

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

BELINDA MOSS,)	
Plaintiff,)	
)	
vs.)	3:03-cv-80-RLY-VSS
)	
AMERITECH SERVICES, INC.)	
(a/k/a SBC/AMERITECH),)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

BELINDA MOSS,)
Plaintiff,)
)
vs.) 3:03-cv-80-RLY-VSS
)
AMERITECH SERVICES, INC.)
(a/k/a SBC/AMERITECH),)
Defendant.)

**ENTRY ON AMERITECH’S MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF
BELINDA MOSS’ CLAIMS, and AMERITECH’S MOTION TO STRIKE OR
DISREGARD PLAINTIFF’S UNTIMELY AND IMPROPER “SUPPLEMENTAL
RESPONSE”**

On May 16, 2003, Plaintiff, Belinda Moss (“Plaintiff”), filed a Complaint against her former employer, Ameritech Services, Inc., a/k/a SBC/Ameritech (“Ameritech”). Plaintiff alleges that Ameritech discriminated against her on the basis of her race (Africa-American), sex (female), age (over 40) and disability (asthma), and retaliated against her for filing an internal EEO complaint. Ameritech now moves for summary judgment. For the reasons set forth below, that motion is **GRANTED**. In addition, Ameritech moves to strike Plaintiff’s Supplemental Response. That motion is likewise **GRANTED**.

I. Preliminary Issues

A. Motion to Disregard or Strike Improper Portions of Plaintiff’s Brief and Exhibits

In its Reply Brief, Ameritech moves to disregard or strike numbered paragraphs 6, 7, 8, 9, 10, 12, 13, 14, 15, 17, 18, 19, and 20 of Plaintiff’s Response Brief, and Exhibits 1 and 3 in their entirety. Numbered paragraphs 6, 7, 8, 9, 10, 12, 13, 14, 15, 17, 18, 19, and 20 cite to

Plaintiff's deposition testimony. However, the deposition pages cited in support of Plaintiff's "facts" were not filed with the court. Therefore, these numbered paragraphs have no evidentiary support in the record. Moreover, paragraph 20 is inadmissible as speculation and hearsay. Accordingly, the court strikes numbered paragraphs 6, 7, 8, 9, 10, 12, 13, 14, 15, 17, 18, 19, and 20 from its review.

Plaintiff provides no explanation, testimony or evidentiary support for Exhibits 1 and 3. Accordingly, the court also strikes Exhibits 1 and 3 from its review.

B. Motion to Strike or Disregard Plaintiff's Untimely and Improper "Supplemental Response"

Over five months after the close of discovery and three months after Ameritech's Motion for Summary Judgment was fully briefed, Plaintiff filed a Supplemental Response ("Response"). The Response consists of a "Statement" by a previously undisclosed witness named Diane Northington, without a motion or leave from the court. Plaintiff represents that "the identity and interest of [Diane Northington] was not known to plaintiff until much after any applicable date for response to Defendant's Motion for Summary Judgment."

Ameritech moves to strike or disregard Plaintiff's Response for several reasons. First, Plaintiff has not made the necessary showing that coming forward with this new "witness" after the close of discovery is substantially justified or harmless. Second, the Response is replete with inadmissible speculation, conjecture, conclusory allegations and hearsay, and is irrelevant because it fails to provide any evidence regarding the employment decision at issue here, namely, the decision to eliminate Plaintiff's job during a reduction-in-force.

The court, having read and reviewed Ameritech's motion, now finds its should be **GRANTED**. Plaintiff's Supplemental Response is hereby **STRICKEN**.

B. Discussion

Plaintiff formerly held a low-level managerial position at Ameritech's Call Center located in Evansville, Indiana. Plaintiff's position was eliminated in October 2002. (Defendant's App. B, Affidavit of JoElla Baker ("Baker Aff."), ¶ 52). Although Plaintiff was offered a similar management position at another Call Center in San Antonio, Texas, Plaintiff refused Ameritech's offer of continued employment. (Baker Aff, ¶ 60). Plaintiff then filed the instant employment discrimination suit against Ameritech. Plaintiff alleges that Ameritech discriminated against her on the basis of her race, age, and sex when it eliminated her position during the reduction-in-force. Plaintiff also alleges a variety of "incidents" of intentional discrimination.

Having read Plaintiff's Response, and the evidence cited in support of her claims, the court finds Plaintiff's race, age, and sex discrimination claims cannot survive summary judgment for the reasons set forth below.

First, Plaintiff failed to establish the fourth element of the *McDonnell Douglas* framework; namely, that similarly situated, substantially younger or Caucasian or male employees were treated more favorably than her. To meet her burden, Plaintiff needed to come forward with evidence establishing "that there is someone who is directly comparable to her in all material respects." *Peele v. Country Mut. Ins. Co.*, 288 F.3d 319, 330 (7th Cir. 2002) (quoting *Patterson v. Avery Dennison Corp.*, 281 F.3d 676, 680 (7th Cir. 2002)). Specifically, in a reduction-in-force case, Plaintiff must show "at a minimum that the retained . . . employees possessed analogous attributes, experience, education, and qualifications relevant to the positions." *Radue v. Kimberly-Clark Corp.*, 219 F.3d 612, 618 (7th Cir. 2000). Plaintiff wholly failed to provide any evidence that she was directly comparable to any employee at Ameritech.

In fact, Plaintiff completely ignored the *McDonnell Douglas* burden-shifting framework and failed to address this necessary prong under the indirect method of proof.

Second, Ameritech offered legitimate, nondiscriminatory reasons for selecting Plaintiff's position for the reduction-in-force. JoElla Baker, the general manager of the Call Center for operations, determined that Plaintiff's position would be eliminated based on Call Center experience, supervisory experience, and performance. (Baker Aff., ¶¶ 45-47, 49, 51). The burden then shifted to Plaintiff to show that Ameritech's proffered reason was a pretext for discrimination. *Jones v. Union Pac. R.R. Co.*, 302 F.3d 735, 742 (7th Cir. 2002). Plaintiff made no attempt to do so.

Plaintiff's disability discrimination claim fares no better. Not only does Plaintiff fail to address the similarly situated prong, but also makes no attempt to rebut the admission that she made in her deposition that she is not disabled. *See* Defendant's App. A at 54, 145 (Q: You are not disabled? A: No, I am not.').

Finally, Plaintiff makes no attempt to address Ameritech's argument with regard to her retaliation claim.

For all of these reasons, Plaintiff's claims must be dismissed on summary judgment.

III. Conclusion

Plaintiff failed to establish a prima facie case of race, age, sex and disability discrimination, failed to establish that Ameritech's reasons for her termination were pretextual, and wholly failed to address her retaliation claim. Accordingly, Ameritech's Motion for Summary Judgment on Plaintiff Belinda Moss' Claims must be **GRANTED**. Further, Ameritech's Motion to Disregard or Strike Improper Portions of Plaintiff's Brief and Exhibits, which was advanced in its Reply Brief, is **GRANTED**. Finally, Ameritech's Motion to Strike

or Disregard Plaintiff's Untimely and Improper "Supplemental Response" is **GRANTED**.

SO ORDERED this _____ day of January 2005.

RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

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