UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

ANTONIO ANGLIN,

Intervenor,

vs. Case No. 8:00-civ-2012-T-24 EAJ

ENTERPRISE LEASING COMPANY OF FLORIDA , d/b/a ENTERPRISE RENT-A-CAR,

Defendant.
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ORDER

This cause comes before the Court on Defendant's Motion for Summary Judgment as to Plaintiff EEOC's claims (Doc. No. 78). Plaintiff EEOC filed a response in opposition (Doc. No. 101), and Defendant filed a reply to Plaintiff's response (Doc. No. 111).

I. Background

Plaintiff filed suit for race discrimination under Title VII due to Defendant's failure to promote Antonio Anglin during his tenure with the company. Anglin, an African-American man, was hired as a management trainee on December 12, 1994. Anglin worked for Defendant until he resigned in August of 1997.

The management trainee position for which Anglin was hired is an entry level position. The next level up from his position is management assistant. The management assistant position

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is a non-competitive position, which means that any number of qualified management trainees could be promoted to management assistant at any time.

The next level up from management assistant is assistant manager. While the assistant manager position is a competitive position, a management trainee can bypass the management assistant position and be promoted directly to assistant manager. The next level up from assistant manager is branch manager. Like the assistant manager position, the branch manager position is also competitive.

There were no written requirements for promotion from management trainee to management assistant until March of 1997. (Doc. No. 85, p.76-78). Prior to that time, Anglin contends that in order to qualify for a promotion to management assistant, a management trainee needed to achieve a Collision Damage Waiver ("CDW") sales percentage of 55% and needed to pass a certain qualifying exam called the "grill." Id. at 123, 201. Anglin met this CDW sales goal in March of 1995, August of 1995, January of 1996, and February of 1996.[1] Anglin took the grill in September of 1996. (Doc. No. 85, p.149-150; Doc. No. 102, Ex. 4).

The grill is a two part exam–there is an objective portion and a subjective portion. (Doc. No. 85, p.150-51; Doc. No. 102, Ex. 9). Anglin passed the objective portion, but he failed the subjective portion. Id. The subjective portion, which consisted of a mock sales call, was administered by Drew Akers. Id. Akers, who was the Area Manager at that time, was the sole decision maker as to Anglin's performance on the mock sales call portion. (Doc. No. 102, Ex. 9).

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[1](Doc. No. 103, Item Number 4, Bates stamped page 000548; chart summarizing Item Number 4).

Anglin was entitled to retake the grill, and he attempted to retake the subjective portion within 30 days after he had failed it. (Doc. No. 89, p.183; Doc. No. 102, Ex. 9). After he had scheduled to retake the subjective portion, Steven Barger (who became the new Area Manager) told Anglin that the rules had changed, and therefore, he was barred from retaking the grill. (Doc. No. 85, p.153).

Anglin believes that Akers discriminated against him. (Doc. No. 85, p.258). Previously, in July or August of 1996, Akers told Anglin that he could not put in for any more promotions. Id. at 135-138. At that time, Akers told Anglin that he could not be promoted because he did not have a dynamic presence–that if they lined up every employee in the office and no one was allowed to say a word and a customer walked in and was asked who they thought the branch manager was, the customer would never choose Anglin.[2] Id. at 137. Akers had also told Anglin that he could train a monkey to do the things that Anglin does. (Doc. No. 102, Ex. 9).

Akers once commented to another employee, William Westergom, that if you lined up all of the management trainees, Anglin just does not look like a manager. (Doc. No. 105, p.104-05). Westergom asked Akers what he meant by that comment, and Westergom asked if it was because Anglin is black. Id. at 105. Akers responded, "'Well, there you go.'" Id.

In March of 1997, the 55% CDW sales requirement that had to be met in order to be eligible to become a management assistant was reduced to 52%. (Doc. No. 84, p. 201-02.). However, Anglin remained a management trainee throughout his entire tenure with Defendant. Plaintiff contends that Defendant discriminated against Anglin by failing to promote him while

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[2]Akers contends that Anglin was not considered for promotions, because Anglin was repeatedly counseled in 1995 and 1996 for performance deficiencies which had not improved. (Doc. No. 81, ¶ 17).

promoting equally or less qualified white employees. Anglin identified eleven comparators[3], and he contends that a review of his and their employment histories reveals that he was discriminatorily denied several promotions.

II. Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the initial burden of showing the Court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial. See Celotex Corp. v. Catrett, 477 U.S. 317 (1986). A moving party discharges its burden on a motion for summary judgment by "showing" or "pointing out" to the Court that there is an absence of evidence to support the non-moving party's case. Id. at 325. When a moving party has discharged its burden, the non-moving party must then "go beyond the pleadings," and by its own affidavits, or by "depositions, answers to interrogatories, and admissions on file," designate specific facts showing there is a genuine issue for trial. Id. at 324.

In determining whether the moving party has met its burden of establishing that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law, the Court must draw inferences from the evidence in the light most favorable to the non-movant and resolve all reasonable doubts in that party's favor. See Spence v. Zimmerman, 873 F.2d 256 (11th Cir. 1989); Samples on behalf of Samples v. City of Atlanta, 846 F.2d 1328, 1330 (11th

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[3]Kristen Beeman, Mary Mortensen, Dave Straquadine, Dana Sheffield, Bill Westergom, Bob Offerman, Sherri Williams, Tim Grubisic, Robert Boehmler, Dave Lenton, and Cathy Kelly.

Cir. 1988).

Thus, if a reasonable fact finder evaluating the evidence could draw more than one inference from the facts, and if that inference introduces a genuine issue of material fact, then the court should not grant the summary judgment motion. See Augusta Iron & Steel Works v. Employers Ins. of Wausau, 835 F.2d 855, 856 (11th Cir. 1988). A dispute about a material fact is "genuine" if the "evidence is such that a reasonable jury could return a verdict for the non-moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 251-52.

III. Defendant's Motion for Summary Judgment

Defendant filed the instant motion for summary judgment in which it argues that (1) Plaintiff's claims regarding certain promotions are time-barred; (2) Plaintiff cannot establish a prima facie case; and (3) Defendant has legitimate, non-discriminatory reasons for not selecting Anglin for each of the challenged promotions. Accordingly, the Court will address each argument.

A. Time-Barred Promotions

Defendant first argues that Plaintiff's claims regarding certain promotions are time-barred. Specifically, Defendant points out that an aggrieved party must file a charge of discrimination with the EEOC within 300 days of the alleged discriminatory action, and any claims arising more than 300 days prior to the filing of the charge are time-barred. 42 U.S.C. § 2000e-5(e)(1); Malone v. K-Mart Corp., 51 F. Supp.2d 1287, 1300 (M.D. Ala. 1999)(citations omitted). Since Anglin filed his charge with the EEOC on April 1, 1997, Defendant argues that

any claims arising prior to June 5, 1996 are time-barred. Since Kristen Beeman's, Mary Mortensen's and Dave Straquadine's promotions[4] all occurred before June 5, 1996, Defendant argues that Plaintiff cannot pursue claims relating to these promotions because the claims would be time-barred. Plaintiff responds that the non-promotion of Anglin was a continuing violation, and therefore, none of its claims related to these promotions are time-barred.

The continuing violation doctrine is an exception to the 300 day filing requirement. See id. The "doctrine prohibits an employer who has continuously maintained an illegal employment policy or has committed a series of discrete acts amounting to a practice of discrimination from relying on the statute of limitations to bar suits as long as at least one discriminatory act occurred within the" 300 day period prior to filing a charge with the EEOC. Butler v. Matsushita Communication Indus. Corp. of U.S.A., 203 F.R.D. 575, 583 (N.D. Ga. 2001)(citation omitted). The purpose of the 300 day filing requirement "is to protect an employer from having to defend against claims arising out of remote decisions." See Blalock v. Dale County Board of Education, 84 F. Supp.2d 1291, 1307 (M.D. Ala. 1999)(citation omitted)

In order to determine whether the continuing violation doctrine applies, courts consider, among other things, the subject matter, frequency, and the degree of permanence of the alleged acts. See Malone, 51 F. Supp.2d at 1301 (quoting Berry v. Board of Supervisors of L.S.U., 715 F.2d 971 (5th Cir. 1983)). With regards to subject matter, courts consider whether "'the alleged acts involve the same type of discrimination.'" Id. With regards to frequency, courts consider whether the alleged acts are recurring versus a series of isolated employment decisions. Id. With

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[4]Kristin Beeman was promoted to assistant manager on October 1, 1995. Mary Mortensen was promoted to assistant manager on February 1, 1996. Dave Straquadine was promoted to branch manager on March 16, 1996.

regards to the degree of permanence of the alleged acts, courts consider whether the alleged acts "have the degree of permanence which should trigger an employee's awareness of and duty to assert his or her rights." Id. Additionally, the Court notes that "in the absence of a continuing discriminatory policy, a plaintiff cannot extend the life of an otherwise barred failure-to-promote claim under the continuing violation doctrine, for such an employment action is generally deemed a discrete act of past discrimination." Miller v. Bed, Bath & Beyond, 185 F. Supp.2d 1253, 1263 (N.D. Ala. 2002)

In the instant case, the otherwise time-barred acts consist of three promotions. Even assuming that the Court found that the time-barred acts were related in subject matter to the timely filed claims, the Court finds that the time-barred acts consisted of isolated employment decisions and that the degree of permanence resulting from Defendant's promotion decisions as to these three positions should have triggered Anglin's awareness and duty to assert his rights. See id. (finding that the failure to promote the plaintiff was not a continuing violation); Butler, 203 F.R.D. at 583 (finding that the denial of promotions was not a continuing violation). Therefore, the Court concludes that Plaintiff's failure to promote claim as to the positions that were filled before June 5, 1996 are time-barred, because the continuing violation doctrine does not apply to those claims.[5] Therefore, the Court grants Defendant's motion for summary judgement as to these claims.

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[5]The Court notes, however, that even though Plaintiff cannot pursue failure to promote claims as to promotions which occurred before June 5, 1996, Plaintiff may use such promotions as background evidence when proving its failure to promote claim as to the management assistant and assistant manager positions. See Thigpen v. Bibb County, Georgia Sheriff's Department, 223 F.3d 1231, 1243 n.19 (11th Cir. 2000)(citation omitted).

B. Promotions to Assistant Manager

Plaintiff contends that Anglin was discriminatorily denied several promotions for assistant manager positions. Specifically, Plaintiff challenges the following promotions to assistant manager:

- Dana Sheffield - 9/1/96
- Bill Westergom - 10/1/96
- Bob Offerman - 11/1/96
- Dave Lenton - 4/1/97
- Robert Boehmler - 7/1/97

Under the McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), method of proving discrimination, Plaintiff has the burden of establishing a prima facie case of discrimination by a preponderance of the evidence. If such a prima facie case is made, the burden of production, not proof, shifts to Defendant. The burden of production is to show a legitimate, non-discriminatory reason for its employment decision. Once Defendant produces such evidence, Plaintiff must demonstrate by a preponderance of the evidence that the proffered evidence is but a pretext to cover up an actual discriminatory motive. "A mere 'scintilla' of evidence supporting the opposing party's position will not suffice; there must be enough of a showing that the jury could reasonably find for that party." Walker v. Darby, 911 F.2d 1573, 1577 (11th Cir. 1990) (citing Anderson v. Liberty Lobby, 477 U.S. 242, 251 (1986)).

In order to establish a prima facie case, Plaintiff must show (1) that Anglin belongs to a racial minority; (2) that he applied for and was qualified for the position; (3) that he was rejected; and (4) thereafter, the position was filled by a person not of the same racial minority. See Sledge v. Goodyear Dunlop Tires North America, 275 F.3d 1014, 1015 n.1 (11th Cir. 2001); Walker v. Mortham, 158 F.3d 1177, 1186 (11th Cir. 1998)(citing Crawford v. Western Electric Co., 614

F.2d 1300, 1315 (5th Cir. 1980)). Defendant contends that Plaintiff cannot establish that Anglin was qualified to become an assistant manager.

The Court finds that a genuine issue of material fact exists as to whether Plaintiff was qualified. To begin with, there were no written qualifications until March of 1997, and then the qualifications kept changing. (Doc. No. 102, Ex. 11).

Defendant contends that promotions to assistant manager are based on an evaluation of sales and marketing ability, customer service skills, and leadership skills. (Doc. No. 89, p.67-68). Based on these qualities, Defendant contends that Anglin was not qualified. However, a review of the evidence submitted indicates that there is a genuine issue of material fact as to whether Anglin possessed these skills and whether Defendant actually required these skills.

For example, Anglin's performance review on May 6, 1996 reveals that his supervisor felt that Anglin met all of the customer service skills requirements. (Doc. No. 102, Ex. 10). The only negative comment about his customer service skills was that he should talk louder on the phone; however, he was still evaluated as meeting the requirements for telephone skills. Id.

With regards to Anglin's leadership skills, Anglin's performance review on May 6, 1996 reveals that his supervisor felt that Anglin met the requirements that he be able to lead and train others. Id. Anglin's branch manager at the Winter Haven office, Todd Shakne, assigned several people to Anglin to train. (Doc. No. 85, p.92-94). Additionally, when key people were out of the Winter Haven office, Anglin would run the office. (Doc. No. 102, Ex. 11). The only negative comments in Anglin's May 6, 1996 performance review with respect to his leadership skills were that he needed to take a more active role as a manager versus employee and that he needed to improve his ability to delegate and share functions. (Doc. No. 102, Ex. 10).

The final attribute that Defendant contends that it focuses on is sales and marketing ability. According to Defendant, CDW sales are considered an important indicator of a person's ability to sell. (Doc. No. 114, p.2). However, Bob Offerman was promoted to assistant manager on November 1, 1996 despite the fact that his CDW sales percentages were quite low. (Doc. No. 103, Item Number 4, chart summarizing Item Number 4). Offerman's CDW sales percentages were much lower than Anglin's CDW sales percentages during the same time, as shown below:

	1/96	2/96	3/96	4/96	5/96	6/96	7/96	8/96	9/96	10/96
Offerman	38	46	51	25	35	23	41 22	16	23	23
Anglin	59	58	55 46	37	31	40	34	31	30	42

Additionally, William Westergom was promoted to assistant manager on October 1, 1996 even though Drew Akers told him that he did not qualify to interview for the position. (Doc. No. 105, p.22-25; Doc. No. 84). Based on the above, the Court finds that a genuine issue of material fact exists as to whether Anglin was qualified to become an assistant manager and/or whether the articulated promotion requirements were in fact required to be met in order to be promoted. Accordingly, the Court rejects Defendant's argument that Anglin cannot establish a prima facie case.

Defendant also argues that it has legitimate, non-discriminatory reasons for each of its challenged promotion decisions to assistant manager. Plaintiff contends that the proffered reasons are pretextual. Accordingly, the Court will address each of the challenged promotions to assistant manager positions.

1. Dana Sheffield

Dana Sheffield was promoted on September 1, 1996. Defendant states that Sheffield was promoted because she was better qualified than Anglin due to her higher CDW sales, strong customer service skills, and potential leadership skills. However, the Court finds that a genuine issue of material fact exists as to whether this reason is pretextual, given that Anglin was told by his branch manager, Todd Shakne, that he could not apply for the position, because he did not have enough experience. (Doc. No. 85, p.141-45). However, Shakne permitted Sheffield, who had only been with the company for six months and whom Anglin was training at the time, to apply for the position. Id. Therefore, the Court denies Defendant's motion for summary judgment as to this promotion.

2. Bill Westergom

Bill Westergom was promoted on October 1, 1996. Even assuming that Defendant has proffered a legitimate, non-discriminatory reason for this promotion, the Court finds that there is a genuine issue of material fact as to whether the proffered reason is pretextual. Plaintiff has submitted evidence that Defendant bent its promotion requirements when promoting Westergom, since Westergom has stated that Akers told him that he did not qualify to interview for the position. Such non-adherence to its own promotion requirements is suspicious when it gives a non-minority applicant an edge in the promotion process. Carter v. Three Springs Residential Treatment, 132 F.3d 635, 644 (11th Cir. 1998)(citing Morrison v. Booth, 763 F.2d 1366, 1373-74 (11th Cir. 1985)). Therefore, the Court denies Defendant's motion for summary judgment as to this promotion.

3. Bob Offerman

Bob Offerman was promoted on November 1, 1996. Even assuming that Defendant has proffered a legitimate, non-discriminatory reason for this promotion, the Court finds that there is a genuine issue of material fact as to whether the proffered reason is pretextual. Plaintiff has submitted evidence that Defendant bent its promotion requirements when promoting Offerman, since Offerman's CDW sales percentages were lower than Anglin's and yet Defendant has argued that Anglin's CDW sales percentages indicate that he was not qualified for the position. As stated above, such non-adherence to its own promotion requirements is suspicious when it gives a non-minority applicant an edge in the promotion process. Carter, 132 F.3d at 644 (citing Morrison, 763 F.2d at 1373-74). Therefore, the Court denies Defendant's motion for summary judgment as to this promotion.

4. Dave Lenton

Dave Lenton was promoted on April 1, 1997. Defendant contends that Lenton was more qualified than Anglin, because his CDW sales percentages were consistently higher than Anglin's, and Lenton's direct supervisor recommended him for promotion. (Doc. No. 103, Item No. 4, chart summarizing Item No. 4; Doc. No. 93). Additionally, Defendant contends that Lenton had superior sales, leadership skills, and customer service skills. (Doc. No. 93). Based on the above, the Court finds that Defendant has proffered a legitimate, non-discriminatory reason for its promotion decision.

Plaintiff has not addressed why Defendant's proffered reason is pretextual as to this promotion decision. The only reference to Lenton in Plaintiff's response in opposition is that Lenton is one of the comparators who did not achieve the 55% or 52% CDW sales percentage in

more than one month. (Doc. No. 101, p.16). However, Plaintiff has not put forth any evidence that the 55% or 52% CDW sales percentages were required in order to be promoted to the assistant manager position. Instead, the evidence submitted only shows that such percentages were required in order to be promoted to the management assistant position. (Doc. No. 85, p.77, 201-02; Doc. No. 89, p.169-70).

Additionally, the Court notes that there must be "a strong showing of a disparity in qualifications in order for an inference of discrimination to arise." Denney v. City of Albany, 247 F.3d 1172, 1187 (11th Cir. 2001). Pretext cannot be shown simply by showing that Anglin was more qualified, unless his superior qualifications are so apparent as to "'virtually . . . jump off the page and slap you in the face.'" Id. (quoting Lee v. GTE Florida, Inc., 226 F.3d 1249, 1253-54 (11th Cir. 2000)(quoting Deines v. Texas Dept. of Protective and Regulatory Services, 164 F.3d 277, 280 (5th Cir. 1999))(internal citations omitted). Accordingly, since Plaintiff has not shown that Defendant's proffered reason is pretextual, the Court grants Defendant's motion for summary judgment as to this promotion.

5. Robert Boehmler

Robert Boehmler was promoted on July 1, 1997. Defendant contends that Boehmler was more qualified than Anglin, because Boehmler's CDW sales percentages were consistently higher than Anglin's, and Boehmler's sales and marketing abilities and leadership abilities were stronger than Anglin's. (Doc. No. 103, Item No. 4, chart summarizing Item No. 4; Doc. No. 93). Based on the above, the Court finds that Defendant has proffered a legitimate, non-discriminatory reason for its promotion decision.

Plaintiff has not specifically addressed why Defendant's proffered reason is pretextual.

Plaintiff does point out that Boehmler did not ever achieve the 55% or 52% CDW sales percentage. (Doc. No. 101, p.16). However, as stated above, Plaintiff has not put forth any evidence that the 55% or 52% CDW sales percentages were required in order to be promoted to the assistant manager position. Instead, the evidence submitted only shows that such percentages were required in order to be promoted to the management assistant position. (Doc. No. 85, p.77, 201-02; Doc. No. 89, p.169-70).

Additionally, Plaintiff disputes Defendant's assertion that Boehmler was more qualified than Anglin. However, as stated above, there must be "a strong showing of a disparity in qualifications in order for an inference of discrimination to arise." Denney, 247 F.3d at 1187. Accordingly, since Plaintiff has not shown that Defendant's proffered reason is pretextual, the Court grants Defendant's motion for summary judgment as to this promotion.

C. Promotion to Management Assistant

Plaintiff also contends that Anglin was discriminatorily denied a promotion to management assistant. Plaintiff contends that a review of the eleven comparators'[6] employment histories reveals that Anglin was discriminatorily denied a promotion to this non-competitive position. Defendant, on the other hand, contends that Anglin was not qualified for the management assistant position and that the people who were promoted to this position were more qualified than Anglin.

The Court finds that a genuine issue of material fact exists as to whether Anglin was

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[6]Anglin identified the following comparators: Kristen Beeman, Mary Mortensen, Dave Straquadine, Dana Sheffield, Bill Westergom, Bob Offerman, Sherri Williams, Tim Grubisic, Robert Boehmler, Dave Lenton, and Cathy Kelly. However, since there is no evidence that Cathy Kelly was ever promoted, she cannot be used as a comparator in support of Plaintiff's failure to promote claim. (Doc. No. 84, ¶ 6).

qualified for the management assistant position. There were no written requirements for promotion from management trainee to management assistant until March of 1997. Prior to that time, Anglin contends that in order to qualify for a promotion to management assistant, a management trainee needed to achieve a CDW sales percentage of 55% and needed to pass the grill. Anglin met this CDW sales goal in March of 1995, August of 1995, January of 1996, and February of 1996. When Anglin took the grill in September of 1996, he passed the objective portion and failed the subjective portion. The subjective portion, which consisted of a mock sales call, was administered and evaluated by Drew Akers.

Anglin was entitled to retake the grill, and he had scheduled to retake the subjective portion within thirty days of failing it. However, Steven Barger told Anglin that the rules for retaking the grill had changed, and therefore, he was barred from retaking it.

Defendant contends that in order to be promoted to any position within the company, an employee is evaluated based on his or her sales and marketing ability, customer service skills, and leadership skills. The Court has previously found that there is a genuine issue of material fact as to whether Anglin possessed these skills.

Upon review of the evidence submitted, the Court finds that a reasonable jury could conclude that Anglin was qualified for the management assistant position despite the fact that he failed the subjective portion of the grill, due to the fact that (1) Defendant changed the rules for retaking the grill at the same time that Anglin was attempting to retake it; (2) Defendant did not adhere to its promotion requirements for other managerial positions; and (3) it appears[7] that some

[7]Anglin has stated that many employees did not have to take the grill in order to be promoted. (Doc. No. 102, Ex. 9). Additionally, in his deposition, Anglin states that Kristen Beeman, who was promoted to management assistant, never took any qualifying exams. (Doc.

employees may have been promoted to the management assistant position without taking the grill.

Defendant contends that it has legitimate, non-discriminatory reasons for failing to promote Anglin to the management assistant position–Anglin was not qualified and those promoted to the management assistant position were more qualified. However, the Court finds that there is a genuine issue of material fact as to whether Defendant's proffered reasons are pretextual, given the fact that it appears that Defendant did not always adhere to its own promotion requirements. Therefore, the Court denies Defendant's motion for summary judgment as to the management assistant position.

IV. Damages

In its motion for summary judgment, Defendant also requests that some of Plaintiff's damages claims be dismissed as a matter of law. Specifically, Defendant contends that if Plaintiff is awarded back pay damages, such damages should be cut off as of February 28, 2001. To support this contention, Defendant argues that on February 28, 2001, Defendant learned that Anglin had lied on his employment application. Furthermore, Defendant contends that according to its employment policies, it would have terminated Anglin's employment upon learning of such information. (Doc. No. 84, ¶ 17). Plaintiff responds that it is only seeking back pay through August of 1997 (when Anglin resigned). Therefore, since Plaintiff is not seeking back pay after February 28, 2001, the Court will grant Defendant's motion on this issue.

Defendant also contends that Anglin's punitive damages claims should be stricken or dismissed, because of its good faith efforts to comply with Title VII. Plaintiff contends that

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No. 85, p. 106).

despite Defendant's anti-discrimination policy, the jury could find that Defendant acted with malice or reckless indifference. Upon review of the evidence submitted, the Court finds that there is a genuine issue of material fact as to whether Plaintiff is entitled to punitive damages. Therefore, the Court denies summary judgment on this issue.

Accordingly it is ORDERED AND ADJUDGED that Defendant's Motion for Summary Judgment as to Plaintiff EEOC's claims (Doc. No. 78) is **GRANTED IN PART AND DENIED IN PART**: The motion is **GRANTED** to the extent that Plaintiff EEOC is attempting to pursue claims for promotions that occurred prior to June 5, 1996 and for claims that Anglin was discriminatorily denied the assistant manager promotions that Dave Lenton and Robert Boehmler received. The motion is also **GRANTED** to the extent that any award of backpay for Plaintiff's claims will be cut off as of February 28, 2001. Otherwise, the motion is **DENIED**.

DONE AND ORDERED in Tampa, Florida, on June 10th, 2002.

Susan C. Bucklew

SUSAN C. BUCKLEW
United States District Judge

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