, and terminated Ware on February 26, 1998.

With respect to Jonas, the evidence offered by plaintiff shows that Arends did, in fact, issue him a misconduct form for making derogatory remarks to a subordinate on October 24, 1997. Moreover, although the form states that Arends discussed similar issues involving Jonas' interactions with his subordinates on August 18, 1997, plaintiff offers no evidence as to what those issues were, and thus fails to show that those issues rose to the level of misconduct engaged in by plaintiff. Moreover, the second misconduct form presented by plaintiff outlines several acts of misconduct which Ware had recently committed before the form was issued. Arends explained each incident in detail and instructed Jonas to hold a meeting in which to apologize for his conduct. According to the misconduct form, Jonas was required to either hold a meeting to explain his conduct and apologize, or face termination. Moreover, the form states that Jonas would be subject to further disciplinary action, including termination, if he did not show improvement in several other areas.

Thus, we conclude that the evidence offered by plaintiff does not show that her activities were more carefully scrutinized than those of Jonas or Ware, does not provide for an inference of retaliation, and does not show that her filing of the EEOC charge was a significant factor in CAC issuing her the misconduct forms. Moreover, even if we were to assume that it does, plaintiff has not shown by a preponderance of the evidence that the reasons stated by CAC for its actions were pretextual.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Hilda R. Gage