

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

LA DONNA J. SALINAS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-16-1186-D
)	
TRIPLE F. TRUCKING,)	
)	
Defendant.)	

ORDER

Before the Court is Defendant’s Motion to Dismiss Amended Complaint [Doc. No. 12], filed pursuant to Fed. R. Civ. P. 12(b)(6).¹

Defendant first asserts that Plaintiff’s amended pleading does not conform to the Order of March 10, 2017, which dismissed as untimely the gender discrimination claims asserted in the Complaint under Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e *et seq.*, and Oklahoma’s Anti-Discrimination Act (“OADA”), Okla. Stat. tit. 25, § 1101 *et seq.*, that were based on an EEOC charge administratively exhausted in December 2015.² The Court authorized Plaintiff to amend her pleading to assert Title VII and OADA claims of sexual harassment and retaliation that were administratively

¹ Defendant also cites Rule 12(b)(1) but raises no jurisdictional issue.

² The Court also dismissed state law claims of breach of an employment contract and intentional infliction of emotional distress. Plaintiff has abandoned these claims in the Amended Complaint.

exhausted by a second EEOC charge in August 2016, as to which this suit was timely filed. *See* Order 3/10/17 [Doc. No. 10] at 10-11, 13-14.

The Amended Complaint is not a model of clarity. Defendant is understandably concerned that Plaintiff's pleading seems to retain the previously dismissed claims alleging that Defendant terminated her employment based on gender. However, in light of the allegation of the Amended Complaint that Plaintiff is asserting claims administratively exhausted by her second EEOC charge (Am. Compl. [Doc. No. 11], ¶ 2), and Plaintiff's arguments in response to the Motion (Pl.'s Resp. Br. [Doc. No. 13] at 5-6), the Court understands that Plaintiff intends to assert the sexual harassment and retaliation claims asserted in the second EEOC charge and authorized by the Court's Order.

Defendant also contends the Amended Complaint contains insufficient factual allegations to state a plausible claim of sexual harassment. *See* Def.'s Mot. Dismiss [Doc. No. 12] at 5-6 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Although this presents a close question, the Court disagrees.

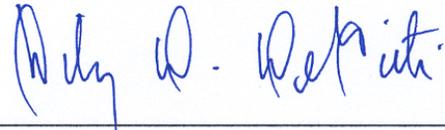
Plaintiff claims she was subjected to a hostile work environment. A hostile work environment that violates Title VII is one involving harassment based on a prohibited factor, such as gender, that is "sufficiently severe or pervasive to alter the conditions of [the victim's] employment and create an abusive working environment." *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986). "Severity and pervasiveness are evaluated according to the totality of circumstances, *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23, 114

S. Ct. 367, 126 L. Ed. 2d 295 (1993), considering such factors as the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Chavez v. New Mexico*, 397 F.3d 826, 832 (10th Cir. 2005) (internal quotation omitted). "[T]he critical issue in determining harassment is because of sex is whether members of one sex are subjected to a disadvantage to which the other sex is not." *Harsco Corp. v. Renner*, 475 F.3d 1179, 1186 (10th Cir. 2007); see *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998).

Plaintiff alleges that she was the only female truck driver employed by Defendant, she "was constantly subjected to offensive sexual comments, and a work environment tainted with sexual innuendoes," and she informed her supervisor "that she was offended by the sexual comments and the unabated humiliation that she was being put under at the workplace." See Am. Compl. [Doc. No. 11], ¶ 12. Plaintiff also alleges that she was treated less favorably than male truck drivers with respect to terms and conditions of employment, including wages, benefits, discipline, and leave time, and these differences were motivated by sex and gender. *Id.* ¶¶ 12-13, 15. The Court finds the Amended Complaint contains minimally sufficient factual allegations to "give the defendant fair notice of what the [sexual harassment] claim is and the grounds upon which it rests" as required by Rule 8(a) and Rule 12(b)(6). See *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (quoting *Twombly*, 550 U.S. at 555); see also *Smith v. United States*, 561 F.3d 1090, 1104 (10th Cir. 2009).

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss Amended Complaint [Doc. No. 12] is DENIED. Plaintiff may proceed on her Amended Complaint limited to the claims authorized by the Order of March 10, 2017 [Doc. No. 10].

IT IS SO ORDERED this 28th day of July, 2017.

A handwritten signature in blue ink, reading "Timothy D. DeGiusti". The signature is written in a cursive style with a horizontal line underneath it.

TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE