UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

ELECTRONIC DATA SYSTEMS CORPORATION,

Defendant.

_____/

CASE NO.: 03-71238
HON. PATRICK J. DUGGAN



**OPINION**

Plaintiff Equal Employment Opportunity Commission ("EEOC") brings this pregnancy discrimination lawsuit on behalf of Tone Holland, a former employee of Defendant Electronic Data Systems Corporation ("EDS"). Currently before the Court is Defendant's Motion for Summary Judgment. The EEOC has also filed a Motion to Strike Exhibits 1 and 2 of Defendant's Reply Brief. A hearing was held on November 20, 2003. For the reasons set forth below, Defendant's motion for summary judgment is denied. Plaintiff's motion to strike is also denied.

**Background**

Holland's employment with EDS began in May 1999. In January 2001, her job code

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was Project Analyst-Advanced. This position was the second (after entry level) of seven progressive job code levels within the project management job code family.[1] From June to November 2001, Holland was part of the Dow Legacy Project Management Team and worked for Andrew Dills. In November 2001, EDS underwent a reorganization and individuals who were part of the Dow Legacy team under Dills were transferred to Lana Rudolph's team, under the umbrella of Bruce Barreras's network engineering organization.

Defendant characterizes Rudolph's team as a "virtual team," meaning that project managers were located throughout the country and team members, including Holland, worked from home.[2] Rudolph used monthly status reports, monthly one-on-one calls, and monthly team meetings to communicate with her team members. Holland was never informed of any problems relating to her job performance under either Dills or Rudolph. (Holland Aff. at ¶ 5). Under Rudolph, Holland received a merit salary increase effective April 16, 2002. On April 30, 2002, Holland informed Rudolph that she was pregnant.

In early June 2002, EDS announced its intention to undergo a broad reduction in force ("RIF"). Barreras's network engineering organization was targeted for the RIF. To this end, Barreras provided Rudolph with a Ranking Tool Template that was designed to identify the employees who would be selected for separation. The Ranking Template included criteria

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[1] Throughout her employment with EDS, Holland performed project management functions which include communicating with clients to determine client needs and coordinating technical resources to complete the project.

[2] Holland began working from home in January 2002.

such as technical skills, customer/industry knowledge, and fiscal responsibility; each criteria was scored from 1 to 4. It is undisputed that Barreras directed Rudolph to target those employees who lacked technical skills. (*See* Rudolph Dep. 89-90). Rudolph completed the template on June 7, 2002, and Holland received a score of "2" on every criteria, translating into a rank of second from the last out of 28 project managers. The individuals who were chosen for reduction were those in the statistical project management role. Rudolph testified during her deposition that Holland, who had a project management role, was *not* chosen for reduction at this point. Although it appears that the EEOC disputes Defendant's assertion that Holland was not chosen for reduction initially, they have offered no evidence disputing Rudolph's deposition testimony. (*See* Pl.'s Resp. at 21).

Prior to the reduction though and pursuant to another reorganization, in June 2002, Rudolph learned that her team was being transferred to the Implementation Services Group ("IS Group") under Janice Hernandez. Although Hernandez initially thought that her IS Group would not be affected by the RIF, she later learned that she would have to terminate employees from her group. On June 28 or 29, 2002, Hernandez directed Rudolph to submit the names of the individuals chosen for termination on July 1, 2002. In making her decision, Rudolph relied solely on the Ranking Template she completed while her team was still under Barreras's organization. Rudolph informed Holland on July 2, 2002, that she was one of five selected for termination.[3] According to Defendant, Holland was chosen for the reduction

[3] Members of the statistical project management group were not targeted for the reduction once transferred to Hernandez's organization. According to Defendant those

"because her position was one that could be eliminated with the least amount of impact to the customer and organization." (Def.'s Br. at 10).

**Standard of Review**

Rule 56(c) of the Federal Rules of Civil Procedure mandates the entry of summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." There is no genuine issue of material fact for trial unless, by viewing the evidence in favor of the nonmoving party, a reasonable jury could return a verdict for that party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1986).

The non-moving party must do more than show that there is some metaphysical doubt as to the material facts. *Pierce v. Commonwealth Life Ins. Co.*, 40 F.3d 796, 800 (6th Cir. 1994). The nonmoving party must present significant probative evidence in support of its opposition to the motion for summary judgment. *Moore v. Phillip Morris Co., Inc.*, 8 F.3d 335, 340 (6th Cir. 1993). Once the moving party has met its burden, the nonmoving party must go beyond the pleadings and come forward with specific facts to show that there is a genuine issue for trial. FED. R. CIV. P. 56(e); *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S. Ct. 2548, 2552-53 (1986).

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individuals "were now valuable assets to Hernandez's project management organization." (Def.'s Br. at 9).

## Discussion

Defendant believes it is entitled to summary judgment because the EEOC cannot establish a prima facie case of pregnancy discrimination. In the alternative, Defendant asserts that the EEOC cannot prove that its legitimate nondiscriminatory reason for Holland's discharge is pretext for pregnancy discrimination.

A. *Whether Plaintiff Has Established a Prima Facie Case of Pregnancy Discrimination*

A prima facie case of pregnancy discrimination requires a showing by the EEOC that Holland was: 1) pregnant; 2) qualified for her job; and 3) subjected to an adverse employment decision. *Cline v. Catholic Diocese of Toledo*, 206 F.3d 651, 658 (6th Cir. 2000). The fourth prong of the prima facie case in a pregnancy discrimination action is a showing of a "nexus between her pregnancy and the adverse employment decision." *Id.* at 658. One way to establish a nexus between pregnancy and the adverse employment action is to show that other similarly situated non-protected employees were treated better. *See Hensley v. Boddie-Noell Enterprises*, Inc., 221 F.3d 1334, 2000 WL 799781 (6th Cir. 2000). A plaintiff in a reduction in force case is required, in addition to satisfying the *prima facie* case, to produce "additional direct, circumstantial, or statistical evidence tending to indicate that the employer singled out the plaintiff for discharge for impermissible reasons." *Barnes v. Gencorp Inc.*, 896 F.2d 1457, 1465 (6th Cir. 1990).

Defendant does not dispute that Holland was pregnant, qualified for her job, and subject to an adverse employment action. It is also undisputed that Rudolph was aware of

Holland's pregnancy at the time she was chosen for termination. The EEOC has also presented evidence that Holland's performance was rated higher on "EDS Performance Assessments" in 2001 than at least one similarly-situated non-protected employee, Kenneth Jodway, who was not selected for reduction.[4]

Other circumstantial evidence pointed to by the EEOC is that there were three pregnant women on Rudolph's team at the time of the reduction. There is evidence in the record suggesting that one of the women, Laurie Kischnick, had indicated that she would work a reduced load from home instead of taking maternity leave. (Pl.'s Resp. Ex. F). Kischnick was not chosen for reduction, whereas Holland and the other pregnant woman, Michelle Overton, were chosen for reduction. The prima facie case poses a burden "easily met." *Cline*, 206 F.3d at 660. The Court is satisfied that viewing the record in a light most favorable to the EEOC, it has established a prima facie case of pregnancy discrimination.

B. *Whether Plaintiff Has Demonstrated Pretext*

Having established a prima facie case of pregnancy discrimination, the burden now shifts to the Defendant to "articulate a 'legitimate, nondiscriminatory reason' for its actions." *Cline*, 206 F.3d at 658. Defendant maintains that Holland was included in the workforce reduction because Holland's position "could be eliminated with the least amount of impact to her organization and the customer she served." (Def.'s Br. at 1). As stated previously,

[4] Whereas Holland was characterized as a "valued contributor" in the 2001 assessment, Jodway's 2001 assessment characterized his performance level as "major development required." (Pl.'s Br. Ex. E). Being a valued contributor meant that Holland was performing at the same level as 50% of her peers. (Def.'s Br. at 3).

Rudolph stated at deposition that the only thing she relied on in identifying the individuals for the reduction in force was the Ranking Template.

At this stage, the EEOC may establish pretext by showing either: 1) that the proffered reason had no basis *in fact*; 2) that the proffered reason did not *actually* motivate the decision; or 3) that they were *insufficient* to motivate discharge. *Manzer v. Diamond Shamrock Chemicals Co.*, 29 F. 3d 1078, 1084 (6th Cir. 1994) (emphasis in original). The EEOC asserts that "[t]he basis for Holland's low template scores are not worthy of belief and, thus, are pretextual." (Pl.'s Resp. at 21). Similarly, although Defendant maintains that the reduction decisions were not based on performance, the EEOC points out that Rudolph must have relied, at least to some extent, on employees' past performance in completing the Ranking Template.[5] In this Court's opinion, this is not an unreasonable conclusion. Based on Holland's performance, which Rudolph was aware of, the EEOC argues that she "ranked Holland totally contrary to her recognized performance criteria, which is evidence of pretext." (Pl.'s Resp. at 22).

Holland received a merit salary increase effective April 16, 2002. Holland also stated

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[5] The Ranking Template includes criteria such as quality of work, productivity, and "contributes to team's success." (*See* Def.'s Ex. A- Ranking Template). Similarly, the performance assessment includes criteria such as problem solving, client focus, decision making, and teamwork. In spite of the fact that the criteria appear to overlap, or in some cases, are identical (teamwork), Defendant maintains that "Rudolph did not review or consider prior performance assessment (inasmuch as the ranking template criteria were not criteria utilized in the annual performance assessment process), but rather used her personal observation and involvement with each employee to assess to what extent that employee possessed the identified skills and to what extent that employee was in a position that would meet the identified future needs of the organization." (Def.'s Br. at 5-6).

during deposition that she had a one-on-one discussion with Rudolph about performance objectives in June 2002. When asked what Rudolph specifically said about the performance objectives, Holland responded, "Well, she said I was hitting my objectives as far as I can recall. It was a very positive assessment, she told me I was doing a great job and to keep it up." (Holland Dep. at 119). As noted in footnote 4 *supra*, Holland's performance assessment ranking placed her at the same level as 50% of her peers. In spite of this positive feedback from Rudolph, Holland was ranked second to last on the Ranking Template in June 2002.

The Ranking Template included 9 criteria: quality of work, productivity, job knowledge, problem resolution, fiscal responsibility, technical skills, customer/industry knowledge, customer focus, and "contributes to team's success." (Def.'s Br. Ex. A). Defendant offers explanations as to why Holland scored a "2" in the following criteria: customer skills, job knowledge and technical skills, and quality of work and fiscal responsibility. First, with respect to customer skills, Defendant asserts that "Rudolph was involved in an escalation initiated by the Dow customer that reached very high management levels within both EDS and Dow and was based on Holland's poor judgment in contacting a vendor of the Dow customer." (Def.'s Br. at 6).[6] Second, Holland only received a "2" for job knowledge and technical skills because she was not a former Dow employee, did not have years of experience on the Dow account, and did not possess some of the "more

[6] "Escalation" is Defendant's preferred term for "conflict."

technical experience that many of the others on her team possessed." (*Id.* at 7). Third, with regard to quality of work and fiscal responsibility, Holland received a "2" based on "Rudolph's assessment that Holland did not complete an accurate and tidy spreadsheet in her role as Asset Coordinator, did not stay within budget constraints when purchasing a printer for her home office, and did not properly submit her travel authorizations." (*Id.* at 7).

The EEOC argues that Rudolph's Ranking Template scores had no basis in fact, and thus were pretextual. In support of this argument, the EEOC points to the deposition testimony of Holland wherein she discusses Defendant's rationales:

> A: Okay. It says that I was ranked a 2 in the customer skills category because I had gone over budget to buy a printer; and taking a business trip without proper approval; and had been harsh in my communications with customers. And as a result of the harsh tone, Rudolph received complaints from customers about Holland's communication style.
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> I did not go over budget to buy a printer; I did not take a business trip without obtaining proper approval; and I was not– I did not have any harsh communications with customers. Lana Rudolph never spoke to me about any problems– any complaints from customers, any problems with my communication skills. Ms. Rudolph only had good things to say about me and my performance.
>
> Q: You never got any feedback from anybody, from peers or anyone, with regard to your communications with customers?
>
> A: No, not that I recall. I cannot recall anybody ever complaining about my communications with customers.

(Holland Dep. at 241). The fact that Rudolph believed that the escalation warranted a score of "2" yet never confronted Holland about it, at least raises a question of fact as to Holland's

score in that criteria.

With respect to customer skills and job knowledge, Holland noted during deposition that another team member, Mark Camden, who was "brand new" to the Dow account and whom Holland had assisted by answering questions about the Dow account, received a score of "3" in this criteria. (Holland Dep. at 168). With respect to unauthorized travel, Rudolph admitted during deposition that she did not know if she even knew of the unauthorized travel prior to filling out the template:

> Q: When did you find out that she had taken these trips without authorization?
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> A: I don't recall.
>
> Q: Was it before you completed the ranking template?
>
> A: I don't recall.
>
> Q: Do you know what date she took these trips?
>
> A: No, not today, no.

(Rudolph Dep. at 150-151). The EEOC also submitted evidence suggesting that Holland should have received a score greater than "2" for the "contributes to team's success" criteria. Holland submitted ideas to Rudolph meant to improve productivity and efficiency (Pl.'s Resp. Ex. D), and Holland assumed dual roles within her team, taking on the position of asset coordinator. (Holland Dep. at 177).

The Court is satisfied that viewing the record in a light most favorable to Plaintiff, there are genuine issues of fact with respect to the Ranking Template score, the sole tool used

by Rudolph to identify individuals selected for reduction.[7] The fact that Holland was ranked via a performance assessment in 2001 to be performing as well as 50% of her peers, raises some questions with respect to Rudolph's ranking of Holland near last among her team members. Also, as discussed above, there is sufficient evidence in the record to create an issue of fact with respect to the validity of Holland's template scores.

For the reasons set forth above, this Court concludes as a matter of law, that the jury could resolve the disputed issues of fact in favor of Plaintiff. Therefore, Defendant's motion for summary judgment must be denied.

C. *EEOC's Motion to Strike*

The EEOC filed a motion to strike exhibits 1 and 2 of Defendant's reply brief. These exhibits consist of two charts wherein the Defendant attempts to point out discrepancies between Plaintiff's assertions and the evidence contained in the record. The EEOC argues that these charts violate local rules with respect to font size, and that these charts are "additional arguments distinguishing facts in the record, and attempts to make clarifications and distinctions between the EEOC's arguments and recorded testimony." (Pl.'s Mot. to Strike at 2). Defendant opposes the motion arguing that the charts "do not contain 'additional' argument, but rather, merely compare the EEOC's unfounded assertions and

[7] Defendant disagrees that Rudolph relied solely on the template because Rudolph stated at deposition that she also contacted customers "in order to determine whether the potential employees to be separated would cause an adverse impact on the customer, and the customer could veto the selection." (Def.'s Reply Ex. 1 at 1). Although the *ultimate* decision may have been impacted by customer input, it remains undisputed that in identifying the individuals to be chosen for termination initially, Rudolph relied on the template.

misrepresentations with the actual and complete record evidence." (Def.'s Br. in Opp'n to Mot. to Stike at 2). Having reviewed the motion to strike and the response to it, the Court denies EEOC's motion to strike because the Court does not perceive exhibits 1 and 2 to be additional arguments.

**Conclusion**

For the reasons set forth above, Defendant's motion for summary judgment is denied. The EEOC's motion to strike is also denied. An order consistent with opinion shall issue.

DEC 29 2003

HON. PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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