IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	:	
Plaintiff	:	
APRIL LEPERA,	:	**5:03-CV-219 (WDO)**
Plaintiff-Intervenor	:	
v.	:	
CAGLE'S, INC.,	:	
Defendant	:	

ORDER

Plaintiff Equal Employment Opportunity Commission (hereinafter referred to as the "EEOC") filed this case against Defendant Cagle's alleging discrimination against Cagle's former employee April Lepera. Ms. Lepera thereafter joined this suit as the Plaintiff-Intervenor. The plaintiffs allege sexual harassment and retaliation for filing a complaint about the alleged sexual harassment. Before the Court is the defendant's motion for summary judgment on all claims. After a thorough review of the record, the Court finds that a hearing is unnecessary and enters the following order.[1]

[1]The plaintiffs moved to strike several affidavits filed by the defendant in support of its motion for summary judgment. The affidavits were given by individuals who were employees working in the same department as Plaintiff Lepera during the time in question. The plaintiffs claim that the Court should not consider the affidavits because the same were not disclosed to the plaintiffs during discovery. However, the defendant did notify the plaintiffs during discovery that these individuals would be called upon to present evidence and the plaintiffs have had an

Material, Undisputed Facts[2]

In May of 2000, April Lepera was hired as a supervisor in the Human Resources department at the Cagle's plant in Perry, Georgia. She interviewed with and was hired by David Moore, the plant's Human Resources manager. The Plant Manager was Alan Habegger. During this time, the Perry Plant was a new facility in "start-up" mode. Plaintiff Lepera and Moore were among the first managerial employees hired before production started in order to put the appropriate company policies and systems in place. Prior to working at Cagle's, Lepera had held at least three human resources related positions, including one as a Human Resource Supervisor. Upon hiring Lepera, Moore told her that she would be helping with hiring production workers for the new facility, organizing orientation sessions and social events, learning the Kronos timekeeping system and administering the company's attendance policies and health insurance plan.

During Lepera's tenure at Cagle's, she supervised five human resource clerks. As second-in-command in her department, part of Lepera's job was to

---

opportunity to dispute any evidence presented in the affidavits. The plaintiffs' motion to strike the affidavits is DENIED. As is customary, the Court carefully reviewed the entire record, construing all facts in the plaintiffs' favor, to arrive at the findings in this opinion.

[2]The following facts are taken from the defendant's statement of material, undisputed facts and construed in the plaintiffs' favor, taking into consideration the plaintiffs' responses to the defendant's statement. However, some of the plaintiffs' responses consisted of no more than a notation that the defendant's statement of a particular fact was "disputed." Local Rule 56 provides that "[a]ll material facts contained in the moving party's statement which are not specifically controverted by the respondent in respondent's statement shall be deemed to have been admitted, unless otherwise inappropriate." Federal Rule of Civil Procedure 56(e) provides that "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." Therefore, the facts considered in this opinion are the material, undisputed facts that were not specifically controverted by the plaintiffs and that are supported by the record.

communicate instructions from Moore to the clerks and generally see that the work of the department was completed. From the beginning, the Human Resources department did not run smoothly because there were problems with the timekeeping system and frequent errors in the documentation of attendance and the filing of insurance applications. Lepera contends that she reported these problems to Ron Faircloth, Cagle's Chief Financial Officer, and others but that, according to the plaintiff, the problems centered around Moore being a "micro manager" who only wanted things done his way and not necessarily the right way. Another problem in the department was the use, or non use, of I-9 forms that documented whether an individual was permitted to work in the United States. Since this type of plant generally employs a large percentage of migrant workers, this form and its correct usage were a particularly important part of Lepera's job. However, she did not understand the I-9 form, what it was for or how to use the form. In fact, on one occasion, nearly 100 illegal immigrants were employed at the Perry Plant, partly because the plaintiff and others in the department failed to properly document them and their illegal status was ignored. Further, the plaintiff admittedly had no knowledge of federal employment laws, although she was in charge of distributing the Cagle's employee handbook in which those laws are explained to the employees and had read the handbook herself.

Cagle's has a policy prohibiting sexual harassment and explaining to the employees how complaints about such matters may be pursued. The policy provides that

> If you believe you have been subjected to unlawful sexual harassment, you should, without fear of reprisal report that immediately to your department manager, department supervisor or the human resource manager. All complaints will be investigated in a prompt and confidential manner. If it is determined that violation of the sexual harassment policy has occurred, the company will take appropriate action to correct this situation and prevent further violations. Such action will include discipline up to and including termination.

On April 2, 2001, Lepera, for the first time, complained to Habegger that Moore had subjected her to sexual harassment. She stated that, beginning in October of 2000, Moore had pulled or tried to pull her across his lap a couple of times, had put his hands on her shoulders, had, in the course of admiring a ring on Lepera's hand, kissed or licked the top of her hand, had licked a candy bar and then given her the candy bar, had on one occasion stated something along the lines of how he could "break" or "snap" her "like a toothpick,"[3] had once smacked her "behind" with a file folder, would tell jokes and stories with sexual content and that he once led a conversation among several of the employees in the department about what kind of undergarments people in the office were wearing at the time. Although Lepera admitted that it was not uncommon for the women in the department to talk about their personal lives, including their sexual activity, she contends that she would tell Moore when she was offended by his behavior, jokes or stories. When Lepera met with Habegger about the alleged sexual harassment, Habegger called in his secretary to take notes of the meeting.

---

[3]Because no context was given for this statement, it impossible to determine whether it was made in relation to a sexual remark by Moore to Lepera or as part of one of his inappropriate jokes or stories. The remark will therefore be taken into consideration as part of the overall "totality of the circumstances" in relation to the other facts presented.

Habegger informed Lepera that he would speak to Moore and begin an investigation immediately.

Later that day, Habegger met with Moore to discuss Lepera's complaint. Habegger informed Moore of the charges against him, gave him a letter outlining the substance of the complaint and placed him on administrative leave pending the findings of the investigation. Habegger personally conducted the investigation and interviewed the clerks in the Human Resources department. During those interviews, Habegger learned that none of the women whom the plaintiff told Habegger had witnessed Moore's alleged harassment could confirm any of the incidents about which Lepera had complained. However, during the interviews, Habegger did learn, and for some things for the first time, about the numerous problems in the Human Resources department that needed further investigation. On April 6, 2001, Moore was placed on probation until June 1. On or about April 9, 2001, Habegger gave Moore a memo in which Habegger stated that "we need to make a management change so as to place a new emphasis on the Human Resources Department," effective immediately. Moore was offered the choices of resigning or being terminated. Moore chose to resign. On or about April 10, 2001, Habegger informed Plaintiff Lepera of the results of his investigation and that Moore had resigned.

During the investigation, Habegger learned that Moore and Lepera had not been running their department according to company policy. For instance, individuals who were hired for specific tasks were not working on those tasks. There were no defined roles for anyone in the department. The timekeeping

system was either not working correctly or being used incorrectly. Tardies, vacations and overtime were not being recorded correctly. Illegal aliens were working at the plant, thereby placing the corporation in legal jeopardy, because Lepera was processing their employment applications without verifying their legal or illegal status.[4] Because of these problems, Habegger consulted with Cagle's Chief Operating Officer, Jerry Gattis, about how to work toward getting the Perry Plant's Human Resources department on the right track. Habegger also informed Gattis of the recent sexual harassment allegations against Moore and that Moore had resigned. Gattis asked O'Neal Shaw, a Human Resources manager from another plant in Pine Mountain, Georgia with more than 12 years' experience with Cagle's, to work at the Perry Plant temporarily to investigate the problems reported by Habegger and determine how to make the department run more smoothly and efficiently. Shaw was appointed the temporary Acting Manager of the Human Resources Department. He was directed to conduct a thorough investigation of the department's operations and to evaluate the skill and ability of department personnel in order to improve employee performance in the department. Shaw reported to the Perry Plant the next day.

Upon his arrival in Perry, Shaw met with Habegger then met the Human Resources staff, first as a group then individually. He explained that he would be taking charge on an interim basis and that until a permanent replacement could

---

[4]There is some dispute regarding when Habegger learned of specific problems, either during his investigation or during a later investigation. Regardless, this is not a dispute of a "material" fact because when Habegger learned of which problems is immaterial. The material fact is that at some point Habegger learned about all the problems and took the actions described below.

be hired all staff in the department was to report directly to him. Shaw had already learned about the sexual harassment claim by Lepera against Moore from speaking to corporate counsel before he arrived in Perry. Shaw also quickly learned that the Human Resources department was in deplorable shape.[5] Through his investigation of the department, Shaw learned that the clerks were not performing the tasks for which they were hired and that as a result there was no accountability or follow-through on those responsibilities. Shaw learned that Plaintiff Lepera had been responsible for the attendance system where employees received points for absences and tardies and were supposed to be warned when they approached the limit beyond which they would be terminated. Shaw discovered that Lepera had not properly implemented that system and had terminated many employees summarily, without warnings, and let others continue to work even when they had exceeded their allotted attendance deficiency points. Shaw learned that employees were not being enrolled in the company insurance plan when they became eligible. New-Hire orientation sessions had not been properly conducted. Shaw also discovered that Plaintiff Lepera had very poor relationships with the clerks in the department. Shaw learned that the clerks did not like working for Lepera, that some had threatened to quit because Lepera interacted with them in a divisive or otherwise unprofessional manner and that some of the employees "hated" her. The clerks reported that Lepera was "high-

---

[5]There is some dispute over what Shaw learned and when and whether he attributed the deficiencies in the department to Moore, Lepera or both. Again, this is not a dispute of a *material* fact because (1) Moore had already resigned and his performance or lack thereof was no longer relevant to Shaw's investigation and (2) with Lepera as the sole remaining supervisory employee she was held responsible for the deficiencies that were attributable to her.

handed" and confrontational with production employees. At some point during the investigation, Shaw relieved Plaintiff Lepera of her supervisory duties, although she maintained her salary, retained her office and continued to have several of her old responsibilities such as being the Human Resources employee liaison and having responsibility for implementing and enforcing the attendance policies.

Rather than cooperate with the new, temporary leadership, Lepera retreated into her office and ceased to perform the responsibilities of her job and to interact with the other employees in general. She stopped meeting with employees, told the clerks she had been demoted and took a box of personal items home because, according to Lepera, Shaw had informed her that he may move her into a different office and she felt that if she moved into a smaller office she would not have room for all of her personal belongings. There is some dispute over an incident where Shaw assigned Lepera the duty of maintaining the bulletin boards where information was on display for all employees, such as federal and state employment laws and other important information. Lepera viewed the assignment as a demotion but Shaw testified that he considered the boards so important, because of the information provided therein, that he had taken personal responsibility for the boards at his home plant.

Habegger and Shaw communicated regularly about how the reorganization in the Human Resources department was proceeding. Shaw reported that he had experienced difficulties with Lepera regarding his instructions to carry out the bulletin board assignment, that Lepera was not communicating with other employees and that she had packed all of her personal belongings in a box as if

she was preparing to quit. During this time, three of the clerks from that department met with Habegger and stated that they could no longer work with Lepera because of her domineering and unprofessional approach to leadership. At some point during this process, Shaw determined that Lepera should be terminated based on her inability to effectively and properly lead the department, because she had completely stopped performing her responsibilities after her perceived demotion and had in several other respects failed to otherwise fulfill her responsibilities. Shaw communicated this recommendation to Habegger. Based on Habegger's meeting with the clerks, supported by what Shaw had told him about Lepera's poor attitude and track record, and Shaw's recommendation, Habegger agreed that Lepera should be terminated.

After she was terminated, Lepera filed sexual harassment charges with the EEOC. The EEOC then conducted an investigation and determined that there may be reason to believe that Lepera experienced sexual harassment and/or retaliation for complaining about the alleged harassment. Thereafter, the EEOC and Lepera filed this case against Cagle's alleging a hostile work environment sexual harassment claim and retaliation regarding her termination.

Summary Judgment Standard

Summary Judgment is appropriate when the pleadings, depositions, and affidavits submitted by the parties show no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). The Supreme Court has explained that the moving party's burden may be discharged "by 'showing' – that is, pointing out to the district court – that there is

an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Summary judgment is appropriate against

> A party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Id. at 322-23. "By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

> [T]he non-moving party must put forth more than a "mere 'scintilla'" of evidence; "there must be enough of a showing that the jury could reasonably find for the party." Walker v. Darby, 911 F.2d 1573, 1577 (11th Cir. 1990). "[T]here is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted.

Nyasuma v. Donley, 843 F. Supp. 1456, 1458 (M.D. Ga. 1994).

The plaintiffs correctly point out that, in the context of employment discrimination claims, the Eleventh Circuit has found that "nebulous questions of motivation and intent often make summary judgment inappropriate for disposition" of such claims. Grigsby v. Reynolds Metals Co., 821 F.2d 590, 595 (11th Cir. 1987). That case also held, however, that the inference of intentional

discrimination raised by a plaintiff's prima facie case may be stronger or weaker, depending upon the facts of the particular case. Id. Nonetheless, this Circuit has found that "[s]ummary judgments for defendants are not rare in employment discrimination cases." Earley v. Champion Int'l Corp., 907 F.2d 1077, 1081 (11th Cir. 1990). A plaintiff must "present concrete evidence in the form of specific facts. . . . Mere conclusory allegations and assertions will not suffice." Id.

Sexual Harassment Claim

To establish a sexual harassment claim under Title VII, a plaintiff must show (1) that she belongs to a protected group; (2) that she has been subjected to unwelcome harassment; (3) that the harassment must have been based on a protected characteristic of the employee, such as the employee's sex; (4) that the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment; and (5) that the employer is responsible for such environment under either a theory of vicarious or of direct liability." Walton v. Johnson & Johnson Services, Inc., 347 F.3d 1272, 1279-80 (11th Cir. 2003) (citation omitted).

"An adverse employment action is an ultimate employment decision, such as discharge or failure to hire, or other conduct that alters the employee's compensation, terms, conditions, or privileges of employment, deprives him or her of employment opportunities, or adversely affects his or her status as an employee." Bass, 256 F.3d 1095, 1118 (11th Cir. 2001) (citations omitted).

> Employer criticism, like employer praise, is an ordinary and appropriate feature of the workplace. Expanding the scope of Title VII to permit discrimination lawsuits predicated only on unwelcome

> day-to-day critiques and assertedly unjustified negative evaluations would threaten the flow of communication between employees and supervisors and limit an employer's ability to maintain and improve job performance. Federal courts ought not be put in the position of monitoring and second-guessing the feedback that an employer gives, and should be encouraged to give, an employee. Simply put, the loss of prestige or self-esteem felt by an employee who receives what he believes to be unwarranted job criticism or performance review will rarely – without more – establish the adverse action necessary to pursue a claim under Title VII's anti-discrimination clause.

Davis v. Town of Lake Park, Fla., 245 F.3d 1232, 1242 (11th Cir. 2001). "Work assignment claims strike at the very heart of an employer's business judgment and expertise because they challenge an employer's ability to allocate its assets in response to shifting and competing market priorities." Id. at 1244.

In the case at bar, Cagle's concedes, for the purposes of its summary judgment motion, that Plaintiff Lepera satisfied the first three elements of her prima facie case – that she is a woman who was subjected to unwelcome harassment that was based on her sex. However, Cagle's contends that Lepera fails to satisfy the last two criteria. Cagle's contends that Lepera failed to show that the harassment was sufficiently severe and pervasive to alter her work environment and failed to show that Cagle's should be held either directly or vicariously liable for the harassment.

Six months after the alleged harassment commenced, Lepera complained to Hebegger of a few instances of unwelcome contact with Moore. However, according to the defendant, Habegger's investigation did not uncover any evidence that substantiated the specific claims made by Lepera. Specifically, the clerks that Lepera claimed witnessed the alleged harassment denied having witnessed what

Lepera alleged and stated that Lepera initiated the contact and allegedly offensive jokes and stories. Regardless, considering these contentions in the light most favorable to the plaintiffs, the facts alleged by the plaintiffs simply do not rise to the level of "severe and pervasive" so as to alter her work environment as required by circuit precedent.

Factors to consider in the determination of whether harassment objectively altered an employee's terms or conditions of employment are: "(1) the frequency of the conduct; (2) the severity of the conduct; (3) whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interferes with the employee's job performance." Mendoza v. Borden, Inc., 195 F.3d 1238, 1246 (11th Cir. 1999) (citations omitted). "The courts should examine the conduct in context, not as isolated acts, and determine under the totality of the circumstances whether the harassing conduct is sufficiently severe or pervasive to alter the terms or conditions of the plaintiff's employment and create a hostile or abusive working environment." Id. (citations omitted). Construing the evidence in the light most favorable to Mendoza, the court found that she presented evidence of four categories of harassing conduct: (1) one instance in which [the alleged harasser] said to Mendoza 'I'm getting fired up;' (2) one occasion in which [he] rubbed his hip against Mendoza's hip while touching her shoulder and smiling; (3) two instances in which [he] made a sniffing sound while looking at Mendoza's groin area and one instance of sniffing without looking at her groin; and (4) [his] 'constant' following and staring at Mendoza in a 'very obvious fashion.'" Id. at 1247. The court held

that the conduct alleged by the plaintiff fell "well short of the level of either severe or pervasive conduct sufficient to alter her terms or conditions of employment.

In Gupta v. Fla. Bd. of Regents, the court noted that we "examine the statements and conduct complained of collectively to determine whether they were sufficiently pervasive or severe to constitute sexual harassment." Gupta v. Florida Bd. of Regents, 212 F.3d 571, 583 (11th Cir. 2000) (citing Mendoza, 195 F.3d at 1242). The "statements and conduct must be of a sexual or gender-related nature – 'sexual advances, requests for sexual favors, or conduct of a sexual nature, before they are considered in determining whether the severe or pervasive requirement is met. Innocuous statements or conduct, or boorish ones that do not relate to the sex of the actor or of the offended party (the plaintiff), are not counted. Title VII, as it has been aptly observed, is not a 'general civility code.'" Id. (citations omitted). With this in mind, the court found that the following conduct did not constitute sexual harassment: being told to steer clear of certain faculty members because they were evil and racist; helping the plaintiff find a place to live and to find inexpensive furniture; telling the plaintiff to come and see him if there was anything he could do for her because "[m]ere solicitude, even if repetitive, is not sexually harassing behavior;" suggesting lunch at Hooters; being told on one occasion in a six-month time period, "You are looking very beautiful;" frequently calling the plaintiff at home and making innocuous inquiries that, although annoying or inappropriate, did not equal severe or pervasive sexual harassment; pulling down his zipper and tucking his shirt in; staring at her twice, touching her ring and bracelet once, and repeatedly asking her to lunch. Id. at 583-585. The

court held that of "all the conduct about which [the plaintiff complained], the most serious is [the alleged harasser] placing his hand on [the plaintiff's] knee once, and his touching the hem of her dress once. He should not have done either of those things. But those were only two incidents in a period of six or seven months during which they were interacting (out of an even longer period during which the two worked for the University). Each incident was only momentary, and neither was coupled with any verbal suggestions or advances." Id. at 585.

In the case at bar, the plaintiffs failed to establish that Moore's alleged harassment was sufficiently severe or pervasive so as to alter the conditions of Lepera's employment. Although Lepera pointed out several incidents that occurred over a period of five or six months, this was hardly a "continuous barrage of sexual harassment." Johnson v. Booker T. Washington Broadcasting, 234 F.3d 501, 509 (11th Cir. 2000) (citation omitted). Granted, Moore's behavior was boorish and inappropriate but courts do not get involved in circumstances of inappropriate conduct only conduct that results in discrimination. The discussion next turns to whether the Court should hold Cagle's liable for Moore's conduct.

"In Ellerth and Faragher, the Supreme Court indicated that courts should no longer use the labels 'quid pro quo' and 'hostile environment' to analyze whether an employer should be held liable on an employee's Title VII claim concerning a supervisor's sex-based harassment." Walton, 347 at 1280 (citing Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 753, 765, 118 S. Ct. 2257, 141 L.Ed.2d 633; Faragher v. City of Boca Raton, 524 U.S. 775, 807, 118 S. Ct. 2275, 141 L.Ed.2d 662 (1998)). "Instead, when analyzing whether an employer should

be held liable for a supervisor's harassment, courts should separate these cases into two groups: (1) harassment which culminates in a 'tangible employment action,' such as discharge, demotion or undesirable reassignment, and (2) harassment in which no adverse 'tangible employment action' is taken but which is sufficient to constructively alter an employee's working conditions." Id. (citations omitted).

In Walton, the court found there was absolutely no evidence in the record that the plaintiff was discharged (as opposed to being harassed) *because* of her sex. Rather, the undisputed evidence showed that the plaintiff was discharged because she elected to take disability rather than return to work. Id. at 1281 (allegations of sexual harassment included claims of unwelcome sexual advances, including multiple allegations of rape). The plaintiff claimed that, because the disability resulted from the harassment of one of her supervisors, there was a causal link between the harassment and the discharge. The court held that "the question we must concern ourselves with, however, is whether [the defendant], when it terminated [the plaintiff], took her gender into account. And there is no evidence that [the defendant], or any of the employees acting on its behalf, considered [the plaintiff's] gender when the company terminated her." Id. at 1281-82. The plaintiff "was terminated because she failed to return to work after her short-term disability benefits expired in order to preserve her eligibility for long-term disability benefits." The court of appeals upheld the district court's summary judgment in the defendant's favor.

When a plaintiff fails to show she suffered an adverse employment action related to the alleged sexual harassment, the employer is entitled to the so-called Ellerth-Faragher defense. That is, "(a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise." Walton, 347 at 1286.

In this case, Shaw recommended to Hebegger that Lepera be terminated based on her inability to perform the job she was hired to perform. Therefore, this case presents a somewhat unique factual scenario in that the alleged harasser, Moore, did not terminate the plaintiff. Rather, Moore was terminated within days of Lepera's complaint to Hebegger. Hebegger, the next in command, was not even the one who made the initial decision to terminate Lepera. Hebegger accepted Shaw's recommendation to terminate the plaintiff after Shaw reported that Lepera had failed in nearly every aspect of the job for which she was hired. That is not to say that an employer may always escape liability by bringing in a third party to terminate someone who files a claim for sexual harassment. Rather, on the facts of this case, there is simply no evidence that Lepera was fired *because of her sex*. She was terminated after Shaw determined that she had not been adequately performing her job as a Human Resources supervisor.

Likewise, Lepera's claim that she was demoted because of her sex has no merit. Neither Moore nor Hebegger made the decision to temporarily remove Lepera as a supervisor. Shaw made the decision to temporarily take over *all*

supervisory duties while he was investigating the operations of the department based on (1) the fact that Moore, the department manager, had just been terminated and (2) Shaw wanted everyone in the office reporting directly to him until he could redistribute tasks to the individuals who were supposed to be performing them. During that time period, Lepera retained her official title, her salary, her office and continued to have several of her old responsibilities such as being the employee liaison and having responsibility for the attendance system. Again, there is simply no evidence that Shaw "demoted" Lepera based on her sex.

Finally, one of Lepera's allegations is that she was terminated prior to receiving any counseling regarding her allegedly poor performance or a "progressive discipline" plan as used with other employees. The defendant testified that the progressive discipline plan is in place for non-management, non-salaried employees. Indeed, after Lepera filed her sexual harassment complaint with Hebegger, Moore did not receive a progressive discipline plan. Rather, he was terminated, or allowed to resign, before the investigation concluded. The fact that Moore did not go through "progressive discipline" shows that, when circumstances or poor performance reach a certain level, Cagle's chooses to treat its managers differently and impose immediate discipline. Therefore, Lepera may not base her claim on the fact that she was not allowed to participate in a progressive discipline plan.

Based on the foregoing, Cagle's is entitled to the Ellerth-Faragher defense. First, none of the "adverse employment actions" can be attributed to the alleged sexual harassment. Second, Cagle's exercised reasonable care to prevent and

promptly correct any sexually harassing behavior. As soon as Lepera complained to Hebegger, Moore was placed on leave and was terminated within a few days. Prior to that, Lepera unreasonably failed to take advantage of the preventive and corrective opportunities provided by Cagle's. Lepera allowed the alleged sexual harassment to continue for at least five or six months without a complaint to anyone. Although Moore, the alleged harasser, was at the time her direct supervisor, Lepera could have gone to Hebegger at any time and reported the harassment. Lepera admitted she knew she could make an appointment with him when she needed to speak with him and that she had read the employee manual outlining the steps necessary to report sexual harassment. Further, she clearly had a relationship with the other supervisors such that she could report wrongdoing to them because she had in the past reported other concerns to Cagle's Chief Financial Officer. Finally, the harassment did not constructively alter Lepera's working conditions. Defendant Cagle's Motion for Summary Judgment on the Sexual Harassment claim is GRANTED.[6]

Retaliation Claim

To establish a prima facie case of retaliation, the plaintiffs must show that: (1) Lepera engaged in a protected activity; (2)she suffered an adverse employment action; and (3) there was a causal link between her protected activity and the adverse employment action. Bass, 256 F.3d at 1117 (citations omitted).

---

[6]Prior to Moore's termination, he had hired Randy Cisne to be an additional supervisor in the Human Resources department on the third shift. Although Cisne had been hired prior to Moore's resignation, he did not actually begin working at the plant until shortly after Shaw arrived. Therefore, to the extent the plaintiffs attempted to assert the claim, Lepera's "adverse employment action" cannot be based Moore's hiring Cisne as her "replacement."

"To establish a causal connection, a plaintiff must show that the decisionmakers were aware of the protected conduct, and that the protected activity and the adverse action were not wholly unrelated." Id. at 1119 (citations omitted). "Close temporal proximity between the protected activity and the adverse action may be sufficient to show that the two were not wholly unrelated." Id. (citations omitted).

Lepera engaged in a protected activity when she complained to Hebegger. However, even assuming she suffered an adverse employment action, for purposes of analyzing the retaliation claim, when she was eventually terminated, there was no causal link between her complaining to Hebegger and her termination. Although the decisionmakers (Shaw and Hebegger) were aware of her claim, the evidence shows the claim and the termination were wholly unrelated. The close temporal proximity between Lepera making the claim and the termination is not, in this case, sufficient to show that the two were related. Rather, Hebegger could have terminated Lepera when he terminated Moore. Shaw could have terminated Lepera immediately upon his arrival or shortly thereafter. Although only a few weeks passed between the complaint and Lepera's termination, there is no evidence she was terminated *because* she complained. Again, as more fully explained above, she was terminated because of her poor performance as a Human Resources Supervisor.

Even if the plaintiffs had satisfied the elements of a prima facie case of retaliation, the burden would have shifted to Cagle's to rebut the presumption of retaliation by producing legitimate reasons for the adverse employment action." Johnson, 234 F.3d at n.6. "If the defendant offers legitimate reasons, the

presumption of retaliation disappears. The plaintiff must then show that the employer's proffered reasons for taking the adverse action were actually a pretext for prohibited retaliatory conduct." Id. (citations omitted).

The Eleventh Circuit Court of Appeals has admonished that "federal courts do not sit as a super-personnel department that reexamines an entity's business decisions. No matter how medieval a firm's practices, no matter how high-handed its decisional process, no matter how mistaken the firm's managers, [courts do] not interfere. Rather our inquiry is limited to whether the employer gave an honest explanation of its behavior." Chapman v. Al Transport, 229 F.3d 1012, 1030 (11th Cir. 2000) (citation omitted). Federal courts "are not in the business of adjudging whether employment decisions are prudent or fair." Id. (citation omitted). "An 'employer may fire an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason.'" Id. (citing Nix v. WLCY Radio/Rahall Communications, 738 F.2d 1181, 1187 (11th Cir.1984)). Often mistaken for more than what it is, most plaintiffs fail to comprehend that "Title VII is not a federal 'civility code.'" Mendoza, 195 F.3d at 1245. While an employee who receives criticism or negative evaluations in the workplace may suffer in some way, the protections of Title VII simply do not extend to every action that makes an employee unhappy. Davis v. Town of Lake Park, 245 F.3d at 1242.

Even if the plaintiffs had produced evidence of a prima facie case of retaliation, Cagle's produced evidence that would have rebutted the presumption of retaliation by producing legitimate reasons for Lepera's termination. The record

is replete with evidence of mismanagement in the Human Resources Department, by Moore and Lepera. Lepera had never kept the timekeeping system up to date, allowing some people to not log in overtime, absences or tardies. Numerous individuals were not timely enrolled in the insurance plan and on several occasions were not paid for more than two weeks at a time. Considering the totality of the circumstances, all of these incidents were more than sufficient to serve as a basis for Lepera's termination. This Court is not in the business of adjudging whether Lepera's termination was prudent or fair. Cagle's is permitted to fire its employees for good reasons, bad reasons, reasons based on erroneous facts or for no reason at all, as long as it is not for discriminatory reasons. There was no retaliatory discrimination in this case. Defendant Cagle's Motion for Summary Judgment on the Retaliation claim is GRANTED.

SO ORDERED this 1st day of February, 2005.

William L. Owens, Jr.

WILBUR D. OWENS, JR.
UNITED STATES DISTRICT JUDGE