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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SHANNON MCMINIMEE,

Plaintiff,

v.

YAKIMA SCHOOL DISTRICT NO.
7, and JOHN R. IRION, in his
individual capacity,

Defendants.

NO. 1:18-CV-3073-TOR

ORDER DENYING PLAINTIFF’S
MOTION FOR RECONSIDERATION

BEFORE THE COURT is Plaintiff’s Motion for Reconsideration Re EPA Claim (ECF No. 82). This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein and is fully informed. For the reasons discussed below, Plaintiff’s Motion for Reconsideration Re EPA Claim (ECF No. 82) is **DENIED**.

BACKGROUND

This case arises out of Plaintiff Shannon McMinimee’s employment with the Yakima School District (“YSD”). See ECF No. 26. The extensive factual

1 background of this case is summarized in the Court’s Order Granting in Part and
2 Denying in Part Defendants’ Motion for Summary Judgment. ECF No. 80.

3 On January 8, 2021, Defendants filed a motion for summary judgment on all
4 of Plaintiff’s claims. ECF No. 45. On March 26, 2021, the Court granted
5 summary judgment in favor of Defendants on all but two state law claims. ECF
6 No. 80. The Court declined supplemental jurisdiction under 28 U.S.C. §
7 1367(c)(3) and dismissed the remaining state law claims without prejudice so
8 Plaintiff could refile in state court. *Id.* On April 2, 2021, Plaintiff filed the instant
9 Motion for Reconsideration of the Court’s summary judgment ruling on Plaintiff’s
10 Equal Pay Act (“EPA”) discrimination claim. ECF No. 82. Per the Second
11 Amended Jury Trial Scheduling Order, a response to a motion for reconsideration
12 is not required unless requested by the Court. ECF No. 33 at 6, ¶ F. The Court did
13 not request a response to the instant motion.

14 **DISCUSSION**

15 Motions for reconsideration are generally disfavored. “Reconsideration is
16 appropriate if the district court (1) is presented with newly discovered evidence, (2)
17 committed clear error or the initial decision was manifestly unjust, or (3) if there is
18 an intervening change in controlling law.” *Sch. Dist. No. 1J, Multnomah Cty., Or.*
19 *v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). “There may also be other,
20 highly unusual, circumstances warranting reconsideration.” *Id.* at 1263.

1 Plaintiff's contentions are that (1) Mr. Izutsu's professional experience is an
2 insufficient EPA defense, (2) Defendants' Rule 30(b)(6) deponent gave conflicting
3 testimony where she "did not know" how superintendents were placed on the pay
4 salary scale, and (3) Plaintiff is prejudiced by the "late" affirmative defense
5 because "pretext would have been found" from discovery. ECF No. 82 at 6-11.

6 First, experience qualifies as a factor other than sex for purposes of an EPA
7 defense. *See Stanley v. Univ. of S. Cal.*, 178 F.3d 1069, 1075 (9th Cir. 1999)
8 (noting that "[e]mployers may reward professional experience and education
9 without violating the EPA" and citing to a case that found "nine-year experience
10 differential between women's and men's basketball coaches justifies pay
11 differential"). Plaintiff, without citation to authority, attempts to bar consideration
12 of professional experience by equating it to the prohibition on solely considering
13 prior pay. ECF No. 82 at 6. The Ninth Circuit held that an employer cannot solely
14 use prior pay as a basis for a pay differential due to historical gender
15 discrimination. *Rizo v. Yovino*, 950 F.3d 1217, 1227-1228 (9th Cir.), *cert. denied*,
16 141 S. Ct. 189 (2020). Here, the pay differential was not made due to any prior
17 pay considerations. The decision was made due to Mr. Izutsu's substantial
18 professional experience as a superintendent with YSD for fifteen years. Under this
19 record, no jury could find gender played a role in the pay differential.

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1 Second, Plaintiff cherry-picks and mischaracterizes the evidence by arguing
2 that Defendants provided “conflicting reasons” for the salary differential due to
3 Defendants’ Rule 30(b)(6) deponent testimony. ECF No. 82 at 7-8. Defendants
4 identified Human Resources employee Shari Chapman as the Rule 30(b)(6)
5 deponent. ECF No. 53-3 at 3. Ms. Chapman stated that she believed the criteria to
6 determine whether an employee was given a certain superintendent title was
7 determined at the cabinet level, and more, specifically, Ms. Chapman identified
8 Superintendent Dr. Irion as the cabinet-level individual with final decision-making
9 authority in placing an employee on the superintendent pay scale. ECF No. 53-3 at
10 7, 11. During Dr. Irion’s deposition, Dr. Irion explained the pay differential: “As I
11 stated earlier today, it was based upon their experience in the job that they held
12 Prior to me becoming superintendent, my predecessor had placed [Mr. Izutsu] on
13 the associate superintendent level. When I’m superintendent I used associate and
14 assistant to show whether or not the person had experience in the job that they
15 were in And so it had everything to do with her experience for the position that
16 we were hiring her for.” ECF No 53-2 at 56. Contrary to Plaintiff’s argument, Ms.
17 Chapman and Dr. Irion did not provide conflicting testimony.

18 As to Plaintiff’s claim of prejudice, Plaintiff had every opportunity to follow
19 up on the “experience” testimony that was provided *supra*. Plaintiff’s citation to
20 *Magana* does not change the Court’s analysis. ECF No. 82 at 10. The Ninth

1 Circuit “liberalized” the requirement that a defendant must raise affirmative
2 defenses in the initial responsive pleading. *Magana v. Com. of the N. Mariana*
3 *Islands*, 107 F.3d 1436, 1446 (9th Cir. 1997), *as amended* (May 1, 1997). It is
4 only inappropriate to allow an affirmative defense in a dispositive motion “without
5 first determining whether the delay caused prejudice to [the plaintiff].” *Id.* at 1445.
6 Here, the Court found no prejudice. ECF No. 80 at 46. The parties engaged in full
7 discovery where Plaintiff could have further explored the “experience” testimony.
8 Plaintiff was not “forced to guess” Defendants’ affirmative defense, Plaintiff
9 merely chose to ignore it. ECF No. 82 at 11. As such, Plaintiff fails to show legal
10 error or manifest injustice in the Court’s prior Order.

11 **ACCORDINGLY, IT IS HEREBY ORDERED:**

12 Plaintiff’s Motion for Reconsideration Re EPA Claim (ECF No. 82) is
13 **DENIED.**

14 The District Court Executive is directed to enter this Order and furnish
15 copies to counsel. The file remains CLOSED.

16 DATED April 7, 2021.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge