

[Cite as *Pease v. Cleveland Clinic Found.*, 2016-Ohio-4710.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104066

JERINE L. PEASE

PLAINTIFF-APPELLANT

vs.

CLEVELAND CLINIC FOUNDATION

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-842246

BEFORE: Kilbane, P.J., McCormack, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: June 30, 2016

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MARY EILEEN KILBANE, P.J.:

{¶1} Plaintiff-appellant, Jerine L. Pease (“Pease”), pro se, appeals the trial court’s decision granting summary judgment to defendant-appellee, the Cleveland Clinic Foundation (“the Clinic”), in Pease’s racial discrimination action. For the reasons set forth below, we affirm.

{¶2} On March 18, 2015, Pease, who is African-American, filed this pro se action against the Clinic, alleging that because of her race, she was subjected to disparate treatment and terminated from her position as a Department Analyst IV in the Clinic’s Regional Operations Institute. After completing discovery, the Clinic filed a motion for summary judgment.

{¶3} In its motion for summary judgment, the Clinic maintained that Pease was not subjected to disparate treatment, but that her continued deficient performance was the basis for her termination from the Department Analyst IV position; and there was no evidence that race played any role in the decision to terminate her.

{¶4} In opposition to the Clinic’s motion for summary judgment, Pease maintained that the Clinic’s proffered reasons were pretextual. She argued that she met the initial qualifications for the Department Analyst IV position, she was in need of additional training that the Clinic failed to provide, and the Clinic improperly placed her on a Performance Improvement Plan (“PI Plan”) that led to her termination. Pease additionally argued that Michael Manfull (“Manfull”) used more stringent standards to

evaluate her job performance, but used less stringent standards for two white coworkers, Ilana Weisberg (“Weisberg”) and Cory Guy (“Guy”).

{¶5} In its reply, the Clinic noted that there was no evidence that race played any role in Pease’s treatment at work or her termination, Pease’s work was deficient in the critical area of financial analysis, and Weisberg, Guy, and Pease were all evaluated under the same standards.

{¶6} A review of the record reveals the following. In 2007, Pease was hired as an Operations Analyst in the Clinic’s Department of Operations. In this position, Pease received information regarding the financial activities of the department and compared it to previously determined “indicators” to determine whether the department was within its forecasted productivity. She “Fully Met Expectations” in this position. She denied any discriminatory treatment in this position.

{¶7} In 2008, Pease worked as a Senior Financial Analyst for the Clinic’s Lerner Research Institute in the Department of Academic Affairs. In this position, Pease compared the institute’s actual performance to forecasted performance, identified and analyzed trends, prepared management reports, and prepared a budget. Pease acknowledged that a 2010 performance evaluation noted that her “reports do not include any analysis or conclusion.” Her supervisor further advised that “[f]or 2011 [Pease] should focus on enhancing her analytic and problem solving skills. These are critical job functions and will be directly linked to job performance in 2011.” However, she denied discriminatory treatment while working in the Department of Academic Affairs.

{¶8} In August 2011, Pease was hired as a Department Analyst IV in the Regional Operations Department. In this position, Pease was responsible for creating Management Discussion and Analyses (“MDAs”) that assess the financial positions of four health centers and their satellite offices. In preparing the MDAs, Pease was required to compare actual financial data to forecasted financial projections, identify significant variances between the two, analyze the causes of such variances, and report her findings to the administrators of the health centers.

{¶9} It is undisputed from Pease’s deposition that she struggled in the Department Analyst IV position. In an evaluation prepared at the end of her 90-day probationary period, Manfull gave her an overall rating of “Needs Improvement,” and noted that she needed to improve the “quality of her work, timeliness of work, and interacting with fellow employees.” On the date of the review, Manfull extended Pease’s probationary period for an additional 30 days. In her deposition, Pease acknowledged that she was “struggling, struggling, struggling,” felt “in over [her] head,” was “overwhelmed,” and “was not good.”

{¶10} Pease’s struggles continued by the time of her next evaluation in April 2012, as Manfull informed Pease that some of the administrators at the health centers had complained about her work performance. Manfull also noted that Pease made several “material mistakes during the 2012 budget process,” and he again gave Pease an overall assessment of “Needs Improvement.” Also in April 2012, as required under the Clinic’s Corrective Action Policy, Manfull engaged in a “Documented Counseling” with Pease in

which he informed her that failure to improve would lead to further discipline that could include termination. Manfull also placed Pease on a PI Plan in which he identified five areas for improvement: financial analysis, financial presentation, financial issues research, accepting and acting on managerial direction, and communication.

{¶11} Under the terms of the PI Plan, Manfull met with Pease every other week and gave her monthly feedback on her job performance. He also reduced her work load so that she was responsible for three health centers and their satellites, rather than four.

{¶12} On May 14, 2012, Manfull gave Pease a written warning in which he noted that the MDA that she prepared in March 2012 did

not provide the information and answers that we are expected to provide as financial support and is a continuation of the behavior that is in need of correction. * * * This is inappropriate given that the * * * [actual] volume * * * exceeded the [forecasted] budget by 1,327%.

In the PI Plan reports issued on this same date, Manfull noted:

Quite often the work that [Pease] performs is not analysis at all, but rather is a simple restatement of the reporting that already exists. Additionally, often general statements are made on assumption without the backing of additional research. Examples would include the [MDA] work[.]

{¶13} In a June 18, 2012 update to the PI Plan, Manfull again identified that Pease needed to improve in the areas of financial analysis, accepting and acting on managerial direction, and communication. On this same date, he gave her a final written warning, noting, in relevant part:

[Pease]'s work has continued to lack the analytical information required of her position. A most recent example included the Chagrin Falls Project Update which intended to compare actual results attributable to a \$2 million capital construction project with that outlined in the original business plan. The first submission of results simply took [year-to-date] results on an annualized basis. This is not correct as some of the services affected by the project were preexisting services and not the result of new services. * * * When required to perform the project a second time, [Pease] simply split it in half again with no clear reason for this approach. * * *

[On May 14, 2012] I also instructed [Pease] to discuss the writing of an [MDA] with Cory Guy [but by June 15, 2012] [Pease] had not reached out to him[.]

{¶14} In her deposition, Pease acknowledged her continuing problems in the areas of financial analysis and presentation. She stated, "I must admit I was not good. I tried * * * but I feel, you know, I didn't get the support that I needed." She also stated that the communication issues were because her work area was away from others in her department.

{¶15} Pease was terminated on July 16, 2012, after Manfull determined that she had not made sufficient improvement on the PI Plan related to the analytical areas of her job. Following her discharge, Pease filed a complaint with the Ohio Civil Rights Commission ("OCRC"), alleging that the Clinic discriminated against her on the basis of race. However, at the conclusion of its investigation, the OCRC issued a Letter of Determination finding no probable cause to issue an administrative complaint accusing the Clinic of an unlawful discriminatory practice. Pease appealed to this court, and this court affirmed. *Pease v. Ohio Civ. Rights Comm.*, 8th Dist. Cuyahoga No. 102016, 2015-Ohio-1386 ("*Pease I*").

{¶16} On January 27, 2016, the trial court granted the Clinic’s motion for summary judgment. Pease now appeals and assigns the following error for our review:

Assignment of Error

The trial court erred in granting [the Clinic’s] Motion for Summary Judgment as there are genuine issues of material fact and reasonable minds cannot come to but one conclusion.

{¶17} In support of this assignment of error, Pease argues that the trial court erred in awarding summary judgment to the Clinic because she established a prima facie case of disparate treatment and discriminatory termination, and that the explanations proffered by the Clinic were a pretext for discrimination. Pease argues that she was qualified for the Department Analyst IV position in light of her prior work experience at the Clinic, and that the Clinic deprived her of a chance to improve because it failed to train her and failed to promptly advise her of her deficiencies. She received ratings of “Meets Most Expectations” in approximately 75 percent of the review categories, which was an overall positive performance rating. However, Manfull improperly placed her on the PI Plan for improvement, and this directly led to her termination. Pease also argues that Manfull used a more rigid resource guide to determine that her job performance was deficient, but he used different standards set forth in a Performance Management Policy to evaluate Weisberg and Guy.

Summary Judgment

{¶18} A reviewing court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336, 671 N.E.2d 241; *Mitnaul v. Fairmount Presbyterian Church*, 149 Ohio App.3d 769, 2002-Ohio-5833, 778 N.E.2d 1093 (8th Dist.). Therefore, this court applies the same standard as the trial court, viewing the facts in the case in the light most favorable to the nonmoving party and resolving any doubt in favor of the nonmoving party. *Viock v. Stowe-Woodward Co.*, 13 Ohio App.3d 7, 12, 467 N.E.2d 1378 (6th Dist.1983).

{¶19} Pursuant to Civ.R. 56(C), summary judgment is proper if:

(1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977).

{¶20} Once a moving party satisfies its burden of supporting its motion for summary judgment with sufficient and acceptable evidence pursuant to Civ.R. 56(C), the nonmoving party must set forth specific facts, demonstrating that a “genuine triable issue” exists to be litigated for trial. *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 449, 1996-Ohio-211, 663 N.E.2d 639.

A. Racial Discrimination

{¶21} In *Mauzy v. Kelly Serv., Inc.*, 75 Ohio St.3d 578, 1996-Ohio-265, 664 N.E.2d 1272, the Ohio Supreme Court held that a plaintiff may establish a prima facie case of discrimination in one of two ways: (1) by using the indirect method of proof

articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973); or (2) by directly proving the prima facie case through the presentation of evidence of any nature to show that the employer was more likely than not motivated by a discriminatory animus. *Id.* at 586-587.

{¶22} Under the *McDonnell Douglas* test, a plaintiff may establish a prima facie case of racial discrimination as follows: (1) he or she is a member of a protected class; (2) he or she suffered an adverse employment action; (3) he or she was qualified for the position lost or not gained; and (4) the position remained open or was filled by a person not of the protected class. *Id.* at 802.

{¶23} If a plaintiff is able to establish a prima facie case of discrimination under *McDonnell Douglas*, then a presumption is created that the employer unlawfully discriminated against the employee, and the burden then shifts to the employer to produce evidence that its actions regarding the plaintiff were based on legitimate nondiscriminatory reasons. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). Thereafter, the burden switches to the plaintiff, who must show that defendant's stated justification is, in fact, merely a pretext for unlawful discrimination. *Id.* However, the ultimate burden of persuasion remains at all times with the plaintiff. *Id.*

{¶24} In applying these legal standards, “if a plaintiff is not able to establish that she performed the job at a level which met the employer's legitimate expectations or [is not able to establish] that the accusation of poor work was only a pretext, the claim for

discrimination cannot be successful.” *Gerding v. Girl Scouts of Maumee Valley Council, Inc.*, 6th Dist. Lucas No. L-07-1234, 2008-Ohio-4030, ¶ 27, quoting *McDonald v. Union Camp Corp.*, 898 F.2d 1155, 1160 (6th Cir.1990). Accord *Smith v. ExpressJet Airlines, Inc.*, 8th Dist. Cuyahoga No. 101336, 2015-Ohio-313, ¶ 22.

{¶25} In this matter, it is undisputed that Pease is a member of a protected class and that she suffered an adverse employment action, thus fulfilling the first two elements of a prima facie case. As to the third element, Pease met the initial qualifications for the Department Analyst IV position. Accord *Collins v. Orange City School Dist. Bd. of Edn.*, 8th Dist. Cuyahoga No. 93778, 2010-Ohio-3195, ¶ 14. As this court explained in *Smith*,

“[t]he prima facie burden of showing that a plaintiff is qualified can be met by presenting credible evidence that his or her qualifications are at least equivalent to the minimum objective criteria required for employment in the relevant field.”

Id. at ¶ 14, quoting *Saha v. Ohio State Univ.*, 10th Dist. Franklin No. 10AP-1139, 2011-Ohio-3824, ¶ 49. No evidence has been presented on the fourth element addressing whether the position remained open or was filled by a person not of the protected class. The essence of this appeal is whether Pease was qualified to remain in the Department Analyst IV position.

{¶26} In determining whether the Clinic demonstrated a legitimate, nondiscriminatory reason for its decision to terminate Pease, the record presents compelling evidence that Pease is well-educated and performed well in her prior positions at the clinic. The record is equally clear that she continually struggled in the Department

Analyst IV position. Beginning in the 90-day probationary period, her supervisor identified issues with Pease's job performance and then extended her probationary period, gave her an overall rating of "Needs Improvement," and noted that she needed to improve the quality of her work. By the time of her next evaluation in April 2012, some of the administrators at the health centers with whom Pease worked had complained to Manfull about the quality of Pease's presentations, and Manfull also noted that Pease made several "material mistakes during the 2012 budget process." Manfull gave her an overall assessment of "Needs Improvement," then conducted a "Documented Counseling" with Pease advising her that failure to improve would lead to further discipline, which could include termination. In addition to reducing Pease's workload, Manfull placed Pease on a PI Plan and met with her every other week to provide feedback on her job performance.

In his written remarks on the PI Plan, Manfull repeatedly stated that Pease's work product lacked analysis and needed to improve in the area of financial analysis. Then, on May 14, 2012, Manfull gave her a written warning in which he stated that her most recent MDA did "not provide the information and answers that we are expected to provide as financial support and is a continuation of the behavior that is in need of correction. * * * This is inappropriate given that the * * * volume * * * exceeded the budget by 1,327%." Pease received her final warning on June 18, 2012, after Manfull noted problems in her analysis of a \$2 million capital construction project.

{¶27} Moreover, it is undisputed in the record that Pease acknowledged her continuing problems in the areas of financial analysis. By Pease's own admissions in

her deposition, her financial analysis was deficient, and she did not have a full grasp of this critical area of her job. She also acknowledged that her performance in this area did not improve and that things were “steadily downhill.” She admitted that she was “struggling, struggling, struggling, felt “in over [her] head,” was “overwhelmed,” and “was not good.”

{¶28} By application of the foregoing, we conclude, as the trial court concluded, that there are no genuine issues of material fact, and the Clinic was entitled to judgment as a matter of law on Pease’s claim that the Clinic subjected her to racial discrimination when it terminated her from her position as a Department Analyst IV. The Clinic articulated a legitimate and nondiscriminatory reason for the termination. Pease admitted to a continuing deficient performance in the key areas of her job. Moreover, Pease failed to demonstrate that this continuing deficient performance was simply a pretext for discrimination.

B. Disparate Treatment

{¶29} In establishing a disparate treatment claim, the plaintiff is required to establish the first three elements outlined in the *McDonnell Douglas* test, but for the fourth element, the plaintiff must demonstrate that he or she was treated differently from similarly situated individuals. *Chenevey v. Greater Cleveland Regional Transit Auth.*, 2013-Ohio-1902, 992 N.E.2d 461, ¶ 23 (8th Dist.), citing *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 582 (6th Cir.1992).

{¶30} With regard to the claim of disparate treatment, Pease asserted that she had been treated differently than Weisberg and Guy. However, the Clinic demonstrated that Pease was evaluated under the same standards as these employees. Moreover, although Pease admitted that she continually struggled with analytical deficiencies, neither Weisberg nor Guy received a single “Needs Improvement” rating on any of their job performance categories. To the contrary, according to Manfull, both Weisberg and Guy engaged in appropriate research, and received no complaints from their health center administrators. When required to do so, both also provided additional research or work to address whatever issues arose in their reports. Therefore, Pease failed to demonstrate that she was treated differently than similarly situated employees.

{¶31} Based upon all of the foregoing, we are unable to conclude that the trial court erred in awarding the Clinic summary judgment.

{¶32} Therefore, the assignment of error is without merit.

{¶33} Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

TIM McCORMACK, J., and
ANITA LASTER MAYS, J., CONCUR