UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 07-CV-10416-RGS

EILEEN CARROLL

v.

JOINT APPRENTICE AND
TRAINING TRUST FUND

and

PHILLIP W. MASON

MEMORANDUM AND ORDER ON
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

January 8, 2009

STEARNS, D.J.

Eileen Carroll was employed full-time as an administrative assistant at the Joint Apprentice and Training Trust Fund (JATF) from 1995 until her termination in April of 2006. On February 28, 2007, Carroll filed suit against the JATF and Phillip W. Mason, her former supervisor and JATF's Director of Training, alleging unlawful discrimination and termination in retaliation for her assertion of protected rights under Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act (FMLA), and Mass. Gen. Laws. ch. 151B. Defendants have collectively moved for summary judgment on all claims.

BACKGROUND

The facts in the light most favorable to Carroll as the non-moving party are these.

Carroll began work at JATF in the early 1990s.[1] Although Carroll was initially hired as a clerical assistant on a part-time basis, she hankered for a full-time position in order to become eligible for benefits. When Carroll asked Mason for a promotion to full-time status, he was noncommital. In 1995, Carroll sought out Russell Sheehan, JATF's Business Manager, to ask for his support in her quest for a full-time job. Sheehan gave her the promotion on his own. To Carroll's surprise, Mason reacted angrily. He warned Carroll to never again go over his head.

Carroll's job duties involved tracking apprentices in JATF's electrician's training program. She spent three weeks of each month manually posting the hours worked by the apprentices. Her remaining tasks included the creation of paper and computer personnel files for new apprentices, arranging orientations, monitoring apprentices looking for jobs, keeping track of drug test results, and sending notices regarding unpaid union dues.

Carroll's troubles began in September of 2004 when she filed an internal sexual harassment claim against Mason.[2] JATF's Trustees investigated the complaint,

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[1]Although Carroll refers to the Joint Apprentice and Training Committee (JATC), defendants state that the proper designation is the Joint Apprentice and Training Trust Fund (JATF).

[2]In her harassment complaint, Carroll accused Mason of making several crude comments, including a remark to Carroll's sister that his head was not the only place where he was "getting grey." Carroll recalled another instance when after she informed Mason that all of the appropriate hotels for JATF guests were fully booked, he remarked that she must have connections at some of the local hotels, a statement that Carroll took to imply that she "got around." On an occasion when employees of DeWalt Tools came into the office, Carroll commented that they appeared to be in uniform because they wore matching clothes. Mason wondered out loud whether they were wearing matching underwear. Several weeks later, Mason decried the fact that drug testing was getting more expensive, and asked Carroll if she was willing to conduct the tests herself. When Carroll declined, Mason said, "It's not like you have to hold the cup while they piss." Later that day, Mason

interviewing Carroll, Mason, and several other staff members. On November 9, 2004, the Trustees sent a letter to Mason informing him of their finding that he had made several "crude and off color statements to Ms. Carroll and other office staff employees that are inappropriate and could be perceived as offensive." However, the Trustees also stated that they "did not find that [Mason] engaged in the more serious inappropriate conduct alleged by Ms. Carroll or that [he] harassed her as charged in her complaint."

After Carroll filed the complaint, Mason began to treat her distantly. He avoided any direct communications, and forbade Carroll from speaking to him without witnesses being present. At one point, Mason blocked Carroll's access to the JATF computer system, but did not inform Carroll that he had done so. Mason no longer assigned staff members to assist Carroll when she requested extra help, contrary to his past practice. Finally, in August of 2005 and in early 2006, Carroll asked Mason's permission to take additional training courses. She never received a an affirmative response.

In 2005 and 2006, Carroll sought treatment for depression and anxiety that she associated "at least in part" with the cold-shoulder treatment she was receiving from Mason. Carroll complained of sleep disruption, difficulty caring for herself and her children, concentration problems, and memory loss. In August of 2005, Carroll was hospitalized with abdominal pains. She subsequently missed work on a number of occasions through March of 2006 because of recurring stomach pain.

In the spring of 2006, Carroll spoke with Thomas O'Toole, JATF's Assistant Director,

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made a comment about nude sunbathers after he saw Carroll's screen saver, which depicted a seaside scene.

about her desire to take a leave of absence. She told O'Toole that she was in counseling and taking anti-depressants. Carroll stated that her relationship with her children was suffering, and that she needed a respite from the stress of the work environment. Carroll expressed concern that if she asked for leave, Mason would seize on the request as an excuse to fire her. O'Toole encouraged Carroll to do whatever she felt necessary to safeguard her health.

On April 7, 2006, Carroll emailed Mason requesting a thirty-day leave of absence for personal and health reasons. Mason immediately agreed, and asked Carroll to provide medical documentation. Carroll submitted a note from a Dr. William McDonald which stated: "[Carroll] has requested that I write a letter to her employer allowing her time for extended leave due to personal and health related issues. I have agreed with her that a short period of time off from work may be of benefit in helping the resolution of her current health status." Carroll began her leave on April 18, 2006, eleven days after Mason gave his approval.

While on leave, Carroll flew to Ireland to visit relatives. On May 16, 2006, Carroll emailed Mason to inform him that she planned to return to work the following week. Mason responded by email, telling Carroll that she had been laid off by letter on April 28, 2006. Mason attributed the termination to budgetary difficulties and the recent automation of most of Carroll's job duties.

This litigation followed. After filing a timely charge with the Massachusetts Commission Against Discrimination (later withdrawn), Carroll filed this Complaint asserting claims for violation of the FMLA (Count I); unlawful retaliation under Mass. Gen. Laws ch.

151B (Count II); retaliation in violation of the FMLA (Count III); retaliation in violation of the Americans with Disabilities Act (ADA) (Count IV); retaliation in violation of Title VII (Count V); and disability (handicap) discrimination in violation of Mass. Gen. Laws ch. 151B (Count VI), and the ADA (Count VII).

DISCUSSION

Summary judgment is appropriate where "the pleadings, discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A factual dispute is genuine only if there is sufficient evidence to permit a reasonable jury to resolve the dispute in the non-moving party's favor. NASCO, Inc. v. Pub. Storage, Inc., 29 F.3d 28, 32 (1st Cir. 1994). Summary judgment may be granted notwithstanding a dispute of fact where "the evidence is merely colorable, or is not significantly probative." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-250 (1986) (internal citation omitted).

Carroll alleges that Mason terminated her primarily in retaliation for her filing of the sexual harassment complaint. She also alleges that she was retaliated against for taking FMLA leave and discriminated against because of her related disability (depression). The familiar burden-shifting framework set out in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-804 (1973), applies to all of Carroll's claims. See Santiago-Ramos v. Centennial P.R. Wireless Corp., 217 F.3d 46, 53 (1st Cir. 2000) (sex discrimination and Title VII retaliation); Colburn v. Parker Hannifin/Nichols Portland Div., 429 F.3d 325, 335 (1st Cir. 2005) (FMLA retaliation); Marcano-Rivera v. Pueblo Int'l, Inc., 232 F.3d 245, 251 (1st Cir. 2000) (disability discrimination); Lipchitz v. Raytheon Co., 434 Mass. 493, 507-508 (2001)

(Chapter 151B).

Assuming for present purposes that Carroll has established a prima facie case of retaliation and discrimination, the burden shifts to defendants to articulate a legitimate, non-discriminatory reason for her termination.[3] Keeler v. Putnam Fid. Trust Co., 238 F.3d 5, 9 (1st Cir. 2001). Defendants in response contend that Carroll was laid off for the reasons cited by Mason: a budgetary shortfall and the computerization of most of her duties.

According to defendants (and undisputed by Carroll), JATF was running a deficit when the termination decision was made. Although JATF then had some $3 million in cash reserves, it was spending far more than it was earning. In FY 2004, JATF lost $275,000, an amount that increased to almost $500,000 in FY 2005. JATF's projected loss for FY 2006 was $260,000. At a meeting of the Trustees in April of 2006, Mason identified a number of possible cost savings, including lay-offs and a reduction of overtime. Defendants state that the Trustees approved the recommendations, and asked Mason to formalize and submit the proposals at the May meeting for final adoption. Defendants contend that after the April meeting, it was determined that because Carroll earned $54,000 to $60,000 per year (plus a 30 percent increment in benefits and pension contributions), the elimination of her job would result in a $100,000 annual savings.

Second, JATF states that the automation of the tracking of apprentice hours rendered Carroll's job obsolete. JATF made the decision to computerize in 2002, and the configuration of the system began in 2004. The final version was tested from January

[3]Defendants dispute that Carroll has made a prima facie showing that she is disabled within the meaning of the ADA. Cf. Criado v. IBM Corp., 145 F.3d 437, 442 (1st Cir. 1998).

through March of 2006. The automated system electronically posts hours worked to each apprentice's file, and when a pay raise is due, generates notices to contractors and apprentices. It also tracks apprentices' availability for work, their termination status, grades, and classroom attendance. According to defendants, the system rendered the core functions of Carroll's job - the manual entry of apprentice hours and the mailing of pay raise letters to apprentices and employers - redundant. The tasks that once took Carroll approximately three weeks of each month to perform, are now completed by the computer in a matter of two or three hours.

Given defendants' facially non-discriminatory justifications for Carroll's lay-off, the presumption of discrimination is rebutted, and it falls to Carroll to demonstrate that the reasons proffered by defendants are mere pretexts put forward to mask a discriminatory motive. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 510-511 (1993); Mesnick v. Gen. Elec. Co., 950 F.2d 816, 825 (1st Cir. 1991). Carroll offers several arguments in support of an inference of pretext. First, she argues that the minutes of the Trustees' meetings in April and May of 2006 contradict defendants' explanation of the reasons for her termination. While defendants state that budget issues were raised at the April 14, 2006 Trustees' meeting, Carroll contends that the minutes reveal that the budget discussion did not take place until the meeting of May 18, 2006, one month after she had been fired.

Carroll additionally argues that it was Mason, and not the Trustees, who agitated for the elimination of her position. She cites an email exchange between Mason and Michael Monahan, JATF's Business Manager, as evidence. On February 23, 2006, Mason wrote to Monahan stating, "Just want to let you know that I can appreciate your concerns about

the JATF budget and last year's losses. I think we've made some positive changes this year which should help or at least substantially reduce losses for this year, but I also think more can be done." Monahan responded that he was "curious what it would take to get out of deficit spending."

"Neither conclusory allegations nor improbable inferences are sufficient to defeat summary judgment. Rather, to withstand a properly supported motion for summary judgment, the opposing party must present enough competent evidence to enable a factfinder to decide in its favor on the disputed claims." Carroll v. Xerox Corp., 294 F.3d 231, 236-237 (1st Cir. 2002) (internal quotation marks and citation omitted). There is nothing in the record to corroborate Carroll's theories of pretext. The minutes of the April Trustees' meeting make clear that the third-quarter budget deficit was a prime topic of discussion. A document on the subject, created specifically for the meeting, in a section entitled "Expense Areas most promising for savings," projected that JATF could save, *inter alia*, $100,000 in staff salaries. The document also identified an additional $186,000 in potential savings, proposing the cutting of training and the giving out of free books and awards for apprentices. According to the April minutes, the Trustees voted to implement the proposed budget cuts. Defendants have also submitted the uncontradicted affidavit of John A. Penney, a former JATF Trustee. Penney states that the Trustees voted to cut one staff position at the April 2006 meeting, and because most of Carroll's duties had been computerized, he had agreed to eliminate her job. Monahan by affidavit states that in March of 2006, he asked Mason to prepare budget-cutting scenarios for the Trustees' consideration. Monahan also states that the Trustees voted to accept all but one of the six

cuts recommended by Mason.[4] Monahan states that it was he and Penney who decided that Carroll was the most logical candidate for a redundancy. As for Mason's email to Monahan, it was clearly written in response to Monahan's concerns about JATF's financial situation. The email exchange makes no mention of Carroll.[5]

Carroll also argues that JATF overstates the direness of its financial situation, pointing out that as of the date she was fired, JATF had $3 million in cash reserves and was making progress in reducing its operating deficit. That argument misses the mark. While JATF may have still had money in the bank, it was not obligated to exhaust its reserve before making staff cuts. Indeed the reserve had shrunk by over $ 1 million between 2004 and 2006. The word for the Trustees' decision to reverse that trend is prudence, not pretext.

Finally, Carroll claims that prior to her termination, she had been led to believe that the computerization project would not jeopardize her employment. She notes that although

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[4]The Trustees voted to keep a $40,000 line item providing free books to apprentices with perfect attendance records.

[5]The court notes that nineteen months passed between the time Carroll filed her complaint against Mason and her termination. "This temporal gap is sufficiently large so that, without some corroborative evidence, it will not support an inferred notion of a causal connection between the two." Bennett v. Saint-Gobain Corp., 507 F.3d 23, 32 (1st Cir. 2007). While there is almost no gap (only two weeks) between Carroll's taking of FMLA leave and her termination, defendants have offered a convincing justification for the elimination of her position. Carroll does not argue that defendants had no right to lay off an employee on FMLA leave. As 29 C.F.R. § 825.216 makes clear, an employer may lay off an employee granted FMLA leave so long as it would have taken the same action had the employee not taken leave. Cf. Smith v. F.W. Morse & Co., Inc., 76 F.3d 413, 422 (1st Cir. 1996) (same, simply because an employee on maternity leave loses her job in a reduction in force, absent a causal nexus between the employer's action and the protected trait, there is no discrimination claim.)

the project had languished for almost four years, Mason testified at his deposition that he had "communicated a sense of urgency" to the vendor to complete the project by April of 2006.[6] It may be true that JATF did not initially plan to eliminate Carroll's position, but it was not obligated to perpetuate a job that had been rendered obsolete. Carroll was not replaced; her job was effectively eliminated, and the few duties that remained were parceled out to other staff members. In sum, Carroll has offered no evidence "that would ground a reasonable inference that [JATF] would be moved to retaliate on [Mason's] behalf." Bennett, 507 F.3d at 32.[7]

Even granting a prima facie case, Carroll has not met her burden of persuasion on the critical issue of a discriminatory motive. "Even in employment discrimination cases where elusive concepts such as motive or intent are at issue, summary judgment is appropriate if the non-moving party rests merely upon conclusory allegations, improbable

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[6]Carroll argues that Mason was the motivating cause of her termination because he admitted at his deposition that he was embarrassed after she filed the internal complaint, and that he was "licking his wounds" as a result. He also admitted to exaggerating criticisms of Carroll in his 2004 meeting with the Trustees' investigators. Assuming that the accusation is true - although the supporting evidence is scant - it does not establish an inference of a discriminatory intent. An employee may be terminated for any number of unjust or unseemly or even irrational reasons - personal dislike or nepotism, for example - without violating the employment laws. These guarantee a workplace free of discrimination, not one free of petty tyranny. See Smith, 76 F.3d at 422 ("There is little doubt that an employer, consistent with its business judgment, may eliminate positions during the course of a downsizing without violating Title VII even though those positions are held by members of protected groups. . . . [A]n employer can hire or fire one employee instead of another for any reason, fair or unfair, provided that the employer's choice is not driven by . . . some . . . protected characteristic.").

[7]As an afterthought, Carroll suggests that pretext can be inferred from the fact that at the time of her termination, she was JATF's longest-serving employee. To Carroll, this means that she should not have been the first to be laid off. However, JATF states (and Carroll does not dispute) that it does not function under or recognize a system of seniority.

references, and unsupported speculation." Benoit v. Tech. Mfg. Corp., 331 F.3d 166, 173 (1st Cir. 2003) (citation omitted). As Carroll has offered nothing by way of substance to rebut defendants' legitimate and non-discriminatory reasons for her termination, her claims necessarily fail.[8]

CONCLUSION

For the foregoing reasons, the motion for summary judgment is ALLOWED. The Clerk will enter judgment in favor of defendants on all claims and close the case.[9]

SO ORDERED.

/s/ Richard G. Stearns

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UNITED STATES DISTRICT JUDGE

[8]To the extent that Carroll argues that she was treated less favorably following the filing of her internal complaint against Mason, she has failed to show that she suffered an adverse employment action as required. See Valentin-Almeyda v. Mun. of Aguadetta, 447 F.3d 85, 94 (1st Cir. 2006). To be "adverse," an employment action "must materially change the conditions" of a plaintiff's employment. Gu v. Boston Police Dep't, 312 F.3d 6, 14 (1st Cir. 2002). That is, something of consequence must be taken from the employee (discharge, demotion, or reduction of salary), or an accouterment of the job (e.g., a scheduled promotion) must be withheld. See Blackie v. Maine, 75 F.3d 716, 725 (1st Cir. 1996). Nothing of the sort happened in Carroll's case. Her pay, duties, and perquisites remained unchanged to the end.

[9]In light of the court's ruling on the motion for summary judgment, Mason's motion to dismiss will be terminated as moot.