

**BEFORE THE ALABAMA
STATE PERSONEL BOARD
IN THE MATTER OF**

TAKIYAH KUARANHA,)	
)	
Appellant,)	
)	
v.)	CASE NO. 18-28-JJW
)	
ALABAMA DEPARTMENT YOUTH SERVICES,)	
)	
)	
Appellee.)	

**RECOMMENDED ORDER TO THE
STATE PERSONNEL BOARD**

Takiyah KuAranha (“KuAranha”), on July 13, 2018, filed a discrimination complaint against the Alabama Department of Youth Services (“DYS”) alleging Victor Black (“Black”), her immediate supervisor, had discriminated against her on the basis of her gender. Specifically, KuAranha says Black has created a hostile work environment and has harassed, bullied, and retaliated against her. A prehearing conference was held on July 19, 2018, during which the parties agreed to a hearing date of August 20, 2018. Fred Gray, Jr., Esq. entered his appearance as KuAranha’s counsel on July 26, 2018. The parties filed a joint motion to continue and the hearing was reset for September 18, 2018. The undersigned was first made aware of KuAranha’s discrimination allegations in 2017, when she

raised similar issues with her then DYS supervision, which were informally resolved by KuAranha and DYS management.¹

At the hearing held September 18, 2018, Dudley Perry, Esq. represented DYS. Fred Gray, Jr., Esq., represented KuAranha. DYS offered Exhibits 1-30, which were admitted without objection. KuAranha offered Hearing Exhibits 1-3, which were admitted without objection. KuAranha offered her testimony and that of Billy McCullough (“McCullough”), a DYS Security Officer. DYS relied on the testimony on cross-examination of KuAranha’s witnesses. The burden of proof was KuAranha’s to establish a prima facie case of alleged discriminatory conduct.

KuAranha’s Statement of Facts

...

1. Complainant is an African American female hired in the State of Alabama Department of Youth Services as a full-time permanent laborer in April 2014. She works in a male-dominated environment and is subjected to hostile work place acts and retaliatory conduct by Victor Black, current Program Specialist at the Department of Youth Services. In 2017, Black was Acting Campus Administrator at DYS.
2. In February 2017, Victor Black pressured and coerced male employees at DYS to write false statements against the Complainant resulting in a warning and reprimand from her immediate supervisor. The nature of the false statements was that Ms. KuAranha refused to drive a vehicle that was offered to her to drive upon the original transportation’s unavailability due to a malfunctioning part. Upon a meeting with Paulette Underwood on February 15, 2017, a warning and reprimand

¹ March 24, 2017 letter to KuAranha in ALJ file.

were issued to the Complainant relating to a supposed refusal to drive a certain vehicle. The Complainant resisted the write-ups. Victor Black pressed his work assault on the Complainant.

3. May 2018-June 2018, Victor Black has made the Complainant the object or target of shift meeting or meetings. Mr. Black has discriminatorily deprived the Complainant of work hours, shifted or reassigned those hours to male employees and singled her out for ostracism by male counterparts. In May 2018, while the Complainant's hours were taken from her, work hours of male officers similarly situated were not reduced. See DYS Exhibit 1. When she complained about his unfair treatment, he retaliated against her as indicated in Complainant's July 2, 2018 memo and other complaints, claims and memoranda. See DYS Exhibits 2, 3, 4, 5.
4. Dates of acts of discriminatory and retaliatory conduct by Victor Black against Ms. KuAranha include, but are not necessarily limited to the following: February 2017; May 18, 21; June 26, 28, 29; July 6; and 12, 2018.
5. Mr. Black has subjected Ms. KuAranha to conditions of employment different from the conditions of other similarly situated male employees including, but not necessarily limited to: requiring her to drive transportation that emitted dangerous fumes and otherwise constituted a danger and hazard to her life and safety; requiring her to request permission to go to designated area to get ice for drinking water purposes; taking from her the work radio assigned to her and giving to another employee; depriving her of the opportunity to work overtime; changing her work schedule; requiring her to take her lunch break under a certain tree while male employees similarly situated are not so restricted; otherwise subjecting Ms. KuAranha to scorn, ridicule and humiliation on the job.
6. Mr. Black has violated Department of Youth Services policies against sexual harassment, gender discrimination, retaliation, if any.

7. Mr. Black has violated laws of the United States, specifically, Title VII gender discrimination, retaliation, hostile workplace environment and the Alabama Constitution equivalents thereto.

...

DYS's Position Statement

DYS sent its position statement to KuAranha on July 24, 2018, which states, in pertinent part:

DYS Policy and Procedure 3.7, (Sexual Harassment and Discrimination Prohibited) states that discrimination against DYS employees is prohibited. Procedurally, complaints of discrimination must be made to the DYS Personnel Manager, not through the chain of command. Such complaints are taken seriously. DYS investigates such complaints and, if a complaint is substantiated, takes appropriate personnel action.

As you know, the Alabama State Personnel Board Rules also prohibit discrimination. Employees who have reason to believe they have been discriminated against may appeal to the Personnel Board.

Finally, DYS Policy and Procedure 3.12 (Employee Grievance Procedure) provides a system for resolving grievances. Grievances are disputes and break-downs in communication in job-related situations. However, performance appraisals, disciplinary actions and complaints of discrimination are EXCLUDED from the grievance procedure. Grievances are NOT filed with DYS Personnel or with State Personnel but follow the chain of command.

Ms. KuAranha you have recently submitted a large number of memos, grievances and complaints. On June 1, 2018, you first submitted an eight-page memorandum to the DYS Personnel office. On July 2, 2018, you submitted to DYS a seven-page "grievance." On July 5, 2018, you submitted a three-page handwritten memo to DYS Personnel. On July 13, 2018, you submitted a two-page "grievance" to DYS Personnel. On July 13, you submitted a five-page complaint (dated July 12) to DYS Personnel alleging a hostile work environment. On July 13, you submitted a gender discrimination

claim to State Personnel. Although the July 13 discrimination claim was addressed to “Department of Youth Services, Human Resources Manager: Debra Spann,” you did not submit the claim to DYS but submitted it to State Personnel without copying it to DYS. I also understand you submitted an unsigned or incomplete “First Report of Injury” to SEICTF. Several of these filings are obviously procedurally improper or incorrect. For example, your grievances were untimely, they attempt to grieve disciplinary actions, and you did not submit them through the chain of command. Moreover, the two discrimination complaints you filed (one at DYS and the other at State Personnel) are not identical, so it is uncertain what you have complained about to whom.

In any event, immediately upon receiving your complaint State Personnel scheduled a prehearing conference and asked DYS to submit a Statement of the Facts. Rather than parse the procedural issues your shotgun pleading approach has created, I simply submitted copies of **all** your memos, grievances, and complaints to the State Personnel Hearing Officer. It is not my client’s intention to proceed piecemeal with investigations of all your claims, but to conduct all necessary investigation utilizing the State Personnel forum.

...

KuAranha, since April 14, 2014, has been employed in a “Laborer” classification and has been engaged in providing shuttle transportation to DYS employees from the outside parking area to buildings inside the restricted areas of the Mt. Meigs Campus. KuAranha, during her approximately four and one-half years of employment, has received performance appraisals showing her “meeting standards” and has filed multiple grievances. KuAranha is still employed at DYS. She has not suffered an “adverse personnel action” in the context of State Personnel Board Rule 670-X-4-.01.

KuAranha did not prove the prima facie elements of a discrimination claim, or of a hostile work environment, or of retaliation by Black or any other DYS employee. From the beginning of her employment, KuAranha has had difficulty with communication and interpersonal interactions with fellow employees.²

I. PROCEDURAL HISTORY AND CHARGES

KuAranha filed her complaint of gender discrimination and harassment on July 13, 2018, pursuant to ALA. ADMIN. CODE r. 670-X-4-.01-.03 (State Personnel Board Rules), which prohibits discrimination against any person with regard to promotion, retention, or any other personnel action because of race, sex, national origin, age, handicap or other non-merit factor. Under this rule, any applicant or employee who has reason to believe that he or she has been discriminated against because of race, sex, national origin, age or handicap may file a complaint with the State Personnel Board. That person shall have the right to be heard by the Board or a special hearing agent.

II. FACTUAL BACKGROUND

Having reviewed the documentary evidence and having heard the testimony presented at the hearing and having observed the witnesses' demeanor and

² DYS Exhibit 5.

assessed their credibility, the undersigned finds sufficient evidence supports the following findings of fact.³

KuAranha was hired by DYS as a Laborer on April 14, 2014. KuAranha's job responsibilities include transporting DYS personnel, completing incident reports involving transport, maintaining the cleanliness of transport vehicles, delivering documents and supplies around the DYS Campus, and assisting with off-campus transportation as needed.⁴ A review of the documentary evidence reflects that KuAranha, particularly as it relates to her claim of discrimination in being denied overtime, clearly views herself as an employee similarly situated to DYS security officers. In her complaint, KuAranha stated, "I have been subjected to things that *other male officers* are not" and "*Other male officers* still received their overtime." [Emphasis added.] DYS security officers have specialized training and provide security by guarding and patrolling the campus. They interact with youth as necessary including controlling physical altercations. Although KuAranha works in close proximity with security officers at the Mt. Meigs Campus and shares the use of transport vehicles with them, her job duties are so vastly different that they cannot be considered comparators (*i.e.*, similarly situated).

³ All references to exhibits and testimony are intended to assist the State Personnel Board in considering this Recommended Order and are not necessarily the exclusive sources for such factual findings.

⁴ DYS Exhibit 4.

Black, who is currently a DYS Program Specialist, became KuAranha's immediate supervisor on May 1, 2018, after Paulette Underwood, KuAranha's former supervisor, was reassigned to the DYS Central Office. Overtime costs were identified as a critical issue in late March 2018 after it was noted that DYS had spent approximately \$100,000.00 more in overtime than it had at that point the previous year. David Rogers, DYS Deputy Director for Administration, and Marcia Calender, DYS Deputy Director of Institutional Services, sent emails to management campus-wide with a mandate to reduce overtime.⁵ Shortly after Black became KuAranha's supervisor, it came to his attention that she was routinely working up to ten hours per day and not clocking out during her 30-minute lunch break. On May 21, 2018, Black met with KuAranha to discuss her work schedule and verbally directed KuAranha that she was to work 7:30 a.m. to 4:00 p.m. each day with a 30-minute break during which she was to clock out. KuAranha did not obey this directive. In fact, after taking off May 22-23, KuAranha continued working from 5:00 a.m.-3:00 p.m. daily without clocking out for breaks from May 24-31. Thereafter, KuAranha was off work from June 2-22. After KuAranha returned to work, Black issued a "Counseling" to her on Friday, June 29, 2018 documenting the overtime issue.⁶ He also issued a Reprimand to

⁵ DYS Exhibit 25.

⁶ DYS Exhibit 6 (KuAranha #000023).

KuAranha that same date for insubordination because she failed to follow a directive regarding when to use a particular transport vehicle.⁷ On Monday, July 2, 2018, after having been disciplined for these issues on Friday, KuAranha filed a grievance claiming that she had been treated unfairly by Black.⁸

On July 12, 2018, KuAranha filed an additional grievance after having been issued a “Counseling” by Black upon him observing that she spent her lunch break sitting in a DYS transport vehicle with the motor and air conditioner running on July 6, 2018.⁹ The Counseling advised KuAranha she could not utilize a transport vehicle for personal use (*i.e.*, to sit in while taking her lunch break). KuAranha does not dispute that she was in the vehicle as noted and throughout her own documentation acknowledges the shortage of available transport vehicles.

On July 13, 2018, KuAranha filed an additional grievance with DYS¹⁰ and a complaint of discrimination with the State Personnel Department. In her complaint of discrimination, KuAranha alleged Black harassed, bullied, and retaliated against her because of her gender. Specifically, she alleged Black changed her work schedule; took away overtime hours she had historically worked; told her she could

⁷ DYS Exhibit 6 (KuAranha #000022).

⁸ DYS Exhibit 7.

⁹ DYS Exhibit 6 (KuAranha #000021) and DYS Exhibit 9.

¹⁰ DYS Exhibit 10.

not sit in the parking lot while on break;¹¹ forced her to drive vehicles she claims emit “harsh, potentially toxic fumes;” ignored her doctor’s orders; took away a work radio assigned solely to her; and made her the subject of meetings he held with DYS security officers. KuAranha stated in her complaint that Black “hates women.”¹²

III. ISSUES PRESENTED

Did Black or any DYS employee discriminate against KuAranha based on her gender by changing her work schedule, precluding her from working overtime, forcing her to clock out for breaks, altering her working conditions and, in general, treating her differently than other similarly situated employees?

IV. DISCUSSION AND CONCLUSIONS OF LAW

KuAranha claims the treatment she received from Black was discriminatory based upon her gender. For the reasons which follow, KuAranha failed to substantiate a prima facie case of gender discrimination.

Similar to the State Personnel Board regulations prohibiting discrimination in employment, Title VII of the Civil Rights Act of 1964 prohibits employment

¹¹ Ostensibly, this is in connection with the Counseling that KuAranha received for sitting in a transport vehicle during her break while it was idling with the air conditioner running.

¹² In the Statement of Facts filed by KuAranha on September 4, 2018, she lists additional allegations including Black requiring her to request permission to go to a designated area to get ice and requiring her to take her lunch break under a certain tree. During the hearing, KuAranha did not introduce any credible evidence to establish the veracity of these claims. Further, the allegations do not rise to the level of being adverse employment actions. Finally, it is not clear who KuAranha is actually complaining of in reference to her allegation of being required to sit under a certain tree during her breaks. In the memorandum she filed with DYS Personnel on June 1 (DYS Exhibit 11, KuAranha #000045), KuAranha states, “Ms. J. Coles-Lewis sentenced me to sitting under the tree at the dining hall.”

discrimination on the basis of “race, color, religion, sex or national origin.” 42 U.S.C. § 2000e, *et. seq.* Therefore, in analyzing KuAranha’s discrimination claim, we must look to federal case law interpreting federal employment discrimination statutes. Courts hold that in order to establish a claim of gender discrimination, KuAranha must rely on either direct or circumstantial evidence of discrimination. *Maynard v. Bd. of Regents of the Div. of Univs. of the Fla. Dept. of Educ.*, 342 F.3d 1281, 1288 (11th Cir. 2003).

To rely on direct evidence, KuAranha needed to present direct evidence of discrimination that reflected “a discriminatory or retaliatory attitude correlating to the discrimination” alleged by the employee. *Carter v. Three Springs Residential Treatment*, 132 F.3d 635, 641 (11th Cir. 1998). Indeed, courts hold that “only the most blatant remarks, whose intent could be nothing more than to discriminate” will constitute direct evidence of discrimination. *Earley v Champion Int’l Corp.*, 907 F.2d 1077, 1081 (11th Cir. 1990). KuAranha must provide evidence that, if it is believed, “proves the existence of the fact in issue without inference or presumption.” *Maynard*, 342 F.3d at 1289. At the hearing, KuAranha failed to offer any direct evidence of gender discrimination. She cannot successfully support a case with general allegations that do not disclose the facts in detail and with precision. The law provides that mere allegations unaccompanied by any evidentiary support will not suffice. *See Engl v. Aetna Life Insurance Co.*, 139

F.2d 469 (2d Cir. 1943); *Croley v. Matson Navigation Co.*, 434 F.2d 73 (5th Cir. 1970). McCullough testified that KuAranha was not the subject of meetings Black had with DYS Security Officers. McCullough further stated that KuAranha was treated like other DYS employees and, in fact, enjoyed a more flexible work schedule in that up until her prior supervisor transferred to the DYS Central Office, KuAranha was able to take lunch breaks without clocking out. KuAranha, like most discrimination complainants, ultimately relied upon circumstantial evidence. *Holifield v. Reno*, 115 F.3d 1555, 1562 (11th Cir. 1997).

The U.S. Supreme Court established a burden-shifting framework to evaluate claims of indirect evidence of discrimination in employment actions. *McDonnell Douglas Corp. v Green*, 411 U.S. 792 (1973). First, KuAranha must carry the burden of establishing a prima facie case of discrimination. *McDonnell Douglas Corp.*, 411 U.S. at 802. In order to establish a prima facie case of gender discrimination, an employee must prove:

- (1) She is member of a protected class;
- (2) She is qualified for the job;
- (3) She suffered an adverse employment action by the employer; and
- (4) She was either replaced by someone outside her protected group or received less favorable treatment than a similarly situated individual outside the protected group.

See *Maynard*, 342 F.3d at 1289. KuAranha must meet this burden of proving a prima facie case by a preponderance of the evidence. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 252-253 (1981).

Second, if KuAranha succeeded in proving the prima facie case, the burden would shift to DYS to articulate some legitimate, nondiscriminatory reason for its employment action. *Id.* at 254. This intermediate burden is “exceedingly light.” *Reno*, 115 F.3d at 1564.

Third, should DYS carry this burden, KuAranha must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by DYS were not its true reasons, but were a pretext for discrimination. *Burdine* at 252-253. KuAranha has the “opportunity to demonstrate that the proffered reason was not the true reason for the employment decision.” *Id.* at 256. KuAranha “may succeed in this either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer’s proffered explanation is unworthy of credence.” *Id.*

Throughout the presentation of proof, KuAranha had the burden of proving DYS discriminated against her. *Id.* “The ultimate burden of proof of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff.” *Id.* at 253. Additionally, “[i]n pursuing a discrimination action, a plaintiff cannot rely on the attenuated possibilities which

might infer a discriminatory motive, but rather, she must come forward with sufficient evidence to establish a prima facie case.” *Pace v. Southern Railway System*, 701 F.2d 1383, 1391 (11th Cir. 1983). Personal opinions and conclusory allegations, in the absence of supporting evidence, are insufficient to withstand judgment as a matter of law. *Holifield v. Reno*, 115 F.3d 1555, 1564, n.6 (11th Cir. 1997).

There is no dispute about the first and second elements of KuAranha’s claim. KuAranha is female and, therefore, a member of a statutorily protected class of individuals. Moreover, she is qualified for her job. However, KuAranha’s claims for gender discrimination fail for several other reasons.

A. Similarly Situated, but Disparately Treated Employee

Assuming *arguendo*, KuAranha could meet the burden of proving an adverse employment action, she also had to prove, as part of her prima facie case, that DYS treated similarly situated employees outside her classification more favorably than herself. *Reno*, 115 F.3d at 1562. In order to meet this burden, “to make a comparison to the plaintiff’s treatment to that of male employees, the plaintiff must show that she and the employees are similarly situated in all relevant respects.” *Id.* KuAranha must offer sufficient evidence that employees, who were treated more favorably than she, were sufficiently similarly situated to her. *Crayton*, 589 F.Supp.2d at 1284. As previously stated, KuAranha seeks to

compare herself to DYS security officers and claims gender discrimination because she believes male security officers have been allowed to continue to work overtime and she has not. KuAranha offered no evidence establishing any nexus between her duties as a Laborer and the duties of the security officers that would make them suitable comparators (*i.e.*, similarly situated employees).

B. Legitimate, Non-Discriminatory Reasons for Employment Decision

Even assuming, *arguendo*, that KuAranha met her burden of establishing a prima facie case, DYS has the opportunity to demonstrate that its decisions to regulate overtime and set job requirements were based on a legitimate, non-discriminatory reason. *Burdine*, 450 U.S. at 254.

DYS clearly met this burden based on the evidence adduced at this hearing. DYS had legitimate, non-discriminatory reasons to require KuAranha to work the schedule management determined for her, to restrict the overtime hours for the whole campus including for KuAranha, and to require KuAranha to clock out when taking breaks. KuAranha claims that prior supervisors had approved her to work overtime daily. KuAranha also argues that prior to Black becoming her supervisor, there had never been an issue with her not clocking out for her 30-minute lunch breaks. KuAranha claims that Black changed her schedule. However, the evidence introduced shows that KuAranha's schedule prior to Black

becoming her immediate supervisor was 7:30 a.m.-3:30 p.m.¹³ Black essentially only directed KuAranha to stop clocking in at 5:00 a.m. every day, to clock out for her lunch breaks, and to work until 4:00 p.m. (ostensibly so that she would get paid for eight hours and maintain her full-time status). Although KuAranha avers she should be allowed to work an adjusted schedule because there is a compelling need for her to begin work every day before 7:30 a.m. and there is little need for her to work after 3:00 p.m., she also admits in her June 1 memorandum filed with DYS Personnel that the daily overtime was “what I depended on to survive because my salary is small...” Regarding working until 4:00 p.m. each day, KuAranha wrote, “I scheduled lots of appointments after 3 before doctor offices closed so it leaves me less time taking off during work hours.”¹⁴

Regarding KuAranha’s complaint about a work radio previously assigned only to her being reassigned for general circulation, that is a matter within DYS’s purview and is not an adverse employment action. KuAranha also complains of being forced to drive vehicles she claims emit fumes that could be detrimental to her health. DYS has discretion to assign vehicles as it sees fit and the record reflects KuAranha’s concerns have been taken seriously by DYS and the vehicles

¹³ DYS Exhibits 26-27.

¹⁴ DYS Exhibit 11 (KuAranha #000045).

have been tested by DYS and found safe.¹⁵ KuAranha also claims Black ignored her doctor's orders, but DYS Exhibits 6 and 7 detail Black's efforts to accommodate her need to work in air-conditioned transport vehicles in extreme temperatures.

Importantly, courts hold that "Title VII does not take away an employer's right to interpret its rules as it chooses and to make determinations as it sees fit under those rules." *Jones v. Bessemer Carraway Med. Ctr.*, 137 F.3d 1306, 1311 (11th Cir. 1998). Alabama courts have held that "an agency's interpretation of its own regulation must stand if it is reasonable, even though it may not appear as reasonable as some other interpretations." *Ferlisi v. Alabama Medicaid Agency*, 481 So.2d 400, 403 (Ala. Civ. App. 1985). *State Pers. Bd. V. Wallace*, 682 So.2d 1357, 1359 (Ala. Civ. App. 1996).

V. CONCLUSION

The undersigned finds the substantial weight of the evidence demonstrates that Black did not discriminate against KuAranha and that DYS did not engage in or condone gender discrimination against KuAranha. The record contains over 70 pages of memoranda, journal entries, grievances and complaints written by KuAranha in which she describes in great detail her perception of the people with whom she works at DYS's Mt. Meigs Campus. Her writings are filled with

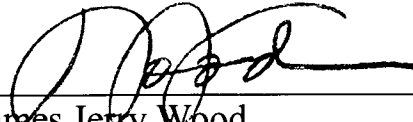
¹⁵ DYS Exhibit 7 (KuAranha #000029).

references to her supervisors that clearly reflect she is constantly at odds with them and her fellow DYS employees. On February 1, 2016, in a rebuttal she wrote to Janice Lewis, Assistant Administrator of Institutional Services, KuAranha stated, "I feel that it's just one of me alone against this huge fight against the whole campus."¹⁶ While it is clear that KuAranha views Black's directives to adhere to her schedule, to clock out during breaks, and to otherwise have her follow DYS's extant rules as him harassing, bullying, and creating a hostile workplace for her, she introduced no evidence other than her own conclusory writings to support her contentions. Similarly, KuAranha offered no credible evidence to support her allegation of retaliation.

The evidence established that KuAranha did not receive less favorable treatment than any similarly situated employee outside her protected class. Many of the actions KuAranha complains of do not rise to the level of adverse employment actions. Moreover, DYS had legitimate, non-discriminatory reasons for its employment actions concerning KuAranha that she failed to prove were pretextual. KuAranha failed to establish a claim of discrimination under ALA. ADMIN. CODE r. 670-X-4-.01-.03. Accordingly, the undersigned recommends that KuAranha's complaint be DISMISSED.

¹⁶ DYS Exhibit 16 (KuAranha #000091).

Done, this the 26th day of October 2018.



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