

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:11-CV-748-BO

BENITA L. ARTIS,)

Plaintiff,)

v.)

NORTH CAROLINA DEPARTMENT OF)
HEALTH AND HUMAN SERVICES DIVISION)
OF PUBLIC HEALTH OFFICE OF THE STATE)
HEALTH DIRECTOR,)

Defendant.)

ORDER

This matter is before the Court on plaintiff's request for sanctions and renewed motion to compel. [DE 32]. For the following reasons, motion for sanctions is DENIED, and the motion to compel is GRANTED.

BACKGROUND

Plaintiff filed this action nearly three years ago on December 22, 2011. Plaintiff alleges that she was employed by the defendant Department of Health and Human Services and, after three years of work without incident, she began having problems with the new lead technologist in her department, Radish Persaud, a male. Plaintiff alleges that Mr. Persaud made sexist comments to her regularly, demeaned her in front of her coworkers, and blamed her for his and other's mistakes. Plaintiff alleges she complained to her supervisors which resulted in a mediation being arranged with her supervisors as mediators. Plaintiff alleges this mediation was biased, and when she refused to sign a mediation plan she received a negative review. Plaintiff appealed the negative review to no avail. After the appeal concluded, plaintiff alleges she was

demoted and later transferred to a different department within her employer. In her new position she alleges that she was forced to do work that was not similar to the work she was hired for. Plaintiff alleges further retaliatory actions were taken against her and that she was fired after filing an EEOC complaint and contacting a Clinical Laboratory Improvements Amendment representative.

No dispositive motions have been filed in this matter. Plaintiff has filed several motions to compel including the instant motion and United States Magistrate Judge James E. Gates granted one of the motions to compel on September 11, 2013. Plaintiff filed the instant motion on June 23, 2014, alleging that defendant had still not complied with Judge Gates's order.

DISCUSSION

“Rule 37(d) of the Federal Rules of Civil Procedure gives the district court wide discretion to impose sanctions for a party's failure to comply with its discovery orders.” *Mutual Federal Savings and Loan Assoc. v. Richards & Assocs., Inc.*, 872 F.2d 88, 92 (4th Cir. 1989). Such a sanction includes “dismissing the action or proceeding in whole or in part.” FED. R. CIV. P. 37(b)(2)(A).

Plaintiff complains that defendant has failed to answer all of her discovery requests. She specifically claims that defendant has not responded to her request for missing discovery documents requested in Document Request #2, that defendant has refused to produce a substantial number of documents on the grounds that they have been destroyed pursuant to its document retention policy, but has not provided plaintiff with a copy of its document retention policy, and that defendant provided some of the documents covered by Judge Gates's order two days late.

Defendants lack of regard of the deadlines contained within Judge Gates's order is concerning to the Court. Further, with this matter on the eve of trial, any missing discovery is of obvious concern. However, defendant states that it has complied with Judge Gates's order and had complied as of July 3, 2014. In light of the status of this case, the Court will not sanction defendant at this time, however defendant is warned that a failure to comply with this Court's orders in the future will have serious consequences. Further, defendant is ORDERED to provide plaintiff with a copy of its document retention policy and to provide the discovery plaintiff seeks in regards to Document Request #2 by January 1, 2015.

CONCLUSION

For the foregoing reasons, plaintiff's motion for sanctions is DENIED and her motion to compel is GRANTED. Parties are NOTIFIED that a trial in this matter will be held on March 2, 2015 in Elizabeth City, NC.

SO ORDERED.

This the 10 day of December, 2014.



TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE