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*2004 U.S. Dist. LEXIS 20065, **

JOYCE A. SCHWENZER v. EASTON HOSPITAL, T/A NORTHAMPTON HOSPITAL CORPORATION

CIVIL ACTION NO. 03-2520

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

2004 U.S. Dist. LEXIS 20065

September 21, 2004, Decided

September 22, 2004, Filed

DISPOSITION:

Defendant's motion for summary judgment denied. Defendant's motion in limine denied.

COUNSEL: [*1] For JOYCE A. SCHWENZER, Plaintiff: ANDREW S. ABRAMSON, LAW OFFICES OF ANDREW S. ABRAMSON, JENKINTOWN, PA.

For EASTON HOSPITAL, T/A NORTHAMPTON HOSPITAL CORPORATION, Defendant: WALTER T. GRABOWSKI, HOLLAND, BRADY & GRABOWSKI, PC, WILKES-BARRE, PA.

JUDGES: Juan R. Sanchez, J.

OPINION BY: Juan R. Sanchez

OPINION

ORDER

And now this day of September, 2004, Defendant's motion for summary judgment (docket # 9) and Defendant's motion in limine (docket # 13) are DENIED. n1

----- Footnotes ----- -1

Defendant's motion in limine seeks to exclude three pieces of evidence: 1) evidence concerning Plaintiff's separate workers' compensation claim if Defendant's summary judgment motion is granted; 2) evidence concerning Plaintiff's previous employment with Easton Hospital; and 3) evidence concerning other former employees who were discharged or resigned.

Defendant's motion in limine concerning Plaintiff's separate worker's compensation claim is denied as moot since we denied Defendant's summary judgment motion. Defendant's motion in limine regarding Plaintiff's previous employment with Easton Hospital is also denied. Plaintiff may only use evidence concerning her previous employment with Easton Hospital as rebuttal against Defendant's proffered non-discriminatory reason for terminating Plaintiff. Such evidence may not be used regarding Plaintiff's age and gender discrimination claims. Once the Plaintiff makes out a prima facie case of employment discrimination and the

employer provides a non-discriminatory reason for Plaintiff's termination, the Plaintiff must be afforded a fair opportunity to show the employer's stated reason was a pretext. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). Plaintiff may show such pretext with evidence from her previous employment with Easton Hospital.

Defendant's motion in limine regarding the termination of other older employees fired around the same time as Plaintiff is denied because the evidence's probative value outweighs its prejudicial effect. Fed. R. Evid. 403. Plaintiff seeks to provide evidence that when she was terminated, other older employees at the same level of management were also terminated and replaced by younger individuals. The age of other employees may be used as evidence to show the disparity in the treatment of older workers. Abrams v. Lightolier Inc., 50 F.3d 1204, 1216-17 (3d Cir. 1995) (finding magistrate judge's decision that testimonials of former employees had more probative value than prejudicial effect was not arbitrary and irrational). Such statistical evidence regarding the treatment of older employees compared to younger employees may be offered to bolster the age discrimination claim. Bruno v. W.B. Saunders Co., 882 F.2d 760 (3d Cir. 1988).

----- End Footnotes-----

[*2] BY THE COURT:

Juan R. Sanchez, J.

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