IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-50267

Summary Calendar

JEANETTE GARCIA,

Plaintiff-Appellant,

versus

UNIVERSAL CITY, TEXAS,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
(SA-92-CV-20)

(September 8, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:[*]

Plaintiff Jeanette Garcia worked as a police officer for defendant Universal City Police Department from 1983 until 1989, when she resigned. She filed charges of discrimination based on national origin with the Texas Commission on Human Rights (TCHR) and with the EEOC. She brought suit under Title VII and pendent state-law claims for intentional infliction of emotional distress

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

and a violation of the Texas Commission on Human Rights Act. She alleged discrimination based on national origin and retaliation for filing a complaint with TCHR. The district court granted defendant's motion for summary judgment.

To make out a prima facie case of national origin discrimination under Title VII, an employee must show that he was a member of a protected class, he was denied a benefit, he was qualified for the benefit, and employees outside the class received the benefit. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-03 (1973). To show constructive discharge, an employee must show that his working conditions were made so difficult because of discrimination that a reasonable person would have felt forced to resign. Ugalde v. W.A. McKenzie Asphalt Co., 990 F.2d 239, 242 (5th Cir. 1993). The Texas Commission on Human Rights Act is the state counterpart to Title VII. See Tex. Lab. Code § 21.051(2); 42 U.S.C. §§ 2000e-2, 2000e-3.

Garcia complains that, because she is Hispanic, she received a lower salary and lower rank and worked longer hours than did Officer Debi McCourt. McCourt was hired as a crime prevention-investigator officer, a position funded by a special state grant and therefore not on the department's normal pay and promotional track. The job notice for McCourt's job called for at least two years of police experience and preferably two years of relevant college studies and formal training in crime prevention and investigation. Garcia has presented no evidence that she was qualified for or applied for the crime prevention-investigator job.

Therefore, the different pay, hours, and rank are not evidence of discrimination.

Garcia complains that when she was pregnant she was not excused from practice at the firing range, but McCourt was. McCourt, however, presented a written excuse from her physician, while Garcia did not. This is not discrimination.

Garcia alleges that she was sent on dangerous arrests but McCourt was not. Garcia, however, lacks personal knowledge about McCourt's work because they rarely worked together. McCourt's affidavit states that she took part in many dangerous arrests, including drug raids. Garcia has presented no evidence of this claim sufficient to survive summary judgment.

Garcia complains that she overheard a crude locker-room comment derogating Mexican women. She did not complain about the comment and there is no evidence that it was directed toward her. The remark occurred long before Garcia's resignation. This isolated, overheard remark does not amount to constructive termination.

Garcia alleges that the department gave her less than forty hours of training per year, while some other officers received that much. Budget constraints, varying duties, and difficulty in covering an officer's absence prevented many officers from attending the training programs they requested. Garcia received sixteen hours of training in 1989, more than many white male officers received. She has not made out a prima facie case of disparate treatment.

In March 1989, Lieutenant Meek told Garcia that because her performance appraisal had been below average, she would be evaluated monthly. He said that Garcia's inability to get along with dispatchers, the evidence technician, and other officers had resulted in the performance appraisal. One other officer whose performance was deficient received the same treatment. Moreover, the decision had no effect because the Chief of Police rescinded the monthly evaluations of Garcia before they began.

Garcia's claims of retaliation are equally meritless. She alleges that her office was moved because of retaliation. An ad hoc committee of four officers, including Garcia, had unanimously voted to move the warrant office (including Garcia) closer to the patrol offices. Garcia's new office was in the same building and enjoyed all the standard amenities. She has shown no injury.

Garcia alleges that her supervisors conspired and altered her arrest warrant records, to make it look as if she had incorrectly processed an arrest warrant. She admits that she has no evidence of alteration or conspiracy. Bare speculation does not equal a genuine issue of material fact. Furthermore, the department took no adverse action because of the incident.

Garcia claims that Lieutenant Meek repeatedly told her to "get a job," which she interpreted as meaning "look for another job." Lieutenant Meek, however, said "get a job" to every employee whom he saw socializing or standing around, meaning "get back to work." There is nothing hostile or discriminatory about the remark, and Meek told it to all of his employees.

Garcia claims that police dispatchers withheld her telephone calls. Because of the large office and the in-and-out nature of police work, many officers had trouble receiving messages. Garcia has not shown that she was treated worse than non-Hispanic whites or other groups of employees.

Garcia complains that when her hand was in a cast, she was not allowed to drive a department car, but later when McCourt had a cast on her broken arm, she drove a department car. These bare facts do not disclose any injury, let alone national origin discrimination.

Garcia alleges that Hispanics as a group were treated worse than non-Hispanics. She has adduced no evidence substantiating these allegations. Nor has she alleged any extreme, outrageous, or atrocious conduct that would qualify as intentional infliction of emotional distress. Wornick Co. v. Casas, 856 S.W.2d 732, 734 (1993). Therefore, we AFFIRM the district court's grant of summary judgment on all claims.