

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

<p>OSAMA EMARA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>MULTICARE HEALTH SYSTEM, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 11-cv-6055-RBL</p> <p>ORDER</p> <p>(Dkt. #38)</p>	
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INTRODUCTION

Plaintiff, appearing *pro se*, has filed suit alleging that he was fired from his positions as a pharmacy technician by Defendant Multicare based on his race, national origin, and sex. In response, Multicare claims that it terminated Plaintiff after 60-days of employment because he was working outside the scope of his job. Multicare has moved for summary judgment.

BACKGROUND

The facts are undisputed. Plaintiff was admitted to the Pacific University School of Pharmacy in March 2010. (Pl.’s Resp. at 2, Dkt. #50; Defs.’ Mot. for Summ. J. at 7, Dkt. #38.) Following admission, Plaintiff obtained Washington licenses to practice as both a pharmacy technician and a pharmacy intern. Plaintiff explains that an intern is essentially a “pharmacist in training, who is permitted by law to perform most of the tasks a pharmacist can”; a technician, on the other hand, “cannot perform many of the tasks . . . examples are counseling patients and transferring prescriptions.” ((Pl.’s Resp. at 2, Dkt. #50.) Importantly, unlike an intern, technicians do not have assigned mentors who oversee their work directly. According to

1 Multicare, “technicians are not permitted to perform [intern] function[s] under any circumstance,
2 nor any other function [that] requires discretion.” (Defs.’ Mot. for Summ. J. at 8, Dkt. #38.)

3 In May 2010, Plaintiff applied with Multicare and met with Sunil Patel, the manager of
4 Multicare’s pharmacy services. (Pl.’s Resp. at 2, Dkt. #50.) Plaintiff apparently hoped to be
5 hired as an intern, but because he had not yet begun pharmacy school, Multicare hired him as a
6 technician, allowing him the possibility of later transitioning to an intern. (*See id.* at 4.)

7 Multicare, through Vafa Aflatooni, the pharmacy supervisor, hired Plaintiff under its
8 standard 90-day introductory period, beginning on June 21, 2010. (Defs.’ Mot. for Summ. J. at
9 5, Dkt. #38.) Employees within the introductory period are not subject to Multicare’s regular
10 personnel policies—specifically, its policies governing the termination of a long-term employee.
11 (*Id.*) Multicare might therefore fire a new hire without explanation, without investigation into
12 complaints, or in ways that might otherwise be different for long-term employees. (*Id.*)

13 There is no dispute that Plaintiff knew he was hired as a technician and not an intern—
14 although Plaintiff stresses that he was licensed for both positions. Yet it is also undisputed that
15 Plaintiff counseled patients regarding their medications without the supervision of a mentor. On
16 August 7, 2010, pharmacist Debra Plant (also a defendant here) sent Mr. Aflatooni an email
17 complaining of Plaintiff’s conduct, which ultimately led to his termination.

18 Hey Vafa,

19 Is Osama [Emara] tracking intern hours? Does he know that he only gets credit for hours
20 worked with RPh's that hold a preceptor license? I don't know which Rph's actually have
21 them (I would be surprised if Everett has his, and Osama just spent most of the last two
22 weeks with me and Ev at TFM), but there are a few hours that he worked with just me,
23 that he would not be able to claim.

24 And I am also going to copy this to Ken just for the sake of having it documented, but
25 there was an issue last month - I can get you the exact date if you need it - it was while I
26 was covering Renee's vacation in the ED, and I was the morning RPh and Belete worked
27 the evening shift. This was, I believe, the first time I really worked with him, and was
28 unaware of what he was actually being allowed to do. Osama told me that he was allowed
to go to the floors and counsel unsupervised, but that he was unfamiliar with one of the
medications that he was about to deliver and needed info on it. I was very uncomfortable
with the idea of him even counseling on any medication, since he has not even started
pharm school. I had him tell me what he was going to tell the pt about the pain med and
Abx, but had to tell him more than once that he was to call the pharmacy and I would
counsel them over the phone if they had not had the estrogen before. He was very pushy

1 about trying to get permission to counsel. At some point before he left to deliver the rxs,
2 he casually asked me in an FYI manner, what my counseling points would be on
3 estrogen. I was uncomfortable with the question, but I just said a few things very quickly,
4 because I did not want him to think I would not help him if he had questions. He left to
5 make the delivery, and shortly after, I get a call from Osama. He told me that the pt told
6 him that she was having some vaginal bleeding and that the nurse told her to not take
7 ibuprofen, and that he did not know what to tell her. I asked him if it was a new
8 medication for the pt, and he said yes, and then I asked if he just counseled the pt, to
9 which he replied that he had. I was very irritated and shocked to say the least!! I asked
10 him to put the patient on the phone, but he was unable to because he didn't even call me
11 from inside the patients room! I assume he did not want the pt to know that he did not
12 know what he was talking about. So I told him that I would call the pts room and talk to
13 them myself. When I called the pt, it was really awkward, because she thought she had
14 already talked to the RPh. I talked to her about the bleeding, but I had no way of knowing
15 what he else he had said. She sounded really confused and didn't really want to talk to me
16 about the drug. She felt like she had already been counseled and was "informed" on the
17 medication, but I went over it with her anyway. If he told her something wrong, I have no
18 idea. When he came back down, he was very defensive and said I had given him
19 permission and that I told him about the drug so that he could counsel. Later that day, in
20 response to this situation, Belete told him that he was no longer allowed to deliver
21 medications, and I was going to leave it at that. I was not going to say anything else, but
22 with all the other concerns regarding him, I felt it appropriate to document this as well.

13 For the record, I do not trust him and am uncomfortable working with him, and feel that
14 he is dishonest and manipulative. I do not believe he can be trusted to work unsupervised,
15 and that he will try and do as much as he thinks that he can get away with. For the week
16 and a half that I worked with him at TFM, he was not doing transfers under me and
17 Everett. Hein filled in there for about an hour one day, and since Osama knew that Hein
18 did not know what he was authorized to do, he informed Hein that he was going to do a
19 transfer, and Hein, not knowing any different, told him that was fine. (He likes to take
20 advantage of pharmacists that have not worked with him in order to get permission to do
21 things that he has not really been authorized to do - similar to what he did with me and
22 the counseling.) I took the phone after Osama spoke to the pharmacist and confirmed all
23 the info, which Osama was none too happy about. Also this last week at TFM, he spent a
24 LOT of time working on the back counter without anyone being able to monitor work he
25 was doing - or if he was even doing work related stuff at all. At one point, I heard him
26 talking on the phone at the back counter making recommendations (speaking in English)
27 about sumatriptan and ibuprofen to someone on the phone. When he realized I was
28 listening, he started speaking so quietly that I could not hear what he was saying. When I
later asked who he was speaking to, he told me it was his "wife," and in a defensive tone,
he asked me why I wanted to know. I told him that I had overheard drug related
conversation. I don't know who he was talking to for sure, but I believe he usually speaks
to his wife in his native tongue.

25 I feel he is really confused (I use this term lightly, as I feel it is actually more of a blatant
26 disregard, not a failure on your part to explain his duties) about what he is authorized to
27 do as an intern. He thinks that just because the law *allows* him to perform duties
28 beyond what is allowed for techs, he feels that he is *entitled* to those privileges. But the
extent to which he is able to execute those privileges, is at the discretion of the
pharmacist under which is he is working - not the BOP, or even another off-duty
pharmacist. He does not realize that it is a learning process, and that he needs to earn

1 those privileges. Following the estrogen counseling incident, he made comments to Chris
2 Iriarte saying, "doesn't she realize that I am an intern?" which reinforces the idea that he
3 may not clearly understand what it means to be an intern at his level.

4 Thanks so much for time and take care!

5 Debra

6 (Pl.'s Resp., Dkt. #50-1 at 4.) Mr. Aflatooni—who hired Plaintiff only 60 days earlier—fired
7 Plaintiff two days after the email (on Plaintiff's next work day).

8 Plaintiff contends that “[a]lmost all pharmacists who worked with Plaintiff trained and
9 allowed him to perform intern duties.” (*Id.* at 2.) Further, “[h]ad Mr. Patel held his promise to
10 Plaintiff to be hired as an intern, Plaintiff’s job title would not have been an issue.” (*Id.* at 3.)
11 Further, Plaintiff makes clear that Plant was mistaken in her email: Plaintiff’s wife is caucasian
12 and speaks only English.

13 Based on these facts, Plaintiff brought claims under Title VII, 42 U.S.C. § 2000e; the
14 Washington Law Against Discrimination (“WLAD”), Wash. Rev. Code § 49.60, under 42 U.S.C.
15 § 1985, and for defamation and infliction of emotional distress. (Am. Compl., Dkt. #5.)

16 DISCUSSION

17 Summary judgment is appropriate when, viewing the facts in the light most favorable to
18 the nonmoving party, there is no genuine issue of material fact which would preclude summary
19 judgment as a matter of law. Once the moving party has satisfied its burden, it is entitled to
20 summary judgment if the non-moving party fails to present, by affidavits, depositions, answers to
21 interrogatories, or admissions on file, “specific facts showing that there is a genuine issue for
22 trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). “The mere existence of a scintilla of
23 evidence in support of the non-moving party’s position is not sufficient.” *Triton Energy Corp. v.*
24 *Square D Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995). Factual disputes whose resolution would not
25 affect the outcome of the suit are irrelevant to the consideration of a motion for summary
26 judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In other words,
27 “summary judgment should be granted where the nonmoving party fails to offer evidence from
28 which a reasonable [fact finder] could return a [decision] in its favor.” *Triton Energy*, 68 F.3d at
1220.

1 Under Title VII, it is unlawful for an employer “to discharge any individual, or otherwise
2 to discriminate against any individual with respect to his compensation, terms, conditions, or
3 privileges of employment, because of such individual’s race, color, religion, sex, or national
4 origin.” 42 U.S.C. § 2000e-2(a)(1). Similarly, under the WLAD, it is unlawful for an employer
5 “to discharge or bar any person from employment because of age, sex, marital status, sexual
6 orientation, race, creed, color, national origin, honorably discharged veteran or military status, or
7 the presence of any sensory, mental, or physical disability” Wash. Rev. Code § 49.60.180.
8 The two laws parallel each other and are generally considered in tandem. *See Little v.*
9 *Windermere Relocation, Inc.*, 301 F.3d 958, 966 (9th Cir. 2002). A plaintiff alleging both Title
10 VII and WLAD claims must first establish a *prima facie* case, thereby shifting the burden to the
11 defendant to provide a non-discriminatory reasons for termination. *McDonnell Douglas Corp. v.*
12 *Green*, 411 U.S. 792 (1973); *see also Chen v. State*, 86 Wash. App. 183, 189–90 (1997). Upon
13 doing so, the burden then returns to the plaintiff, who must show that the employer’s articulated
14 reasons are pretextual. *Id.*

15 Plaintiff cannot make out a *prima facie* case. First, Plaintiff fails to provide any
16 explanation for how Mr. Aflatooni acquired a discriminatory animus only 60 days after hiring
17 him. *See, e.g., Bradley v. Harcourt, Brace & Co.* 104 F.3d 267, 270–71 (9th Cir. 1996) (“We
18 therefore hold that where the same actor is responsible for both the hiring and the firing of a
19 discrimination plaintiff, and both actions occur within a short period of time, a strong inference
20 arises that there was no discriminatory motive.”)

21 Second, Plaintiff’s primary complaint—that Plant believed he spoke Arabic with his
22 wife—does not lead to the conclusion that Aflatooni fired Plaintiff for discriminatory reasons.
23 Even in Plant’s email was motivated by discriminatory animus, Plaintiff does not dispute that he
24 was counseling patients unsupervised—the specific reason for his termination.

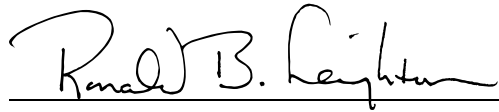
25 Third, Multicare’s explanation for his termination cannot be called “pretextual.” If
26 Plaintiff—a technician not having attended a day of pharmacy school and without a mentor—had
27 mistakenly counseled a patient, then Multicare would be looking at a multi-million tort suit
28 instead of this one.

1 Plaintiff's remaining claims fail for the same reasons.

2 **CONCLUSION**

3 Plaintiff appears to simply be an over-eager student whose enthusiasm trumped his better
4 judgment. No reasonable factfinder could conclude that Plaintiff was terminated for
5 discriminatory reasons based on the record before the Court. For that reason, Defendants'
6 Motion for Summary Judgment (Dkt. #38) is **GRANTED**.

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8 Dated this 11th day of April 2013.

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11 RONALD B. LEIGHTON
12 UNITED STATES DISTRICT JUDGE
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