

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, MARK H. DAVIS, an individual, Plaintiff Intervenor, vs. WARREN PROPERTIES, INC., a Delaware Corporation, d/b/a WILLOW CLIFF APARTMENTS, Defendant.

FILED

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ROBERT D. DENNIS, CLERK U.S. DIST. COURT, WESTERN DIST. OF OKLA. BY [Signature] DEPUTY

Case No. CIV-00-676-M

DOCKETED

ORDER

Before the Court is plaintiff intervenor Mark H. Davis' Motion to Compel Defendant, filed April 6, 2001. On April 6, 2001, plaintiff Equal Employment Opportunity Commission filed its adoption of plaintiff intervenor's motion to compel, and defendant filed its response.

Plaintiffs move this court for an order compelling defendant to provide the following personnel records requested in plaintiff intervenor's First Requests for Production of Documents to Defendant, Request No. 3: (1) Albert Davis, (2) Tom Yardy, (3) Pam Yardy, (4) Kenneth Bledsoe, (5) Larry Glass, (6) Carrie Lonzo, (7) David Lonzo, (8) Geraldine Heenan, (9) John Heenan, and (10) Wendy Bledsoe. All of the above individuals except Albert Davis and Larry Glass were plaintiff intervenor's supervisors. Mr. Davis and Mr. Glass were co-workers of plaintiff intervenor.

The Tenth Circuit has permitted the discovery of personnel files and work records, even of other employees, in discrimination actions. See Weahkee v. Norton, 621 F.2d 1080, 1082-83 (10th Cir. 1980); Rich v. Martin Marietta Corp., 522 F.2d 333, 344-45 (10th Cir. 1975). The general rules

favoring discovery, however, are tempered by the relevancy of the information sought and the burden imposed by permitting discovery.


In the case at bar, according to defendant, plaintiff intervenor was terminated based on poor performance as evidenced by "write-ups" in his personnel file. Plaintiffs contend it is clearly a relevant inquiry to examine personnel files of other individuals employed by defendant at the same time as plaintiff intervenor to better ascertain the extent to which defendant's basis for terminating plaintiff intervenor was pretextual.

Upon review of the parties' submissions, the Court finds the personnel files of plaintiff intervenor's co-workers, Mr. Davis and Mr. Glass, are relevant and discoverable, but finds the personnel files of plaintiff intervenor's supervisors are not relevant nor discoverable. The Court further finds the production of these two personnel files is not burdensome.

Accordingly, the Court GRANTS IN PART and DENIES IN PART plaintiffs' Motion to Compel Defendant as follows:

- (1) The Court GRANTS the motion to compel as to the personnel files of Albert Davis and Larry Glass. Defendant is ordered to produce said personnel files by 9:00 a.m., Monday, April 9, 2001. Said production to be subject to an agreed confidentiality order as to any personal information contained in such files.
- (2) The Court DENIES the motion to compel as to the personnel files of Tom Yardy, Pam Yardy, Kenneth Bledsoe, Carrie Lonzo, David Lonzo, Geraldine Heenan, John Heenan, and Wendy Bledsoe.

IT IS SO ORDERED this 9th day of April, 2001.

  
VICKI MILES-LAGRANGE  
UNITED STATES DISTRICT JUDGE