

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

JEFFREY REED,	)	
	)	
Plaintiff,	)	Civil No. 3:02-cv-10004
	)	
vs.	)	
	)	
IOWA DEPARTMENT OF	)	
HUMAN SERVICES, STATE OF	)	
IOWA, d/b/a IOWA DEPARTMENT	)	
OF HUMAN SERVICES, GAY TODTZ,	)	
THOMAS VILSACK, SALLY	)	
PEDERSON, CHARLES PALMER,	)	ORDER
JAY BARFELS, CHERRIE	)	
MCCLIMMONS, MARLYS	)	
KASEMEIER, DIANE DIAMOND, )	)	
KATHLEEN JORDAN, and CAROL	)	
FONUUA, Individually, )	)	
	)	
Defendants.	)	

On January 17, 2002, plaintiff filed a complaint against defendants, alleging sexual harassment in violation of Title VII and various state law claims. On February 19, 2003, defendants filed a motion for summary judgment. Plaintiff resisted defendant’s motion and filed a cross motion for summary judgment on March 10, 2003. Defendants replied to plaintiff’s resistance on March 12, 2003, and they resisted plaintiff’s motion for summary judgment on March 24, 2003.

In plaintiff’s Response To Defendant’s Statement of Undisputed Facts, filed on March 10, 2003, plaintiff stated that he “disputed” at least 36 of the facts alleged by defendants. However, plaintiff failed to reference anything in the record to support his position as required by Local Rule 56.1.

In its April 1, 2003 Order, the Court granted plaintiff the opportunity to clarify relevant dates pertaining to his hostile work environment claim. Plaintiff subsequently filed a supplemental brief in which he set forth a “Statement of Undisputed Facts.” *See* Brief On Resistance To Defendant’s Motion For Summary Judgment, filed April 21, 2003. Plaintiff cited portions of his initial complaint and his own deposition to support his statement of facts. He did not refer to deposition testimony of his supervisors or coworkers, nor did he reference any work related documents to support his claims. Defendants did not respond to plaintiff’s “Statement of Undisputed Facts.” The Court finds that defendants’ position on these “Undisputed Facts” was made clear in their previous submissions to the Court.

## I. FACTS

Plaintiff failed to appropriately respond to defendant’s statement of undisputed facts as required by Local Rule 56.1. Because plaintiff is proceeding *pro se*, the Court applied the Local Rules leniently. In carefully reviewing the record, the Court has made every effort to determine the relevant facts of this dispute. The following facts, which are supported in the record, are presented in a light most favorable to plaintiff.

Plaintiff, Jeffrey Reed, began working for the Scott County Department of Employment Services in Davenport, Iowa in December 1988. He was promoted to the Muscatine County Department of Human Services office in July 1989, where he worked as a counselor and social worker. Gaye Todtz (“Todtz”) was subsequently hired at the Muscatine County office. Within one month of her employment, Todtz made unsolicited advances toward plaintiff. She massaged his shoulders, talked about coming to his home to relax in his spa in the nude, and discussed plaintiff’s sex

life with her colleagues.

Plaintiff complained about Todtz to his supervisors. In 1991, he transferred to the Department of Human Services office in Scott County. Todtz also transferred to the Scott County office, where her behavior toward plaintiff resumed. Some time thereafter, plaintiff transferred from the Department of Human Services office to the Medicaid Case Management office in Scott County. Todtz remained at the Department of Human Services office, where she continued to discuss plaintiff's sex life with her coworkers.

In 1998, plaintiff feared that Todtz was going to transfer to the Medicaid Case Management office. He expressed his concern to his supervisor, Carol Fonua. Todtz never transferred to plaintiff's office.

In the spring of 1999, plaintiff suffered from gastritis. He left work due to his illness on March 2, 1999. At that time, he did not inform his supervisor that he wanted paid sick leave. Dr. Gary Anderson diagnosed plaintiff's condition and found that it commenced on March 2, 1999. Defendants approved sick leave under the Family and Medical Leave Act commencing on March 3, 1999. Although they were initially unwilling, defendants ultimately agreed to pay plaintiff for 4.5 hours of sick leave for March 2, 1999. Plaintiff refused to accept payment for March 2, 1999.

On April 15, 1999, plaintiff filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), claiming he was constructively discharged on May 4, 1999.

## II. APPLICABLE LAW AND DISCUSSION

### A. Summary Judgement Standard

Summary judgment is properly granted when the record, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Walsh v. United States*, 31 F.3d 696, 698 (8th Cir. 1994). The moving party must establish its right to judgment with such clarity there is no room for controversy. *Jewson v. Mayo Clinic*, 691 F.2d 405, 408 (8th Cir. 1982). "[T]he 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, 247-48 (1986). An issue is "genuine," if the evidence is sufficient to persuade a reasonable jury to return a verdict for the nonmoving party. *Id.* at 248. "Conclusory affidavits, standing alone, cannot create a genuine issue of material fact precluding summary judgment." *Rose-Maston v. NMR Hospitals, Inc.*, 133 F.3d 1104, 1109 (8<sup>th</sup> Cir. 1998). "As to materiality, the substantive law will identify which facts are material . . . . Factual disputes that are irrelevant or unnecessary will not be counted." *Id.*

At the summary judgment stage, the court should not weigh the evidence, make credibility determinations, or attempt to determine the truth of the matter. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Instead, the court's function is to determine whether a reasonable jury could return a verdict for the nonmoving party based on the evidence. *Id.* at 248. The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in the non-movant's favor. *Quick v. Donaldson Co.*, 90 F.3d 1372, 1377 (8<sup>th</sup> cir. 1996). "Because discrimination cases often turn on inferences rather than on direct evidence," the court is to be particularly deferential to the non-movant. *EEOC v. Woodbridge Corp.*, 263 F.3d 812, 814 (8<sup>th</sup> Cir 2001) (citing *Crawford v.*

*Runyon*, 37 F.3d 1338, 1341 (8<sup>th</sup> Cir. 1994)). “Notwithstanding these considerations, summary judgment is proper when a plaintiff fails to establish a factual dispute on an essential element of her case.” *Id.*

B. Title VII Hostile Work Environment

Plaintiff claims that defendant created a hostile work environment in violation of Title VII, 42 U.S.C. 2000(e). Title VII’s statute of limitations requires a plaintiff to file a complaint with the Equal Employment Opportunity Commission within 300 days after the alleged unlawful employment practice occurred. 42 U.S.C. § 2000e-5(e). On April 1, 2003, the Court granted plaintiff 20 days to file a brief explaining what harassment, if any, occurred within the 300-day period before April 15, 1999, the date his EEOC complaint was effectively filed. Plaintiff submitted a brief on April 21, 2003. Having carefully reviewed the record, the Court finds that there are no facts suggesting that harassing conduct occurred within the relevant time period. Therefore, the Court enters summary judgment in favor of defendants on plaintiff’s hostile work environment claim.

C. Title VII Retaliation

Plaintiff claims that defendants retaliated against him in violation of Title VII. To establish a prima facie case of retaliation, plaintiff must establish: (1) that he engaged in protected activity, (2) that there was a subsequent adverse action by the employer, and (3) that there is a causal connection between the protected activity and the subsequent adverse action. 42 U.S.C. § 2000e-3(a); *See also Kiel v. Select Artificials, Inc.*, 169 F.3d 1131, 1136 (8<sup>th</sup> Cir. 1999). Having carefully and liberally reviewed the record in a light most favorable to the *pro se* non-movant in this case, the Court finds that

plaintiff has failed to establish a prima facie case of retaliation.

i. Protected Activity

In December 1998, plaintiff told his supervisor, Carol Fonua, that he opposed the transfer of Todtz to the Scott County Case Management Unit office of the Iowa Department of Human Services. Plaintiff explained that Todtz sexually harassed him when they worked together in the past, and he feared she would continue to harass him if she transferred to the Case Management Unit office. Defendants argue that plaintiff's actions do not satisfy the first element of his prima facie case, because he cannot demonstrate that he had a "good faith, reasonable belief that the underlying conduct [he opposed] violated the law." *Wentz v. Maryland Casualty Co.*, 869 F.2d 1153, 1155 (8<sup>th</sup> Cir. 1989). For purposes of this motion, the Court will assume, without deciding, that plaintiff's complaint to Carol Fonua constituted a "protected activity."

ii. Adverse Employment Action & Causal Connection

Plaintiff's retaliation claim is based upon his allegations that defendants: (1) initially denied him sick leave, (2) refused plaintiff's medical doctor's recommendations, (3) barred plaintiff from the work place, (4) refused mediation for the "dispute" with Gaye Todtz, (5) interfered with his future job prospects; and (6) constructively discharged him. The Court finds that plaintiff's allegations of adverse employment actions are either not amply supported by the record or fail as a matter of law.

a. sick leave

Defendants did not pay plaintiff for 4.5 hours of sick leave on March 2, 1999, because plaintiff left work without informing his advisor that he wanted to take paid sick leave. In June 1999, the DHS Case Management Unit agreed to settle the grievance in plaintiff's favor. For reasons that are unclear

to the Court, plaintiff refused sign the proposed Settlement Agreement. The Court finds that plaintiff's allegation that he did not receive 4.5 hours of paid sick leave does not constitute "adverse employment action" under these circumstances. Moreover, plaintiff has not shown any causal connection between a protected activity and defendant's initial refusal to pay him for 4.5 hours of sick leave.<sup>1</sup>

b. refusing doctor recommendations

Plaintiff suffered from gastritis in the spring of 1999. His treating physician, Dr Gary Anderson, signed FMLA papers for plaintiff, stating that his gastritis commenced on March 2, 1999 and would likely last until May 1, 1999. Defendants approved FMLA leave for plaintiff and paid him sick leave commencing March 3, 1999. Eventually, defendants agreed to pay plaintiff for the 4.5 hours of sick leave on March 2, 1999. Plaintiff's allegation that defendants did not follow his doctor's recommendation for FMLA leave is unsupported by the record.

c. "barring" plaintiff from the workplace

Plaintiff came into the office on March 8, 1999, even though he was officially on sick leave at the time. The next day his supervisor, Carol Fonua, sent plaintiff a letter reminding him that he could not return to work until he had a physician's release. Plaintiff alleges that he was therefore "barred" from the office. The Court finds that these facts do not constitute an adverse employment action. The Court further finds that there is no evidence in the record suggesting that Ms. Fonua's action was

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<sup>1</sup> On December 4, 1998, plaintiff told his supervisor, Carol Fonua, that he opposed the transfer of Todtz to the Scott County Case Management Unit office. Even if this constituted a "protected activity," there is no indication in the record that defendants initial determination that plaintiff was not entitled to 4.5 hours of sick pay for his absence on March 2, 1999 is related to the December 4, 1998 discussion.

causally connected to a protected activity.

d. refusal to mediate

Plaintiff next contends that defendants' refusal to mediate the "dispute" involving Todtz constitutes an adverse employment action. Plaintiff wrote Ms. Fonua a letter on March 22, 1999 requesting mediation. Defendants refused to mediate, as Todtz had not transferred to plaintiff's Case Management Unit. The Court finds that defendants' unwillingness to mediate does not constitute an "adverse employment action."

e. interference with future job prospects

Plaintiff also alleges that defendants interfered with his future job prospects by not providing him with a reference letter. Ms. Fonua informed plaintiff that defendants' policy is to provide a requesting employer with the dates of the employee's employment and the last job classification held. Nothing in the record indicates that Ms. Fonua ever received a reference request regarding plaintiff from a prospective employer. It is understandable, then, that Ms. Fonua did not provide plaintiff's performance evaluations to anyone. The Court finds nothing in the record indicating that defendants interfered with plaintiff's future job prospects.

f. constructive discharge

Plaintiff contends that he was constructively discharged on May 4, 1999. "To constitute constructive discharge, a plaintiff must show more than just a Title VII violation by her employer." *Phillips v. Taco Bell Corp.*, 156 F.3d 884, 890 (8<sup>th</sup> Cir. 1998). Plaintiff must demonstrate that a reasonable person would find the working conditions intolerable, and that the employer deliberately rendered his working conditions intolerable. *Id.* "Such intolerability of working conditions is judged by

an objective standard, not the plaintiff's subjective feelings." *Id.* (internal quotation omitted.) "[T]o be reasonable an employee has an obligation not to assume the worst and not to jump to conclusions too quickly." *Id.* (internal quotation omitted).

Having carefully reviewed the record, the Court finds that plaintiff's constructive discharge claim is based on his fear that Todtz would some day be transferred to the Case Management Unit. Plaintiff quit his job even though Todtz was not transferred. The Court finds there is insufficient evidence in the record to establish plaintiff's constructive discharge claim. In summary, the Court finds that no reasonable jury could find that plaintiff suffered an adverse employment action as a result of engaging in a protected activity. Because the record does not support plaintiff's retaliation claim, summary judgment is entered in favor of defendants.

#### D. State Law Claims

Plaintiff alleges the common law claims of assault, premises liability, and intentional interference with a contract. He also alleges a claim of "intentional infliction of pain and suffering." Plaintiff filed these claims against the State of Iowa, the Iowa DHS, and its employees. The Court finds that none of these claims are viable.

##### i. Assault & Interference With Contract

The doctrine of sovereign immunity does not allow a plaintiff to sue the state or a state employee acting in his official capacity, absent a waiver of sovereign immunity. No waiver of sovereign immunity exists for the claims of assault or intentional interference with a contract. Iowa Code §§ 669.4, ("The immunity of the state from suit and liability is waived to the extent provided in this chapter."); and 669.14.4. (State's waiver of sovereign immunity does not apply to: "[a]ny claim arising

out of assault, . . . or interference with contract rights.”). *See also, Dickerson v. Mertz*, 547 N.W. 2d 208, 213 (Iowa 1996). Employees of the state are not personally liable for any claim which is exempted under § 669.14. *See Iowa Code § 669.14.23*. The Court therefore grants summary judgment in favor of all defendants on plaintiff’s assault and interference with contract claims.

ii. Premises Liability

A tort claim against the state or an employee acting within the scope of his office or employment with the state must be brought pursuant to Iowa Code Chapter 669. Iowa Code § 669.2.3(a); and *Dickerson*, at 213. A claim must be made in writing to the State Appeal Board within two years after it accrued. Iowa Code § 669.13. Plaintiff’s premises liability claim would have accrued by May 7, 1999, the date of his resignation. Plaintiff is now time-barred from filing a claim with the State Appeal Board. This Court therefore lacks jurisdiction to hear this claim. Summary judgment is entered in favor of defendants.

iii. Intentional Infliction of Pain and Suffering

In Count IV, plaintiff alleges the claim of “intentional infliction of pain and suffering.” Plaintiff has clearly indicated that he is not seeking emotional damages. *See Plaintiff’s Resistance to Mental Examination*, Defendant’s Appendix, 97. Thus, plaintiff is not claiming that defendants intentionally inflicted emotional distress. Although physical pain and suffering is included in the measure of damages awarded a tort victim, *Hysell v. Iowa Pub. Serv. Co.*, 559 F. 2d 468, 472-73 (8<sup>th</sup> Cir. 1977), “intentional infliction of pain and suffering” is not a cause of action. Because plaintiff failed to state a claim for which relief can be granted, the Court enters summary judgement in favor of defendants on

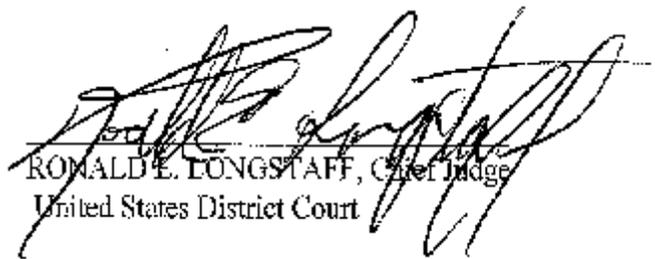
this claim.

IV. CONCLUSION

The Court enters summary judgment in favor of defendants on all counts.

IT IS SO ORDERED.

This 7th day of May, 2003.



RONALD E. LONGSTAFF, Chief Judge  
United States District Court