

I. FACTS¹

Plaintiff filed this Complaint on behalf of 13 Ohio Bell employees (“Complainants”) alleging that Defendant discriminated against the Complainants under § 11(c) of the Act by suspending them without pay for reporting workplace injuries. Ohio Bell administers a number of safety policies, training and job aids to assist employees to work safely and avoid workplace injuries. If Ohio Bell determines that an employee failed to follow established safety practices and procedures, Ohio Bell may discipline the employee under the Midwest Network Services Manager’s Guide to Corrective Action (“MGCA”). The discipline may include a written warning, a one day suspension, or a combination of other disciplinary actions.

Ohio Bell investigated the work-related accidents involving each of the Complainants and determined that the accidents were preventable and that Complainants had violated safety policies and procedures that contributed to the accidents. Applying the guidelines set forth in the version of the MGCA in effect at the time, Ohio Bell disciplined the Complainants for violation of its safety policies and procedures. The Complainants filed complaints with the Secretary of Labor regarding the discipline and Plaintiff, through the Occupational Safety and Health Administration (“OSHA”) investigated the complaints. The Ohio Bell policies at issue in the various investigations include: the Proper Use of Extension and Combination Ladders Job Aid; the Slips, Trips and Falls Prevention Training; the Plants, Animals and Insect Hazard Policy; the Dog Bite Prevention Fact Sheet; the Personal Protective Equipment Policy; and the Ergonomics

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The factual summary is derived from the parties’ statements of fact. Those material facts which are controverted and supported by deposition testimony, affidavit or other evidence are stated in the light most favorable to Plaintiff, the non-moving party.

in the Outside Plant Policy as well the MGCA.

Defendant states that due to concerns raised by OSHA about some of its policies it modified the Slips, Trips and Falls prevention policy with input from OSHA and also substantially revised the MGCA to address OSHA's concerns. After OSHA completed its investigation, Defendant fully compensated Complainants for any time lost based on their brief suspensions and entirely removed any discipline from Complainant's employee files. There are no references to Complainants' reports of workplace injuries in their personnel files.

Plaintiff acknowledges that the Complainants have been fully compensated but notes that Defendant did not mention the posting of an 11(c) notice or the revision of the remaining policies. OSHA notes that it has continued to receive 11(c) complaints against Defendant and related companies with fact patterns similar to those presented in this case and involving the same corporate policies. Accordingly, OSHA contends an injunction permanently enjoining Defendant from violating 11(c)(1) of the Act is necessary to insure future compliance.

II. LEGAL STANDARD

Defendant's Motion for Summary Judgment is ripe for review. Summary judgment under Rule 56 is appropriate where the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show "that there is no genuine dispute as to any material fact and that the movant is entitled to a judgment as a matter of law." Fed .R. Civ. P. 56(a). "The moving party has the initial burden of proving that no genuine issue of material fact exists," and the court must draw all reasonable inferences in the light most favorable to the nonmoving party. *Vaughn v. Lawrenceburg Power Sys.*, 269 F.3d 703, 710 (6th Cir. 2001). When a motion for summary judgment is properly made and supported and the nonmoving party fails to respond with a

agreement to the institution of a permanent injunction enjoining future violation of the provisions of Section 11(c)(1) of the Act.

Defendant contends that as the Complaint hinges on the assertion that “Defendant has failed and refused and continues to fail and refuse to remove the disciplinary actions from Complainants’ records and compensate them for the time they were suspended,” and Defendant has provided that relief sought, summary judgment must be granted to Defendant as to that relief. Plaintiff does not dispute that assertion. Defendant further argues that a case or controversy does not exist here under Section 11(c) of the Act as there is no disciplinary action or other adverse employment action in dispute for the 13 Complainants. Section 11(c) protects employees from adverse employment actions in response to protected activity. In the absence of an adverse employment action, there is no 11(c) action to pursue, and no standing to pursue such an action. The need for an “actual injury redressable by the court” does not exist and Plaintiff has not identified any other actual injury that remains in this action. See *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982) (quoting *Simon Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 38 (1976)). Since there is no remaining adverse employment action for Plaintiff to challenge under Section 11(c), the Complaint is moot.

Plaintiff contends that it has continued to receive 11© complaints against Defendant and is concerned that the policy revisions made thus far have not been adequate to correct the 11(c) violations. Further, Plaintiff complains that not all of the policies have been changed, the changes may not be effective and training and implementation of new policies may not have been adequate. Thus, an injunction, Plaintiff asserts is necessary to ensure future compliance. While

this Court may have jurisdiction under the Act to enter an injunction prohibiting employers from violating §11(c) in the future, that option is discretionary and appears to have been used sparingly by courts. Employers are already under an obligation to obey the law. Moreover, OSHA will address complaints as they are filed. Absent on-going, unresolved issues involving the 13 Complainants in this Complaint, there is no longer any adverse employment action upon which future equitable relief may be based. The 13 Complainants here have received all of the relief that was requested and their claims are mooted. As such, the Court finds that the Plaintiff's claims are moot and summary judgment should be granted. Moreover, even if the Court retains jurisdiction to issue an injunction after all of the Complainants' claims have been satisfied, the Court finds that the entry of an injunction is not warranted or proper given the facts and circumstances in this case.

IV. CONCLUSION

For the reasons set forth above, Defendant's Motion for Summary Judgment (ECF #12) is granted.



Donald C. Nugent
UNITED STATES DISTRICT JUDGE

DATED: January 23, 2015