

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

United States Court
Southern District of Texas
ENTERED

MAR - 3 2005

Michael N. Milby, Clerk of Court

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

v.

**DUNBAR DIAGNOSTIC SERVICES,
INC.,**

Defendant.

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Civil Action No. H - 02 - 555

MEMORANDUM AND ORDER

Pending before the Court are Plaintiff's Second Motion for Partial Summary Judgment; Defendant's Objections to and Motion to Strike Portions of Plaintiff's Summary Judgment Evidence; Defendant's Motion for Partial Summary Judgment; and Plaintiff's Unopposed Motion to Supplement Record.

I. BACKGROUND

Plaintiff brought this action on behalf of Leticia Gonzalez for discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. Judgment as a matter of law ("JMOL") was granted in favor of Defendant on both causes of action. The case was appealed to the Fifth Circuit, which reversed the grant of JMOL on both causes of action. Plaintiff now seeks summary judgment on its claim of pregnancy discrimination. Defendant seeks summary judgment on damages issues.

II. SUMMARY JUDGMENT MOTIONS

A. Standard

A motion for summary judgment under Federal Rule of Civil Procedure 56 requires the Court to determine whether the moving party is entitled to judgment as a matter of law, based on the evidence thus far presented. *See* Fed. R. Civ. P. 56(c). “Summary judgment is proper 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 judgment as a matter of law.” *Kee v. City of Rowlett*, 247 F.3d 206, 210 (5th Cir. 2001) (citations omitted). Evidence is construed in the light most favorable to the non-moving party. *Id.*

B. Plaintiff’s Motion for Partial Summary Judgment

Plaintiff relies on the *McDonnell Douglas*¹ burden-shifting approach to prove its discrimination case by circumstantial evidence. Under this framework, Plaintiff must establish a prima facie case of discrimination, which raises a presumption of discrimination. *Wallace v. Methodist Hosp. Sys.*, 271 F.3d 212, 219 (5th Cir. 2001). Defendant then bears the burden of producing a legitimate, non-discriminatory reason for its actions. *Id.* Defendant is not required to convince the Court that it was actually motivated by these reasons; it need only raise a genuine issue of fact as to whether or not it discriminated against Plaintiff. *Tex. Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 254 (1981). Plaintiff bears the ultimate burden of persuading the trier of fact that Defendant engaged in intentional discrimination. *Wallace*, 271 F.3d at 219.

Plaintiff argues that it is entitled to summary judgment because it has established a prima facie case of pregnancy discrimination that Defendant cannot rebut. As the Fifth Circuit noted, Plaintiff has produced sufficient evidence of its prima facie case by showing: (1) Gonzalez is a

¹ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

member of a protected group; (2) she was eligible for health insurance benefits; (3) these benefits were denied; and (4) the denial was differentially applied to Gonzalez because all other eligible employees were offered benefits. *EEOC v. Dunbar Diagnostic Services*, Nos. 03-20292 & 03-20500 at 2 (5th Cir. February 19, 2004) (unpublished opinion) (citing *Rubinstein v. Adm'rs of the Tulane Educ. Fund*, 218 F.3d 392, 399 (5th Cir. 2000)). Defendant, however, has articulated a legitimate, non-discriminatory reason for its actions by stating that Gonzalez was not given benefits because she failed to ask for them. Although Plaintiff has offered evidence that Plaintiff's proffered reason is false, that remains a fact issue for the jury to decide; summary judgment is therefore inappropriate. *See Burdine*, 450 U.S. at 260 ("When the plaintiff has proved a prima facie case of discrimination, the defendant bears only the burden of explaining clearly the non-discriminatory reasons for its actions.").

C. Defendant's Motion for Partial Summary Judgment

Defendant seeks partial summary judgment on the issue of damages, arguing that Plaintiff is not entitled to punitive damages or money damages for lost employment benefits, and that back pay should be limited to forty-nine days.²

1. Punitive Damages

An employee who establishes a cause of action under Title VII may be entitled to punitive damages "if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual." *Kolstad v. American Dental Ass'n*, 527 U.S. 526, 534 (1999) (quoting 42 U.S.C. § 1981a(b)(1)). "The terms 'malice' or 'reckless indifference' pertain to the employer's knowledge that it may be acting in violation of federal

² The Court need not address Defendant's argument that Plaintiff is not entitled to front pay because Plaintiff has abandoned its claim for front pay.

law, not its awareness that it is engaging in discrimination.” *Id.* at 535. “[A]n employer must at least discriminate in the face of a perceived risk that its actions will violate federal law to be liable in punitive damages.” *Id.* at 536. Plaintiff has presented sufficient evidence to demonstrate that Defendant was aware that retaliation for filing an EEOC charge is prohibited by federal law. If Plaintiff succeeds on its retaliation claim, then it may be entitled to punitive damages.

2. Damages for Lost Employment Benefits

Plaintiff seeks monetary damages for the insurance benefits that Gonzalez was allegedly denied. Defendant argues that Plaintiff is not entitled to recover monetary damages for the value of lost insurance benefits because Gonzalez admitted at trial that she suffered no out-of-pocket expenses to replace the insurance coverage that Plaintiff contends Defendant wrongfully withheld from her, or that she had to pay medical expenses that would have been covered under Defendant’s insurance plan. Defendant cites *Pearce v. Carrier Corp.*, 966 F.2d 958 (5th Cir. 1992), to support its argument.

In *Pearce*, the Fifth Circuit considered the issue of the value of lost health insurance benefits in the context of a claim under the Age Discrimination in Employment Act (“ADEA”). The court held “that an ADEA claimant is limited to recovery of those expenses actually incurred by either replacement of the lost insurance or occurrence of the insured risk.” *Pearce*, 966 F.2d at 959. Although Plaintiff argues that this case is not on point because it does not involve a claim under Title VII, the Court finds the case applicable here.

“A primary remedial purpose of the ADEA is to make the individual victim of discrimination whole.” *Julian v. City of Houston*, 314 F.3d 721, 728 (5th Cir. 2002). Like the ADEA, a primary purpose of Title VII is to “make persons whole for injuries suffered on

account of unlawful employment discrimination.” *Floca v. Homcare Health Services, Inc.*, 845 F.2d 108, 111 (5th Cir. 1988) (citing *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975)). Since Plaintiff did not suffer actual loss by not receiving Defendant’s insurance benefits, an award of damages for these lost benefits would not serve to make Plaintiff whole, but rather, would result in a windfall to Plaintiff. Applying the reasoning of *Pearce*, Plaintiff cannot recover damages for lost employment benefits, so Defendant is entitled to summary judgment on the issue.

3. Back Pay

The parties disagree over how many days of back pay Plaintiff is potentially entitled to recover if it prevails on its claims. This is a purely factual dispute and summary judgment is therefore inappropriate.

III. CONCLUSION

For the foregoing reasons, Plaintiff’s Second Motion for Partial Summary Judgment is **DENIED**. Defendant’s Motion to Strike Portions of Plaintiff’s Summary Judgment Evidence is **DENIED AS MOOT**.³ Defendant’s Motion for Partial Summary Judgment is **GRANTED IN PART** and **DENIED IN PART**; Plaintiff cannot recover money for lost employment benefits, but may seek punitive damages and back pay. Plaintiff’s Unopposed Motion to Supplement Record is **GRANTED**.

IT IS SO ORDERED.

SIGNED this 28th day of February, 2005.


KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

³ In reaching its decision on Plaintiff’s Second Motion for Partial Summary Judgment, the Court did not rely on the objectionable portions of Plaintiff’s summary judgment evidence.

TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT.