

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 11-62525-CIV-DIMITROULEAS/SNOW**

NASRA M. ARAFAT,

Plaintiff,

v.

SCHOOL BOARD OF BROWARD COUNTY,

Defendant.

DEFENDANT SCHOOL BOARDS NOTICE OF SUPPLEMENTAL AUTHORITY

The Defendant School Board of Broward County (“SCHOOL BOARD”) by and through its undersigned attorney’s files the Eleventh Circuit’s recent unpublished opinion in Uppal vs. Hospital Corporation of America, Case No. 11-13614, in the United States Court of Appeals for the Eleventh Circuit (June 13, 2012) a copy of which is attached hereto as supplemental persuasive authority in support of the Defendant SCHOOL BOARD’s Motion to Dismiss Plaintiff’s Amended Complaint.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of June, 2012, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system. I further certify that I either mailed the foregoing document and the Notice of Electronic Filing by first class mail to any non CM/ECF participants and/or the foregoing document was served via transmission of Notice of Electronic Filing generated by CM/ECF to any and all active CM/ECF participants.

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 11-13614
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JUNE 13, 2012
JOHN LEY
CLERK

D.C. Docket No. 8:09-cv-00634-VMC-TBM

NEELAM UPPAL,

Plaintiff - Appellant,

versus

HOSPITAL CORPORATION OF AMERICA,
d.b.a.
HCA Inc.,
EDWARD WHITE HOSPITAL,
LARGO MEDICAL CENTER,
GALENCARE, INC.,
d.b.a.
Northside Hospital & Tampa
Bay Heart Institute,
PALMS OF PASADENA HOSPITAL, LP,
d.b.a.
Palms of Pasadena Hospital,

Defendants - Appellees.



Appeal from the United States District Court
for the Middle District of Florida

(June 13, 2012)

Before MARTIN, JORDAN and ANDERSON, Circuit Judges.

PER CURIAM:

Neelam Uppal, a woman of Indian origin, appeals the district court's dismissal of her Third Amended Complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) against Hospital Corporation of America, Edward White Hospital, Largo Medical Center, Northside Hospital & Tampa Bay Institute, and Palms of Pasadena Hospital, LP.

Dr. Uppal was "appointed as an attending physician and was given privileges to admit and treat patients" at the defendant medical centers. Over the course of her employment with the hospitals, Dr. Uppal was subjected to a number of disciplinary actions. Based on these adverse employment actions, Dr. Uppal filed claims under Title VII and the Florida Civil Rights Act in district court. The district court dismissed Dr. Uppal's Title VII claims for failure to sufficiently plead her claims pursuant to Federal Rules of Civil Procedure 8(a) and 10(b), and

it dismissed her state law claims with prejudice pursuant to the immunity Florida law grants to matters arising out of hospital peer review processes. See Fla. Stat. § 395.0191(7)–(8). Dr. Uppal filed a Second Amended Complaint, and then sought leave to amend, which the district court granted. She ultimately filed a Third Amended Complaint, alleging claims under Title VII for discrimination on account of gender, race and national origin, hostile work environment, and retaliation for engaging in protected conduct. The district court dismissed with prejudice this complaint pursuant to Federal Rule of Procedure 12(b)(6) for failure to plead sufficient facts to state Title VII claims for discrimination, hostile work environment, and retaliation. On appeal, Uppal argues that she pleaded sufficient facts in her Third Amended Complaint to state each of her Title VII claims, and that Florida’s peer review immunity statute does not bar her state law discrimination claims. We address each claim in turn.

I.

We review de novo a district court’s dismissal of a complaint for failure to state a claim under Rule 12(b)(6). Edwards v. Prime, Inc., 602 F.3d 1276, 1291 (11th Cir. 2010).

In a Rule 12(b)(6) motion to dismiss, we take the factual allegations as true; however, we are not “required to accept the labels and legal conclusions in the

complaint as true.” *Id.* at 1291. Instead, a complaint must plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009). As such, a district court may “insist upon some specificity in [the] pleading before allowing a potentially massive factual controversy to proceed.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558, 127 S. Ct. 1955, 1967 (2007) (quotation marks omitted).

II.

Turning first to Dr. Uppal’s employment discrimination claim, Title VII “prohibits employment discrimination on the basis of race, . . . sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1). Disparate treatment can constitute illegal discrimination when “an employer has treated a particular person less favorably than others because of a protected trait.” *Ricci v. DeStefano*, 557 U.S. 557, ___, 129 S. Ct. 2658, 2672 (2009) (quotation marks and alterations omitted). Although a plaintiff need not satisfy the *McDonnell Douglas*¹ framework at the pleading

¹ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). Under this framework, the plaintiff must first establish a prima facie case, which creates a presumption of unlawful discrimination against the employee. The employer may then rebut that presumption with legitimate, non-discriminatory reasons for the adverse employment actions. The employee must then proffer sufficient evidence to create a genuine issue of material fact that the defendant’s articulated reasons are pretextual. See *Crawford v. Carroll*, 529 F.3d 961, 976 (11th Cir. 2008).

stage in order to state a claim for disparate treatment, the “ordinary rules for assessing the sufficiency of a complaint [still] apply.” Swierkiewicz v. Sorema N.A., 534 U.S. 506, 511, 122 S. Ct. 992, 997 (2002); see also Davis v. Coca-Cola Bottling Co. Consol., 516 F.3d 955, 974 (11th Cir. 2008) (“Although a Title VII complaint need not allege facts sufficient to make out a classic McDonnell Douglas prima facie case, it must provide enough factual matter (taken as true) to suggest intentional race discrimination.”) (citations and quotation marks omitted).

Here, Dr. Uppal has stated multiple claims for employment discrimination based solely on the repeated allegation that “[o]ther similarly situated employees outside Plaintiff’s protected classes” engaged in similar misconduct, but were not disciplined. Indeed, this allegation recites a crucial element of a prima facie Title VII case where the alleged discrimination is based solely on an employer’s disparate treatment of employee misconduct. See, e.g., Burke-Fowler v. Orange Cnty, Fla., 447 F.3d 1319, 1323 (11th Cir. 2006). However, Dr. Uppal never once supplements these allegations of disparate treatment with any factual detail, such as even a brief description of how the alleged comparator employees were outside of her protected class. This being the case, Dr. Uppal has alleged no facts to support that gender, race or national origin played any role in the disparate treatment. See Iqbal, 556 U.S. at 678, 129 S. Ct. at 1949 (“Threadbare recitals of

the elements of a cause of action . . . do not suffice.”). Therefore, the district court did not err in dismissing Dr. Uppal’s employment discrimination claim.

III.

Uppal has also asserted a hostile work environment claim against each of the defendant medical centers. Discriminatory conduct that is “so severe or pervasive that it create[s] a work environment abusive to employees because of their race, gender, religion, or national origin offends Title VII’s broad rule of workplace equality.” Harris v. Forklift Sys., Inc., 510 U.S. 17, 22, 114 S. Ct. 367, 371 (1993). Dr. Uppal alleged that “Defendants, by and through Plaintiff’s supervisors created and perpetuated a hostile work environment . . . on the basis of her gender, race, national origin and retaliation,” and that this “hostile work environment was severe and pervasive.” To the extent that this hostile work environment claim stems from the same allegations underlying Dr. Uppal’s employment discrimination claim, as we noted above, she has failed to allege sufficient facts suggesting that gender, race or national origin played any part in the adverse employment actions. This necessarily defeats any allegation that the hostile work environment was on account of protected characteristics.

Dr. Uppal also alleged a single instance of sexual harassment at Largo Medical Center, in which her supervisor “privately met with [her], sat down next

to [her] and placed his arm around her in an unwelcomed sexual manner.”

However, this single incident of harassing conduct cannot support a hostile work environment claim. Miller v. Kenworth of Dotham, Inc., 277 F.3d 1269, 1276

(11th Cir. 2002) (requiring conduct that is severe or pervasive); see also Nat'l R.R.

Passenger Corp. v. Morgan, 536 U.S. 101, 115, 122 S. Ct. 2061, 2073 (2002).

Therefore, the district court properly dismissed Dr. Uppal's hostile work environment claim.

IV.

Turning finally to Dr. Uppal's retaliation claim, Title VII makes it unlawful “for an employer to discriminate against any of his employees . . . because [she] has opposed any practice made an unlawful employment practice” under Title VII. 42 U.S.C. § 2000-3(a). Retaliation under Title VII occurs when an employee engages in protected activity, and suffers an adverse employment action that is causally related to that activity. See Harper v. Blockbuster Entm't Corp., 139 F.3d 1385, 1388 (11th Cir. 1998). In terms of causation, a plaintiff must show that the decision-maker was aware of the protected conduct. Shannon v. Bellsouth Telecomms., Inc., 292 F.3d 712, 716 (11th Cir. 2002).

On appeal, Dr. Uppal argues that she pleaded sufficient facts to support her

retaliation claim against Palms of Pasadena,² because she lost her emergency room privileges shortly after complaining about discrimination. Specifically, in July 2008, she wrote to the CEO of Palms of Pasadena complaining of discrimination and harassment. However, according to her complaint, Dr. Uppal had already lost her emergency room (ER) privileges prior to sending the July 2008 letter. Therefore, this initial loss of ER privileges cannot be causally related to Dr. Uppal's July 2008 letter.

Dr. Uppal further alleges that following her July 2008 letter to the CEO of Palms of Pasadena, the hospital held a hearing on the issues relating to her ER practice. The hearing committee recommended that Dr. Uppal be "re-appointed and trained on the computer." But the hospital never sent her a copy of that decision, and in late February 2009, Dr. Uppal "was deemed as having 'voluntarily resigned' by Defendant." Crucially, these allegations establish no causal relationship between the July 2008 letter that Dr. Uppal sent to the CEO, and the adverse employment actions taken by the hearing committee and the "Defendant" in early 2009. Specifically, Dr. Uppal does not allege that the hearing committee

² Dr. Uppal apparently abandons her retaliation claims against the other defendant medical centers because she only cites to the portion of the complaint concerning Palms of Pasadena. See Wilkerson v. Grinnell Corp., 270 F.3d 1314, 1322 (11th Cir. 2001) (holding that issue not raised in initial brief is deemed waived).

was aware of the letter that she sent to the CEO. See Shannon, 292 F.3d at 716.

Neither does she allege that the decision-maker who deemed her to have voluntarily resigned was aware of the letter, thus failing to allege any kind of causal relationship between the protected conduct and the adverse employment action. See id. This being the case, Dr. Uppal has pleaded no facts to support her retaliation claim, and the district court's dismissal of that claim was proper.

V.

With regard to Dr. Uppal's state law claims, she argues that the immunity that Florida law grants to a hospital's peer review process does not apply to her state law claims. However, we need not reach this issue.

We have held that "decisions construing Title VII are applicable when considering claims under the Florida Civil Rights Act, because the Florida Act was patterned after Title VII." Harper, 139 F.3d at 1387. Here, Dr. Uppal only appeals the dismissal of her state law discrimination claims under the Florida Civil Rights Act, Fla. Stat. § 760.01 et seq. Given that her claims under the Florida Civil Rights Act mirror her Title VII claims for employment discrimination, hostile work environment, and retaliation, Dr. Uppal's state law discrimination claims rise and fall with her Title VII claims. See id.

VI.

For these reasons, we affirm the district court's dismissal of Dr. Uppal's claims.

AFFIRMED.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 11-62525-CIV-DIMITROULEAS/SNOW

NASRA M. ARAFAT,

Plaintiff,

vs.

SCHOOL BOARD OF
BROWARD COUNTY,

Defendant.

**ORDER DENYING MOTION FOR LEAVE TO CORRECT AND REFILE PLAINTIFF'S
RESPONSE AND OPPOSING MEMORANDUM**

THIS CAUSE is before the Court upon Plaintiff's Motion for Leave to Correct and Refile Plaintiff's Response and Opposing Memorandum [DE 39], filed June 12, 2012. The Court has carefully considered the Motion and is otherwise fully advised in the premises.

Plaintiff's motion is ambiguous. From what is decipherable, Plaintiff believes that two words are wrong in her response in opposition to the motion to dismiss. After reviewing the motion and the two paragraphs that purportedly contain errors, the Court was unable to discern any language that would mislead the Court as it analyzes the motion to dismiss. Any mistake as to two words will not prejudice Plaintiff, as the Court will overlook small typographical errors as it evaluates the arguments of the parties.

Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiff's Motion for Leave to Correct and Refile Plaintiff's Response and Opposing Memorandum [DE 39] is **DENIED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this
3rd day of July, 2012.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

Counsel of Record

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 11-62525-CIV-DIMITROULEAS/SNOW

NASRA M. ARAFAT,

Plaintiff,

vs.

SCHOOL BOARD OF
BROWARD COUNTY,

Defendant.

ORDER GRANTING DEFENDANT’S MOTION TO DISMISS

THIS CAUSE is before the Court upon Defendant’s Motion to Dismiss Amended Complaint or in the Alternative Motion for More Definite Statement [DE 34], filed on May 7, 2012. The Court has carefully considered the Motion, Plaintiff’s Response in Opposition [DE 35], and Defendant’s Reply [DE 36], and is otherwise fully advised in the premises.

I. BACKGROUND

This case concerns several allegations of improper employment conduct. Plaintiff Nasra M. Arafat (“Arafat”) began working for the Defendant School Board of Broward County (“School Board”) as a substitute teacher during the 2000-2001 school year.¹ During the 2005-2006 school year, Arafat accepted a full time position at one of the School Board’s middle schools as a seventh grade science teacher. After one semester, the School Board demoted Arafat back to substitute status.

¹ Well-pled allegations of fact in the Complaint are taken as true for the purposes of a motion to dismiss; conclusory allegations, however, are not. *Aschroft v. Iqbal*, 556 U.S. 662, 664 (2009). The Court makes no findings of fact through this Order.

Notwithstanding this setback, Arafat continued to substitute teach. Arafat believes that several negative, false evaluations were placed in her record as a pretense for discriminating against her. She claims that her demotion and termination of employment occurred because she reported unspecified misconduct that affected students' welfare. She believes that this reason was unlawful.

In addition to being demoted and falsely evaluated, Arafat believes that she was not properly compensated as a substitute teacher. She never received a raise. She made \$10.80 per hour, but other substitute teachers made \$15.00 to \$25.00 an hour. Teachers made even more. Arafat believes that she was better qualified than the other substitutes and the other teachers, so it was not fair that she did not make at least as much money. In a conclusory sentence, Arafat states that the School Board gave men and younger employees more money and better career advancement opportunities.

Arafat's grievances do not end there. Arafat claims that an employee at one of the School Board's schools inappropriately touched her. On April 16, 2010, at the beginning of a school day, employees of Northeast High School asked Arafat to leave the premises. While being escorted off of the premises, she claims that one of the employees touched her. The exhibits to her original complaint indicate that an employee touched her arm or shoulder and used offensive language toward her as he escorted her off of the premises. [DE 1-1 at 18, 32].²

² Arafat's Amended Complaint fails to provide any details regarding the inappropriate touching. As discussed below, Arafat's Amended Complaint should be dismissed with or without this description of what happened, so the Court need not determine whether it can properly consider exhibits attached to the original complaint but omitted from an amendment. The Court notes that some courts do consider such exhibits under the proper circumstances. *Jeffrey M. Brown Assocs., Inc. v. Rockville Center Inc.*, 7 Fed. Appx 197, 202-03 (4th Cir. 2001) (considering documents attached to original complaint but omitted from amended complaint);

Finally, Arafat believes that she was subjected to age discrimination. On October 5, 2010, after Arafat had been removed from the substitute teaching list, the School Board held a job fair. Arafat alleges that while attending the job fair, Susan Rocklemen, the School Board's Director of Instructional Staffing, asked her to leave the premises. Rocklemen told Arafat that they were looking for "fresh graduates."

On February 1, 2011, Arafat filed a charge with the Equal Employment Opportunity Commission ("EEOC"). After receiving a right to sue letter, she then filed this action on November 28, 2011. On April 24, 2012, Arafat submitted her Amended Complaint, alleging four Counts of discrimination and unlawful termination. Count I contains allegations of sexual harassment under 42 U.S.C. § 2000e et seq. (Title VII) and 42 U.S.C. § 1981 due to being escorted from School Board property. In Count II, Arafat alleges that the inequality of her pay violated both Title VII and the Equal Pay Act of 1963 ("EPA"), 29 U.S.C. § 206(d). In Count III, Arafat alleges age discrimination under the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. § 621 et seq. Finally, in Count IV Arafat alleges that she was unlawfully demoted and terminated without just cause for filing complaints about issues impacting the students' welfare.

II. DISCUSSION

Defendant moves to dismiss Arafat's Amended Complaint because many of the claims are time-barred and because even if they were not, Arafat fails to state a claim for relief.

Defendant moves for a more definite statement in the alternative, because Arafat's pro se

Advanced Fluid Solutions, LLC v. NASCAR, No. 6:11-vc-16-Orl-22KRS, 2011 WL 3627413 (M.D. Fla. July 26, 2011) (considering documents referred to in amended complaint even though they were only attached to the original complaint).

Amended Complaint is incoherent at times and it is nearly impossible to ascertain which factual allegations support which asserted causes of action. Because of the ambiguities of the Amended Complaint, the Court will not address the time bar arguments at this time. The Court concludes that even without these arguments, Arafat's Amended Complaint should be dismissed.

A. Standard of Review

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a motion to dismiss will be granted if the plaintiff fails to state a claim for which relief can be granted. According to Rule 8(a)(2) of the Federal Rules of Civil Procedure, a claimant must only state "a short and plain statement of the claim showing that the pleader is entitled to relief." When considering a Rule 12(b)(6) motion to dismiss, the Court accepts as true all factual allegations in the complaint. *See Aschroft v. Iqbal*, 556 U.S. 662, 678 (2009). The plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "[A] court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Iqbal*, 556 U.S. at 679.

B. Count I: Sexual Harassment

In Count I, Arafat alleges that employees of Northeast Highschool subjected her to "gender-based harassment and underestimated [the] plaintiff's legal right to work in [a harassment-free] work place under Title VII." [DE 33 ¶ 18(a)]. Title VII prohibits employers from engaging in practices that discriminate on the basis of sex. 42 U.S.C. § 2000e-2(a)(1).

To establish sexual harassment under Title VII, an employee must show “(1) that she belongs to a protected group; (2) that she has been subjected to unwelcome sexual harassment; (3) that the harassment was based on her sex; (4) that the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment; and (5) that a basis for holding the employer liable exists.” Hulsey v. Pride Rests., LLC, 367 F.3d 1238, 1244 (11th Cir. 2004).

In order to determine whether the harassing conduct was sufficiently severe or pervasive to create a hostile work environment, the court must consider both subjective and objective factors. Harris v. Forklift Sys., Inc., 510 U.S. 17, 21-22 (1993). The employee must subjectively perceive the conduct as severe and pervasive, and the employee’s perception must be objectively reasonable. Id. There are four factors to consider: “(1) the frequency of the conduct; (2) the severity of the conduct; (3) whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interferes with the employee’s job performance.” Mendoza v. Borden, Inc., 195 F.3d 1238, 1246 (11th Cir. 1999). “The courts should examine the conduct in context, not as isolated acts, and determine under the totality of the circumstances whether the harassing conduct is sufficiently severe or pervasive to alter the terms or conditions of the plaintiff’s employment and create a hostile or abusive working environment.” Id.

Though Arafat’s claim may fail for other reasons, it at least fails because she has failed to demonstrate that the harassment was severe or pervasive. A touch on the arm or shoulder on one occasion while being escorted off of public school property, even when coupled with offensive language, is insufficiently severe or pervasive to be actionable as unlawful harassment. E.g.

Uppal v. Hosp. Corp. of Am., No. 11-13614, 2012 WL 2136156, at *2 (11th Cir. June 13, 2012) (“[The plaintiff] also alleged a single instance of sexual harassment at Largo Medical Center, in which her supervisor ‘privately met with [her], sat down next to [her] and placed his arm around her in an unwelcomed sexual manner.’ However, this single incident of harassing conduct cannot support a hostile work environment claim.”). If the Court did not consider the documents attached to the original complaint in order to flesh out what the “inappropriate touching” was, Arafat would fail to state a claim because she did not support her vague assertion with factual allegations that give rise to a plausible cause of action. Iqbal, 556 U.S. at 664. Count I shall be dismissed.

C. Count II: Proper Compensation

In Count II, Arafat alleges that the School Board did not pay her fair compensation in comparison to other substitute teachers. To establish a prima facie case of disparate pay, the plaintiff must show that an employer “pays different wages to employees of opposite sexes for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.” Meeks v. Computer Assocs. Int’l, 15 F.3d 1013, 1018 (11th Cir. 1994) (quotations omitted). Arafat asserts that she should be entitled to the same pay as other substitute teachers. Her conclusory allegation that men and younger people were paid more than her is insufficient, both for its lack of factual content and for its failing to demonstrate that the employees of which she complains held jobs equal to her job. Arafat’s Amended Complaint lacks sufficient facts to raise a plausible claim that she was indeed subjected to unequal pay based on her gender or any other protected characteristic. It also shall be dismissed.

D. Motion to Dismiss Count III

In Count III of Arafat's Amended Complaint, Arafat alleges that the School Board violated the ADEA by asking her to leave the Board's October 5, 2010 job fair and telling her that it was looking for fresh graduates. ADEA plaintiffs may either prove discrimination through direct evidence or circumstantial evidence. Mora v. Jackson Mem'l Found., Inc., 597 F.3d 1201, 1204 (11th Cir. 2010).

The only real evidence that Arafat provided to support her ADEA claim is the "fresh graduate" comment. Even assuming that such a comment is direct evidence of discrimination, which is not at all clear, see Carter v. City of Miami, 870 F.2d 578, 582 (11th Cir. 1989) (defining direct evidence as "[o]nly the most blatant remarks, whose intent could be nothing other than to discriminate on the basis of age"), it is not unlawful for an employer to seek out "fresh graduates." See, e.g., Johnson v. Cook Inc., 327 Fed. Appx 661, 665 (7th Cir. 2009) (holding that an employer could legitimately differentiate between applicants based on their time out of college without violating the ADEA); Grossman v. Dillard Dep't Stores, Inc., 109 F.3d 457, 459 (8th Cir. 1997) (same). Recent college graduation is not necessarily a proxy for age. E.g. Laura Bauer, "Once-Oldest College Grad Earns Her Master's at 98," Columbus Dispatch, May 19, 2010, available at http://www.dispatch.com/content/stories/life_and_entertainment/2010/05/19/once-oldest-college-grad-earns-her-masters-at-98.html (last visited Aug. 7, 2012). Of course, coupled with other evidence, such a comment may be probative, but "the bare fact that an employer encourages employment of recent college and technical school graduates does not

constitute unlawful age discrimination.” Williams v. Gen. Motors Corp., 656 F.2d 120, 131 n.17 (5th Cir. Sept. 14, 1981).³ Arafat has insufficiently alleged an ADEA claim based on direct evidence.

Arafat’s allegations also fail to make a circumstantial ADEA case. “In an ADEA case involving discharge, demotion, or failure to hire, a plaintiff may establish a *prima facie* case by showing: (1) that he was a member of the protected group of persons between the ages of forty and seventy; (2) that he was subject to adverse employment action; (3) that a substantially younger person filled the position that he sought or from which he was discharged; and (4) that he was qualified to do the job for which he was rejected.” Turlington v. Atlanta Gas Light Co., 135 F.3d 1428, 1432 (11th Cir. 1998). First, Arafat failed to assert that she was a member of the protected group of persons between the ages of forty and seventy. Second, she did not claim that a substantially younger person filled the position that she sought. Third, she did not allege that she was qualified to do the job for which she was rejected, because she never described what job she applied for. Arafat’s ADEA claim shall also be dismissed.

E. Motion to Dismiss Count IV

In Count IV Arafat alleges that her “intentional, wrongful termination was made based on false evaluation[s].” [DE 33 ¶ 18(d)]. She also seems to indicate that she believes she was discriminated against for complaining about work conditions that affected children. This Count lacks sufficient factual allegations to create a plausible claim. In addition, it is likely that the

³ The Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit issued prior to October 1, 1981. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981).

Garcetti doctrine would bar her claim for termination in retaliation for her speech. See Garcetti v. Ceballos, 547 U.S. 410 (2006). Count IV is dismissed.

III. CONCLUSION

Arafat's Amended Complaint fails to state a claim upon which relief can be granted. There is still a possibility that some of her claims may be salvaged if she pleads sufficient factual content. The Court will give Arafat one final opportunity to cure the deficiencies in her Complaint. Failure to do so will result in the dismissal of this action with prejudice.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant School Board of Broward County's Motion to Dismiss Amended Complaint or in the Alternative Motion for More Definite Statement [DE 34] is **GRANTED**;
2. Plaintiff's Amended Complaint [DE 33] is **DISMISSED without prejudice**. If desired, Plaintiff may file a second amended complaint on or before September 7, 2012, that complies with the Federal Rules of Civil Procedure, the Southern District of Florida Local Rules, and this Order. In redrafting an amended complaint, the Plaintiff shall set forth each legal claim in a separate count. Further, each count shall state with specificity both the factual and legal basis for each claim it sets forth in separately numbered, concise, direct paragraphs. Other numbered paragraphs may be incorporated by reference but this must be done with particular care so that only relevant paragraphs are referenced. It is impermissible to attempt a wholesale incorporation by reference of all preceding paragraphs. A failure to comply with this Order may result in a dismissal with

prejudice of this action. If Plaintiff still does not state a claim upon this second amendment, then the Court will dismiss Plaintiff's case with prejudice.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this 7th day of August, 2012.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies Furnished to:

Counsel of Record

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 11-62525-CIV-DIMITROULEAS/SNOW

NASRA M. ARAFAT,

Plaintiff,

vs.

SCHOOL BOARD OF
BROWARD COUNTY,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO FILE
SECOND AMENDED COMPLAINT**

THIS CAUSE is before the Court upon Plaintiff's Motion for Extension of Time to File Second Amended Complaint [DE 43], filed September 4, 2012. The Court has carefully considered the Motion, notes that Defendant is unopposed to a thirty (30) day extension [DE 44], and the Court is otherwise fully advised in the premises.

Because Defendant agreed to a thirty day extension, the Court will grant Plaintiff's request for an extension of time. The Court is unlikely to grant any further extensions to file the second amended complaint.

Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiff's Motion for Extension of Time to File Second Amended Complaint [DE 43] is hereby **GRANTED**. Plaintiff shall file a her Second Amended Complaint on or before October 8, 2012.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 6th day of September, 2012.


WILLIAM P. DIMITROULEAS
United States District Judge

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United States District Court Southern District Of Florida
Case No. 11-62525 CIV- Dimitrouleas / Snow

Nasra M. Arafat
(pervious married name Ibarhim)
Plaintiff,

Vs.
School Board Broward County (Broward.
County Public Schools)
Defendant,

FILED BY [Signature]
2012 SEP 11 PM 1:56
CLERK U.S. DIST. CT.
S.D. OF FLA.-FTL

Plaintiff's Reply On Defendant School Board's Response To Plaintiff's Motion For Extension Of Time To File Second Amended Complaint

The Plaintiff, / pro-Se Nasra M. Arafat files its reply to defendant's response [DE 44] on plaintiff's motion for extension of time to file second amended complaint [DE 43] and in good faith plaintiff states the following:

1- Plaintiff addressed the facts to indicate not only her need to be presented by lawyer but also addressed the barrier of her ability to file further pleading at this current time. Plaintiff provided a clue about some of these barriers while she couldn't specified the period of time and left the determination in the hand of this honorable court balance and jurisdiction.

2- Plaintiff seeking and asked for a maximum of extension of time could be allowable on basis of law and factuality of current extraordinary circumstances especially plaintiff's health and financial hardship. Also plaintiff looking for place to live now with assistant from a friends and communities when rent is expensive and very difficult to find without stable specific amount of income from employment or fixed resources. Plaintiff eviction from her rental (1) one bed apartment was because of late payment as plaintiff can't enforce the partial rent assistant to be on time as all plaintiff's letters to landlord plus the checks was paid by different friends and communities as indicated since was rented on March 2010 year till eviction on July 2012.

Plaintiff still with continues contact with the attorney who did promise to assist if he can after was informed with court order and current pleadings.

3- Plaintiff just received an order from appellate court for extension of time for 60 days to file initial brief in her divorce case exhibit A 1 for serious matter towards wrong record. Plaintiff's health, financial hardship and securing a place to live will prevented her certainly to do any thing in (30) thirty days nor she can make proper research and file timely pleading if there is no lawyer will take her case as she waiting now for response. If there is no legal assistant by a lawyer then plaintiff's health at this time in addition to her situation to find place to live will be a major barrier to file any further pleading and the period need it will be beyond 30 days. Plaintiff didn't know when she will be recovery to be able to proceed with cases has different aspect of law field properly and timely even so will be impossible in this essential case in my life.

4- The 30 days will not fit such circumstances but it can only if the attorney who promised to assist if he can or federal volunteer lawyer project will accept and signe official filling of his/her appearance in the court. The federal volunteer project called and informed plaintiff today on 09/10/2012 that she did update plaintiff's information based on recent pleadings and court order for possible presentation by lawyer or other lawyer may be will confirm his assistant soon. If there will be negative response from both resources then the situation respectfully will in need for the court consideration and determination due to what plaintiff experiencing since defendant's action and wrongful dismissal from her job on April 28,2010 after her hard work and study harder for better life for others and for herself. .

Therefore, Respectfully plaintiff seeking consideration for reasonable and fair decision to survive within this Honorable court jurisdiction and rules.

Date: September 10,2012


Respectfully submitted,
Nasra M. Arafat Pro-Se /plaintiff

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401**

September 4, 2012

CASE NO.: 4D12-2275
L.T. No. : 96-11008 42/90

NASRA M. ARAFAT

v.

MOHAMED EL. IBRAHIM

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that appellant's motion filed August 20, 2012, for extension of time is granted, and appellant shall serve the initial brief within sixty (60) days from the date of the entry of this order. In addition, if the initial brief is not served within the time provided for in this order the above-styled case may be dismissed.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

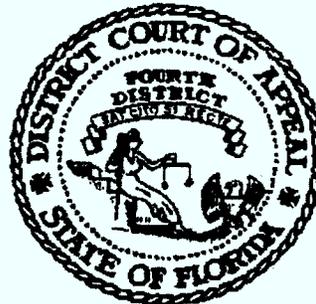
Howard Forman, Clerk

Nasra M. Arafat

Nicholas Gentile

ct

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal



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Certificate Of Service

I hereby certify as pro-se that a true and correct copy of the foregoing, Plaintiff's Reply On Defendant School Board's Response To Plaintiff's Motion For Extension Of Time To File Second Amended Complaint was served with the clerk of the court and send by mail on September 11 ,2012 on all counsel or parties of record on the Service List.

09-11-2012



Nasra M. Arafat / Plaintiff/ pro-Se

P.O.BOX 772177

Coral Springs FL, 33077

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SERVICE LIST

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And,

Omitting party / EEOC Local Office
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Miami FL, 33131

Date: September 11 ,2012



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09-11-12