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

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	:	CIVIL ACTION
Plaintiff,	:	
and VANESSA MARTIN-DENNIS,	:	
Intervenor-Plaintiff,	:	
v.	:	
CHUBB & SON, A DIVISION OF FEDERAL INSURANCE COMPANY,	:	
Defendant.	:	No. 03-4771

OPINION

_____Stengel, J. April 1, 2005

Vanessa Martin-Dennis, an insurance underwriter employed by Chubb & Son, first brought her discrimination claims to the Equal Employment Opportunity Commission ("EEOC"). After the EEOC filed this action,[1] Martin-Dennis intervened, raising a claim under the Equal Pay Act as well as discrimination and retaliation claims.[2] According to the EEOC complaint, Chubb paid Martin-Dennis, a black female, less than a white male employee who was performing substantially equal work. Chubb filed a motion for summary judgment, arguing that the claims of unequal pay must be denied because Martin-Dennis and the male employee did not perform "equal work" and because the pay differential was based on factors other than sex.

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[1] The EEOC based the action on violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., as well as a violation of the Equal Pay Act, 29 U.S.C. § 206 et seq.

[2] Martin-Dennis' discrimination claims were filed under Title VII, the Civil Rights Act of 1866, 42 U.S.C. § 1981, and the Pennsylvania Human Relations Act ("PHRA"), 43 Pa.C.S.A. § 951, et seq. Her retaliation claims were filed under Title VII and the PHRA.

Chubb also argues that the additional claims must be dismissed because Martin-Dennis cannot prove race or sex discrimination or retaliation. I will grant Chubb's motion as it relates to the retaliation claims. However, I will deny the motion as it relates to the Equal Pay Act and discrimination claims.

I. BACKGROUND

A. Ms. Martin-Dennis' Job

Chubb, an insurance carrier, markets a full range of commercial and personal lines of insurance through independent agencies throughout the United States. Chubb sells its commercial products through its Commercial Insurance Specialty ("CIS") department. In October 1999, Chubb hired Vanessa Martin-Dennis, a black female, to work in the Philadelphia branch as an underwriter for the CIS department's Country Club Program at an annual salary of $48,000.00.[3] Chubb's Country Club Program was a cooperative effort with Venture Insurance Programs, an insurance agency in West Chester, Pennsylvania. Chubb sells various commercial lines of insurance to select golf and country clubs, using Venture as a broker. Venture markets the insurance to local brokers throughout the country. These local brokers submit applications for coverage from interested golf and country clubs to Venture.

By 2000, Chubb and Venture had prepared underwriting guidelines for the Country Club Program. Venture would screen insurance applications and forward to Chubb those qualified

[3] Ms. Martin-Dennis worked for several insurance companies as an underwriter assistant or rater before joining Chubb. In 1997, she earned a college degree and, in 1998, obtained her first underwriter position at CGU Insurance Company. Her last salary at CGU was approximately $42,000.00, $6,000.00 less than her first Chubb salary. Martin-Dennis acknowledged that by 1999, when she interviewed at Chubb, her position at CGU was about to be eliminated and she "had been pretty much let go." Before joining Chubb, Martin-Dennis had no experience rating or underwriting the insurance needs of golf courses or country clubs.

under the guidelines. Vanessa Martin-Dennis' job involves receiving the pre-qualified applications from Venture and arranging for the pricing and processing of the proposed policies. When an application exceeds her underwriting authority, Martin-Dennis refers it to her supervisor.

B. Mr. Kunzman's Job

In March 2002, Scott Betlesky, a Chubb manager in New York, was named to head the Philadelphia CIS department. Betlesky decided to hire a second full-time underwriter since the Country Club Program had "grown too large for one underwriter to handle." For this position, he selected Ken Kunzman, a former Venture employee who had been involved with the Country Club Program at Venture in both marketing and underwriting from early in the program's history. Kunzman, a white male, joined Chubb on July 9, 2002 at an annual salary of $73,000.00.[4] Chubb contends that Kunzman's initial salary was based on several factors: his experience at Venture, his $73,000.00 annual compensation in his previous position, Venture's strong recommendation, Betlesky's feeling that he should not lose Kunzman to another employer, Kunzman's other work experience, and his presentation at his interview.

Upon Kunzman's hiring, Betlesky split the "package portion" of country club business[5] so that Kunzman handled country clubs starting with the letters "A" through "M," and Martin-Dennis handled letters "N" through "Z," an even division based on total premium volume.

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[4] Martin-Dennis, who joined Chubb nearly three years earlier, was earning a salary of $52,650.48 at the time of Kunzman's hire.

[5] Since 2002, Chubb's country club business has largely been broken out into a standard package of policies and other separate individual lines of coverage not included with the package. The standard package consists of property, general liability, crime, and inland marine policies which Chubb typically markets together. It does not include workers' compensation coverage, which must be purchased separately.

Betlesky assigned Kunzman full responsibility for all of the Country Club Program workers' compensation referrals because he had worked with their line while employed at Venture.[6]

Kunzman handled all of the Country Club Program workers' compensation referrals for nearly two years until June 1, 2004, when, on Martin-Dennis' request, the referrals were split on the same basis as the "package portion" of the work. Previously, Martin-Dennis had never asked to handle the workers' compensation referrals.

Michael DeMarco, a Chubb supervisor in New York, came to Philadelphia to replace Betlesky as CIS department manager in the fall of 2003. DeMarco met with each of the CIS underwriters, including Martin-Dennis and Kunzman. Kunzman told DeMarco that he would like to transition from the Country Club Program to the more challenging non-country club side of the CIS department, known as "CIS Proper." The CIS Proper accounts differ significantly from the Country Club Program. The Country Club Program is limited to golf and country clubs; CIS Proper accounts involve policies for any number of different types of businesses with a wide variety of risks to underwrite.

When DeMarco asked Martin-Dennis if she had the same interest, she responded that she wanted to speak with her attorneys before committing one way or the other. After speaking with her attorneys, she said that she had no interest in the CIS Proper accounts. DeMarco then assigned Kunzman approximately ten active CIS Proper agencies, which he was expected to handle along with his country club book of business. The agencies had previously been serviced by another underwriter, Laura Burns, and became available when she transferred to Washington,

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[6] Before Kunzman's arrival, Jim Cortellessa, Betlesky's predecessor as manager of the CIS department, had personally handled the workers' compensation portion of the business.

D.C.

In December 2004, Kenneth Kunzman left the employment of Chubb. Ms. Martin-Dennis is still a Chubb employee.

C. The EEOC and Ms. Martin-Dennis' Case Against Chubb

The EEOC contends that: (1) Chubb engaged in sex and race discrimination against Vanessa Martin-Dennis because Kunzman was hired "as a pay band 5 employee" while Martin-Dennis was hired "at a pay band 4 level" and (2) Martin-Dennis continued to be compensated at a rate significantly lower than the rate paid to Kunzman for substantially equal work. Pl.'s Compl., at 3-4.

On October 10, 2003, the Honorable R. Barclay Surrick granted Martin-Dennis' motion to intervene in this matter. In her amended complaint, Martin-Dennis notes that she had twenty years experience in the insurance industry prior to her employment with Chubb, including seven years experience in underwriting. Intervenor Pl.'s Amended Compl., at 4. Ms. Martin-Dennis contends: (1) that she is the only black female underwriter in the program business unit, a highly specialized unit and major source of revenue for the CIS department; (2) that by her efforts and skill, the country club portfolio "has increased in value and is a substantial generator of income" for Chubb; (3) that between 1999 and the end of 2002, Martin-Dennis built "a book of business in the country club program from $2.5 million dollars to $15 million dollars"; and (4) that from 1999 to July 2002, Martin-Dennis wrote approximately $250,000.00 to $500,000.00 worth of premiums per month. Id. at 4-5. According to Martin-Dennis, "This amount is far in excess of [Chubb's] goal for her of $125,000 per month for new business." Id. at 5.

Ms. Martin-Dennis alleges that she "has not been treated in [a] manner consistent with

her accomplishments and less favorably than white males employed with [Chubb]." Id. As an example, Martin-Dennis cites her assignment at Venture, where she "was treated in a hostile and offensive manner . . . including but not limited to shunning and having her office space relocated to a small area in the rear of the building." Id. at 6. Martin-Dennis complains that she reported this treatment to Chubb, but no steps were taken to remedy the situation. Id. Instead, Venture requested that she "not be assigned to work at that location and [Chubb] complied with this request." Id.

Martin-Dennis complains that she had an interest in applying for the position of manager of the CIS department and inquired as to when the opening would be posted. Id. at 7. However, Chubb "did not post the position, but transferred a white male, Scott Betlesky, into the position." Id. Betlesky then became Martin-Dennis' supervisor. Id.

Martin-Dennis, who was the only underwriter assigned to the business unit for golf courses, claims that there was no reason for Kunzman's hire "since the Country Club business book did not require two underwriters." Id. at 8. To provide Kunzman with work, Chubb divided the portfolio that Martin-Dennis helped build since her placement in the program business unit and assigned him one-half of the accounts formerly handled by Martin-Dennis. Id. Martin-Dennis states that because Kunzman was not an experienced underwriter, she was required to assist Kunzman in learning the skills necessary for underwriting. Id.

Martin-Dennis contends that she should have been placed in a higher pay band. Id. at 6. Although Chubb has given her bonuses and annual increases, "these increases are less than those given to white males doing similar work for [Chubb], including but not limited to Kenneth Kunzman." Id. at 7. Moreover, "her base salary is presently less than white males doing similar

work for [Chubb], including but not limited to Kenneth Kunzman." Id. According to Martin-Dennis, Kunzman "is presently being paid a salary approximately $10,000.00 to $12,000 more" than her salary. Id. at 12. Overall, Martin-Dennis estimates that she has been paid over $20,000.00 less in base salary than Kunzman. Id.

Martin-Dennis states that she made internal complaints regarding what she believed was discrimination. Id. at 9. Thereafter, Martin-Dennis was subjected to "excessive criticism" by her supervisors at Chubb. Id. Specifically, Martin-Dennis states that she was excluded from business-related meetings. Id. at 10. She was not afforded the opportunity to attend in-house training or to work in the workers' compensation Country Club Program. Id. Furthermore, Martin-Dennis was not invited to client-underwriter working lunches. Id. These actions caused Martin-Dennis to suffer "considerable distress." Id. at 11.

Martin-Dennis contends that after she filed formal charges of discrimination with the EEOC and the Pennsylvania Human Relations Commission on October 22, 2002, her work environment worsened. Id. In September 2003, when Betlesky left, she requested consideration for his position, but DeMarco, another white male, was selected, even though he "had limited if no specific or relevant experience in the work done by the Philadelphia Region or the Country Club program to which Ms. Martin-Dennis is assigned." Id.

According to Martin-Dennis, DeMarco has continued the practice of assigning Kunzman work "outside of the Country Club program, including several Commercial Agent assignments." Id. She contends that these assignments will provide Kunzman with opportunities Martin-Dennis "does not and will not have," including having an assistant. Id. at 12.

On March 12, 2004, Martin-Dennis filed a supplemental charge of discrimination with

the EEOC. On March 26, 2004, the EEOC relinquished jurisdiction of the supplemental charge and issued Martin-Dennis a right to sue letter.

II. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." F.R.C.P. 56(c). The moving party bears the initial burden of showing that there is no genuine issue of material fact. Highlands Ins. Co. v. Hobbs Group LLC, 373 F.3d 347, 350-51 (3d Cir. 2004). Once the moving party has carried its burden, the nonmoving party must come forward with specific facts to show that there is a genuine issue for trial. Williams v. West Chester, 891 F.2d 458, 464 (3d Cir. 1989). A fact is "material" if its resolution will affect the outcome under the applicable law, and an issue about a material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The court must draw all justifiable inferences in favor of the nonmoving party. Highlands Ins. Co., 373 F.3d at 351.

III. DISCUSSION

A. The Equal Pay Act Claims

The Equal Pay Act claims are based on the pay differential between Ms. Martin-Dennis and Mr. Kunzman during Kunzman's period of employment with Chubb.[7] Claims based upon

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[7] The Equal Pay Act provides, in pertinent part:

> No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the

the Equal Pay Act "follow a two-step burden-shifting paradigm." Stanziale v. Jargowsky, 200 F.3d 101, 107 (3d Cir. 2000). The plaintiff must first present a prima facie case by "demonstrating that employees of the opposite sex were paid differently for performing 'equal work'--work of substantially equal skill, effort and responsibility, under similar working conditions." Id. "The burden of persuasion then shifts to the employer to demonstrate the applicability of one of the four affirmative defenses specified in the Act." Id. Since the employer has the burden of proof at trial, "in order to prevail at the summary judgment stage, the employer must prove at least one affirmative defense 'so clearly that no rational jury could find to the contrary.'" Id. The employer must produce sufficient evidence from which a reasonable finder of fact could conclude that the proffered reasons actually motivated the wage disparity. Id. at 107-08.

There is no question about a pay differential. Chubb paid Mr. Kunzman, an underwriter, more than it paid Ms. Martin-Dennis, also an underwriter. The question here is whether they were paid differently for performing "equal work." Equal work is defined as "work of substantially equal skill, effort and responsibility, under similar working conditions." Id. at 107. Mr. Kunzman and Ms. Martin-Dennis were each underwriters in the Country Club Program and they shared that work. Mr. Kunzman had an additional assignment to handle workers' compensation insurance referrals which Chubb contends involved more effort and responsibility and involved more skill than the country club package assignment. The EEOC and Ms. Martin-

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> performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.

29 U.S.C. § 206(d)(1).

Dennis do not contest Kunzman's additional responsibilities for workers' compensation referrals. Rather, the EEOC and Ms. Martin-Dennis refer to these additional duties as "insubstantial" and contend that they did not require a different level of skill, effort, and responsibility. The EEOC notes that Kunzman did not have these additional duties when he first came to Chubb and that his salary at his initial hire was greater than Ms. Martin-Dennis' salary. It does appear that Kunzman and Martin-Dennis were hired to do the same job at first, but paid differently. When Kunzman's job changed and whether the change was "substantial" would appear to present questions of fact. I am not, under these circumstances, able to find that there is no disputed question of fact over whether these two people performed equal work.

Further, assuming, arguendo, that there was unequal pay for equal work, the burden would shift to Chubb to prove at least one affirmative defense. It does not appear that the affirmative defenses of (1) seniority system, (2) a merit system, or (3) a system which measures earnings by quantity or quality of production are involved in this case. The fourth affirmative defense discussed by Stanziale and the one which applies to this case is a differential based on any factor other than sex. Chubb notes that these other factors include Kunzman's prior experience with Venture, Kunzman's $73,000.00 annual salary in his previous position, Venture's strong recommendation, Kunzman's other work experience, his presentation at his job interview, and Chubb's feeling that, given Kunzman's experience with Venture, it should not lose Kunzman to another carrier. With the assertion of these justifications, the burden shifts to the EEOC and Ms. Martin-Dennis to show that these justifications are not worthy of credibility or are "pretextual." Whether Chubb's justifications for the unequal pay truly motivated the decision to pay Kunzman more than it paid Ms. Martin-Dennis will depend on testimony from

Chubb. It appears that there would be an element of credibility evaluation in determining just how strong these factors were in Chubb's evaluation of Mr. Kunzman's salary. For me to grant summary judgment on this equal pay claim in favor of Chubb, I am required to find that there were reasons other than gender which determined the salary differential and this finding must be so clear that no rational jury could find to the contrary. Factoring in the need to assess the credibility of Chubb's witnesses, who presumably will testify as to why they paid Mr. Kunzman more than they paid Ms. Martin-Dennis, it does not appear that this issue can be resolved on summary judgment. Accordingly, I will deny Chubb's motion for summary judgment as it relates to the Equal Pay Act claims.

B. The Gender Discrimination Claims[8]

A violation of the Equal Pay Act constitutes a violation of Title VII. Miller v. Beneficial Management Corp., 977 F.2d 834, 846 (3d Cir. 1992); Ryan v. General Machine Products, 277 F.Supp.2d 585, 595 n.7 (E.D.Pa. 2003). Employer liability under the PHRA follows the standard applied under Title VII. Knabe v. Boury Corp., 114 F.3d 407, 410 n.5 (3d Cir. 1997) (indicating that employer liability under the PHRA follows the standards set out for employer liability under Title VII). Because there are disputed issues of material fact regarding a violation of the Equal Pay Act, I find that there are disputed issues of material fact regarding the Title VII and PHRA claims of gender discrimination. Accordingly, Chubb's motion for summary judgment is denied as it relates to the EEOC's Title VII claim of gender discrimination. Furthermore, Chubb's motion for summary judgment is denied as it relates to Martin-Dennis' Title VII and PHRA

[8] The EEOC raises a claim of gender discrimination under Title VII, and Martin-Dennis raises claims of gender discrimination under Title VII, Section 1981, and the PHRA.

claims of gender discrimination.

Although the legal standard for a Section 1981 case is identical to the standard in a Title VII case, Lewis v. University of Pittsburgh, 725 F.2d 910, 915 n.5 (3d Cir. 1983) (indicating that the standard of proof for a Section 1981 case is identical to the standard of proof for a Title VII case), gender-related claims are not cognizable under Section 1981. Anjelino v. New York Times Co., 200 F.3d 73, 98 (3d Cir. 1999). Consequently, Martin-Dennis' Section 1981 claim of gender discrimination cannot stand.

C. The Race Discrimination Claims[9]

In order to establish a claim of race discrimination, a plaintiff must demonstrate that she was performing work substantially equal to that of a white employee who was compensated at a higher rate than she was. Aman v. Cort Furniture Rental Corp., 85 F.3d 1074, 1087 (3d Cir. 1996). In this case, it is undisputed that Chubb paid Martin-Dennis, who is black, less than Kunzman, who is white. Moreover, as this court indicated above, there is a genuine issue of material fact regarding whether Martin-Dennis and Kunzman were performing substantially equal work. Accordingly, Chubb's motion for summary judgment is denied as it relates to the EEOC Title VII claim of race discrimination and as it relates to Martin-Dennis' Title VII, Section 1981, and PHRA claims of race discrimination.

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[9] The EEOC raises a claim of race discrimination under Title VII, and Martin-Dennis raises claims of race discrimination under Title VII, Section 1981, and the PHRA. As this court indicated above, employer liability under the PHRA "follows the standard applied under Title VII." Knabe, 114 F.3d at 410 n.5. Furthermore, the legal standard for a Section 1981 case is identical to the standard in a Title VII case. Lewis, 725 F.2d at 915 n.5. Accordingly, this court need not analyze these claims separately.

D. Martin-Dennis' Retaliation Claims[10]

Martin-Dennis claims that Chubb retaliated against her for filing internal complaints and for filing complaints with the EEOC and the Pennsylvania Human Relations Commission for the alleged discriminatory acts set forth above. She contends that Chubb retaliated by creating a "hostile work environment."

A plaintiff raising a claim of retaliation must first establish a prima facie case. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 142 (2000). In order to establish a prima facie case of retaliation, a plaintiff must demonstrate that: (1) she engaged in a protected activity; (2) the employer took an adverse action against her after or contemporaneous with the protected activity; and (3) there is a causal link between the activity and the adverse action. Krouse v. American Sterilizer Co., 126 F.3d 494, 500 (3d Cir. 1997).

Once a prima facie case of retaliation is established, the defendant must produce a legitimate, non-discriminatory reason for the employment action taken against the plaintiff. Reeves, 530 U.S. at 142. Once a legitimate, non-discriminatory reason is proffered, the plaintiff must proffer sufficient evidence for the finder of fact to conclude by a preponderance of the evidence that the legitimate, non-discriminatory reason offered by the employer is a pretext for retaliation. Id. at 143. The plaintiff can prove pretext by presenting evidence that: (1) casts sufficient doubt upon each legitimate reason proffered by the defendant so that a finder of fact could reasonably conclude that each reason was a fabrication; or (2) allows a finder of fact to infer that retaliation was more likely than not a motivating or determinative cause of the

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[10] Martin-Dennis raises retaliation claims under Title VII and the PHRA. Because employer liability under the PHRA "follows the standard applied under Title VII," Knabe, 114 F.3d at 410 n.5, this court can address these claims together.

employment action. Fuentes v. Perskie, 32 F.3d 759, 762 (3d Cir. 1994).

Chubb argues that because there was no "hostile work environment," there was no adverse action and, therefore, no prima facie case of retaliation. Further, Chubb argues that if Martin-Dennis could establish a prima facie case of retaliation, she cannot prove that Chubb's legitimate, nondiscriminatory reasons for the employment action are actually a pretext for retaliation and the retaliation claims must be dismissed.

To establish a prima facie case of hostile work environment, a plaintiff must show: (1) that she suffered intentional discrimination because of her membership in a protected class; (2) that the discrimination was pervasive and regular; (3) that the discrimination detrimentally affected her; (4) that the discrimination would have detrimentally affected a reasonable person in the same position; and (5) the existence of respondeat superior liability. West v. Philadelphia Electric Co., 45 F.3d 744, 753 (3d Cir. 1995). To establish a hostile work environment, a plaintiff must show harassing behavior "sufficiently severe or pervasive" to alter the conditions of her employment. Pennsylvania State Police v. Suders, --- U.S. ---, 124 S.Ct. 2343, 2347 (2004). A court must consider the totality of the circumstances when determining whether the alleged harassment is sufficiently severe or pervasive to constitute a hostile work environment. Andrews v. City of Philadelphia, 895 F.2d 1469, 1482 (3d Cir. 1990). Factors which may indicate a hostile work environment include: "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993).

According to Martin-Dennis, the hostile work environment was created by Betlesky

telling her that what others were paid was "none of her business" and calling her a "liar and a troublemaker," denigrating her "leadership ability to be a Team Manager," advising her to "consider her options," refusing to sign off on a package on September 24, 2002 "even though he agreed with the pricing," "not talking to her" on October 10, 2002, not letting her "develop language for wind claim form," calling a proposed draft performance review prepared by Martin-Dennis "a bunch of words," telling her "that he would not assist her in developing pay band 5 skills," telling her that she should look for another job posting, implying on July 16, 2003 "that her level of work was comparable to an underwriter trainee," and, in November 2003, denigrating "her contribution to the program." Martin-Dennis also states that there was a hostile work environment because of DeMarco keeping a "slanted" journal of his interactions with her, making a "biased and negative assessment of her performance" on December 12, 2003, telling her in December 2003 "that she was not perceived by Venture as a decision maker," requiring her to take a test in order to secure workers' compensation underwriting authority, becoming "critical" when Martin-Dennis "would not bend to Venture's attempt to price Chubb product below Chubb's price guidelines," accusing Martin-Dennis of not being a team player and telling her on January 8, 2004 that she "must get on board his program," that she does not have initiative, and that she does not take control, telling her on January 16, 2003 that she was ignoring his advice, not assigning her additional duties, criticizing her in June 2004 for not changing her voicemail every day to let callers know where she was, criticizing her in July 2004 for not thinking "outside the box" and telling her that she could not meet most of the company's goals, and giving her a warning in October 2004 for inappropriate behavior.

While unpleasant, these actions are directed to plaintiff's performance, not her race or

gender. The statements attributed to her supervisors appear to be blunt and may well have been unwelcome to Ms. Martin-Dennis. They are a far cry from the level of abuse recognized by the Third Circuit as creating a hostile work environment.

In Aman v. Cort Furniture Rental Corp., 85 F.3d 1074 (3d Cir. 1996), the Third Circuit Court of Appeals found that the plaintiffs, who were black former employees of the defendant, provided sufficient evidence of intentional discrimination based on race as well as sufficient evidence of severe or pervasive conduct for a hostile work environment claim. Id. at 1082-84. In Aman, the plaintiffs were referred to as "another one," "one of them," "that one in there," and "all of you" for seven years. Black employees of the defendant were harassed on a daily basis by white employees, who hurled insults such as "don't touch anything" and "don't steal." The Aman plaintiffs were subjected to apparently false accusations of favoritism and incompetence and were made to do menial jobs, several employees refused to deal with one of the plaintiffs, and a supervisor stated that if things were not resolved with one of the plaintiffs, "we're going to have to come up there and get rid of all of you." Another supervisor told one of the Aman plaintiffs that he knew all about three black employees. A supervisor stated that "the blacks are against the whites," one of the plaintiff's time cards were stolen, other employees physically snatched things from one of the plaintiffs, and one of the plaintiffs was falsely accused of wrongdoing on at least two occasions. Moreover, a supervisor yelled at one of the plaintiffs on a daily basis, and after the plaintiffs began complaining about racial discrimination, employees were asked to keep complaint lists about one of the plaintiffs. Furthermore, a supervisor withheld relevant financial information about one of the plaintiffs and gave her orders that directly contradicted orders from another supervisor and company policy.

In Spain v. Gallegos, 26 F.3d 439 (3d Cir. 1994), the Third Circuit Court of Appeals found that the plaintiff, a female employee, provided sufficient evidence of intentional discrimination based on gender as well as sufficient evidence of severe or pervasive conduct for a hostile work environment claim. Id. at 447-49. In Spain, the plaintiff was the subject of false rumors over a period of several years that she was having a sexual relationship with a supervisor and had gained influence over him as a result of their relationship. Due to the rumored sexual relationship, the plaintiff's co-workers allegedly treated her like an outcast, leading to poor interpersonal relationships between herself and them. The rumors and the resulting poor interpersonal relationships at work led supervisory personnel to evaluate the plaintiff negatively for advancement purposes. Moreover, the supervisor knowingly exacerbated the situation by continuing to demand that the plaintiff meet with him privately, even after the plaintiff informed him of the rumors and asked him to stop them. Furthermore, the supervisor denied her a promotion based on the rumors and the resulting effects they had upon her interpersonal relationships at work and her evaluations by her supervisors.

In this case, the actions allegedly taken by Betlesky and DeMarco were not tied to Martin-Dennis' race or gender. Moreover, unlike the harassment in Aman and Spain, this court finds that the alleged harassment in this case was not sufficiently severe or pervasive to constitute a hostile work environment. It is difficult to see how Chubb has retaliated when Ms. Martin-Dennis still has her job, has suffered no reduction in pay, and her job duties remain essentially the same. Accordingly, in light of Aman and Spain, this court finds that Martin-Dennis cannot establish a prima facie case of retaliation.

However, even if Martin-Dennis could establish a prima facie case, this court is not

persuaded that Martin-Dennis can prove that Chubb's legitimate, nondiscriminatory reasons for the employment action are actually a pretext for retaliation. Chubb's proffered reasons for the action are the affirmative defenses that it relies upon in defending itself against the Equal Pay Act and discrimination claims, including that Martin-Dennis is limited in her focus and approach to the business, and that Martin-Dennis refuses to accept constructive criticism and suggestions to improve her performance.

To prove pretext, Martin-Dennis relies on Aman and states, without citing to the record, that Betlesky and DeMarco used discriminatory "code words" in reference to her. According to Martin-Dennis, Betlesky told her she "had no place in his unit," "derided her request for training as a rater," and told her that Kunzman's pay "was none of her business." Furthermore, DeMarco criticized her "for not being decisive," accused her of "not thinking outside the box," and stated that she "was not flexible" and "rigid."

Martin-Dennis has not sufficiently proved pretext because she does not point to any credible evidence of pretext in the record of this case. Moreover, this court finds that the Aman case is of no help to Martin-Dennis. In Aman, the court indicated that the use of "code words," such as "another one," "one of them," "that one in there," and "all of you," combined with all of the other evidence in that case, as set forth above, constituted evidence of intentional race discrimination. Aman, 85 F.3d at 1083-84. According to the court, a plaintiff must show that "race is a substantial factor in the harassment, and that if the plaintiff had been white she would not have been treated in the same manner." Id. at 1083. In this case, there is no evidence of any "code words" used to refer to Martin-Dennis' race or gender. The statements allegedly made by Betlesky and DeMarco do not establish that race or gender was a substantial factor in the

harassment and that if Martin-Dennis had been white or a male she would have been treated in a different manner. Furthermore, even if there were such code words used in this case, this court fails to see how the code words, taken alone, establish retaliation. Therefore, even if Martin-Dennis could establish a prima facie case of retaliation, this court finds that she has not sufficiently shown that Chubb's reasons for the employment action are actually a pretext. Martin-Dennis' Title VII and PHRA retaliation claims must be dismissed.

IV. CONCLUSION

There is a genuine issue of material fact regarding whether Martin-Dennis, a black female, and Kunzman, a white male, performed "equal work" and whether the pay differential was based on factors other than sex. Therefore, Chubb's motion for summary judgment is denied as to the Equal Pay Act claims, the Title VII and PHRA claims of gender discrimination, and the Title VII, Section 1981, and PHRA claims of race discrimination. However, this court finds that Martin-Dennis has not established a prima facie case of retaliation, and even if she could, she has not proved pretext. Accordingly, Chubb's motion for summary judgment is granted as to Martin-Dennis' Title VII and PHRA claims of retaliation. An appropriate order follows.

ORDER

AND NOW, this 1st day of April, 2005, upon consideration of Chubb & Son's motion for summary judgment (Doc. # 28), and replies thereto, it is hereby ORDERED that said motion is GRANTED IN PART and DENIED IN PART as follows:

(1) Martin-Dennis' Title VII and PHRA claims of retaliation are dismissed;

(2) The EEOC and Martin-Dennis' Equal Pay Act claims remain;

(3) The EEOC's Title VII claim of gender discrimination remains;

(4) Martin-Dennis' Title VII and PHRA claims of gender discrimination remain;

(5) The EEOC's Title VII claim of race discrimination remains; and

(6) Martin-Dennis' Title VII, Section 1981, and PHRA claims of race discrimination remain.

/s/
LAWRENCE F. STENGEL, J.