

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

2016 MAY -6 A 11:07

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

MAGALY HERNANDEZ,
10304 Barrington Park Circle,
Manassas, Virginia 20110

Plaintiff,

v.

FAIRFAX COUNTY FIRE AND
RESCUE DEPARTMENT,
12000 Government Center Parkway,
Fairfax, VA 22035

Defendant.

Civil Action No. 1:16cv502-AJT-MSN

COMPLAINT

(Employment Discrimination and Retaliation)

Introduction

1. Plaintiff Magaly Hernandez, brings this action pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), to redress unlawful employment discrimination and retaliation perpetrated against her by the Fairfax County Fire and Rescue Department ("Defendant"). Specifically, Plaintiff alleges that, because of her sex and her protected EEO activity, Defendant (a) subjected her to sexual harassment and a hostile work environment, and failed to take corrective action; and (b) formally reprimanded her and forcibly reassigned her to another station, thereby preventing her promotion.

Jurisdiction

2. This Court has subject matter jurisdiction over the claims raised herein pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5, and pursuant to the Civil Rights Act of 1991, 42 U.S.C. § 1981(a). Subject matter jurisdiction also exists pursuant to 28 U.S.C. § 1331, this action arising under the laws of the United States, thereby presenting a federal question.

Exhaustion of Administrative Remedies

3. Plaintiff sufficiently exhausted all available administrative remedies on her claims as the EEOC issued a dismissal and notice of right to file a civil action concerning these claims fewer than 90 days of the filing of this action.

Venue

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 2000e-5(f)(3), as Plaintiff was employed by Defendant in Fairfax County, Virginia, which is where the acts of discrimination and retaliation complained of herein took place, and where Plaintiff's personnel records are maintained by Defendant.

Parties

5. Plaintiff Magaly Hernandez is a woman who, at all times relevant to the claims in this Complaint, has served as a Firefighter for the Fairfax County Fire and Rescue Department.

6. Defendant Fairfax County Fire and Rescue Department is a municipal agency in the Commonwealth of Virginia, which has had more than 600 employees in each of the last 20 months.

Statement of Facts

7. Plaintiff Magaly Hernandez (hereinafter “Plaintiff” or “Hernandez”), is female and has been employed by Fairfax County as a Firefighter since December 2005. During her career with the Fairfax Fire and Rescue Department she has received multiple positive performance reviews.

8. In October 2013, she was transferred to Station 42, where she was placed under the supervision of Captain Jon Bruley. Shortly after Hernandez was placed under Bruley’s supervision, Bruley began to sexually harass her and create a hostile work environment for her because of her sex. Bruley’s harassing behavior included physically restricting Hernandez’s movements, frequently invading her personal space and touching her, making repeated unwanted sexual advances and comments toward her, demanding hugs, and tracking her movements including when she used the restroom.

9. On April 29, 2014, Hernandez complained about Bruley’s sexual harassment and the hostile work environment he created. Battalion Chief Cheri Zosh, Bruley’s direct supervisor, recommended that Bruley face disciplinary action for his behavior, as well as a psychological evaluation. Defendant’s Medical Director, Dr. Don Stewart, also recommended that Bruley be psychologically evaluated and advised he would arrange for it.

10. Despite this, Defendant took no corrective action against Bruley. Hernandez remained under Bruley’s supervision for three months after she complained. Emboldened, Bruley’s harassment of Hernandez intensified. He ostracized Hernandez from her colleagues and utterly ignored her, even though he was her direct supervisor.

11. Isolating Hernandez from her colleagues quite literally put Hernandez’s life in danger, as firefighters must rely on one another to survive life-threatening emergency situations. Bruley

also spread a rumor that Hernandez was having an inappropriate sexual relationship with Battalion Chief Zosh because she had attempted to address his sexual harassment of Hernandez, and made a baseless hostile work environment complaint against Hernandez. These actions made Hernandez's work environment more hostile, not least because a Deputy Chief has repeated the false rumor.

12. Instead of taking corrective action against Bruley, Defendant penalized Hernandez for complaining. Hernandez was reprimanded based upon an obviously frivolous complaint of workplace violence by Merneptah Funn, a male associate of Bruley's. Guy Morgan, Defendant's Internal Affairs Investigator, conducted an inept investigation – not questioning eyewitnesses, all of whom were women, and ignoring the observations of Battalion Chief Zosh. However, even when the Fire Chief heard from all of the eyewitnesses to the event Funn complained about, he chose to ignore the observations of the three female eyewitnesses and credit only Funn's ridiculous story. All of the women stated that Hernandez and Funn had a verbal disagreement while playing basketball and that at one point in the verbal exchange, Hernandez chided Funn for complaining of a hurt knee. Most importantly, all the women said that Hernandez never touched or threatened Funn or even raised her voice, and that it was Funn who had acted childishly. Yet, Defendant took only Funn's baseless accusations into consideration and reprimanded Hernandez. No action was taken against Funn. As a result of the reprimand, Hernandez was prevented from being promoted. She was also forced to involuntarily transfer to another station in June 2014. Even after she was transferred, Bruley continued to stalk her using Defendant's telestaff system to track her location and asking her supervisors about her.

13. In contrast to its treatment of Hernandez, Defendant has a history of letting its male employees who actually do physically attack its female employees off the hook with no discipline at all. On one occasion, several male firefighters duct taped a female firefighter to her chair. None were charged with workplace violence or issued any discipline. In another incident, a male lieutenant threatened a female firefighter by saying, "shut up or I'll fucking cut you." This lieutenant was not charged with workplace violence, yet Hernandez was found guilty and reprimanded for workplace violence because she merely chided Funn for his inept basketball play.

14. Hernandez grieved the letter of reprimand and transfer via Defendant's internal grievance process. The Fire Chief upheld the reprimand and transfer, again crediting Funn and not crediting the three female witnesses including a Battalion Chief, all of whom corroborated Hernandez and each other. Next, Defendant attempted to wrongfully deprive Hernandez of a hearing before an independent hearing officer. The Hearing Officer rejected this effort and held a hearing.

15. The Hearing Officer determined that the punishment was unwarranted. Specifically, he noted that the Fire Chief based his decision on the fact that the Battalion Chief stepped between Hernandez and Funn and Hernandez re-engaged, ignoring the fact that Funn also re-engaged and was one of the two people who were stepped between. However, in retaliation for her protected activity, Defendant continues to refuse to remove the baseless reprimand from Hernandez's file or reverse the transfer order. In addition, Defendant still has not taken any action to protect Hernandez from Bruley or address Bruley's harassment of her.

Statement of Claim

Claim I – Sexual Harassment --

16. As demonstrated in paragraph nos. 7 through 15 above, Defendant has subjected Plaintiff to unlawful harassment because of her sex in violation of Title VII of the Civil Rights Act of 1964, as amended, as an act of sex-based discrimination in employment practices.

17. As a direct and proximate result of this unlawful sex discrimination, Plaintiff has suffered and continues to suffer injuries in the form of personal and professional humiliation and embarrassment, loss of enjoyment of life, as well as other emotional distress, pain and suffering.

Claim II - Hostile Work Environment –

18. As demonstrated in paragraph nos. 7 through 15 above, Defendant has subjected Plaintiff to a hostile work environment because of her sex and her protected activity in violation of Title VII of the Civil Rights Act of 1964, as amended, as an act of sex-based discrimination in employment practices.

19. As a direct and proximate result of this unlawful sex discrimination, Plaintiff has suffered and continues to suffer injuries in the form of personal and professional humiliation and embarrassment, loss of enjoyment of life, as well as other emotional distress, pain and suffering.

Claim III – Retaliation

20. As demonstrated in paragraph nos. 7 through 15 above, Defendant has unlawfully retaliated against Plaintiff for engaging in protected activity by reprimanding her and forcing her re-assignment, which makes her ineligible for promotion, in violation of Title VII of the Civil Rights Act of 1964, as amended, as an act of unlawful reprisal in employment practices.

21. As a direct and proximate result of this unlawful reprisal, Plaintiff has suffered and continues to suffer injuries in the form of personal and professional humiliation and embarrassment, loss of enjoyment of life, as well as other emotional distress, pain and suffering.

Prayer for Relief

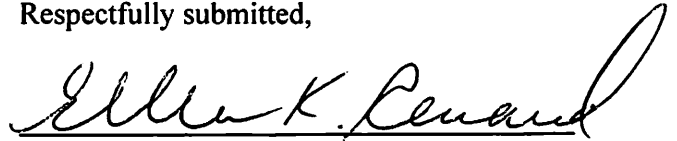
WHEREFORE, Plaintiff prays that this Court enter judgment in her favor and against Defendant on the claims of employment discrimination and retaliation brought herein pursuant to Title VII of the Civil Rights Act of 1964, as amended, and provide her with the following relief:

- (a) award Plaintiff compensatory damages against Defendant in the amount of \$300,000.00, plus interest;
- (b) order Defendant to return Plaintiff to her station of assignment prior to the wrongful transfer;
- (c) order Defendant to remove all negative documentation from Plaintiff's personnel file including the wrongful letter of reprimand;
- (d) enjoin Defendant from discriminating or retaliating against Plaintiff in the future;
- (e) award Plaintiff the costs of bringing and maintaining this civil action and the administrative charges that preceded it, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 2000e-5(k); and
- (f) award Plaintiff such other and further relief as the interests of justice may require.

Jury Demand

Plaintiff hereby requests a trial by jury on all issues of fact and measure of damages.

Respectfully submitted,

A handwritten signature in black ink, reading "Ellen K. Renaud". The signature is fluid and cursive, with the first name "Ellen" and last name "Renaud" clearly legible.

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