IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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LEE BRICE,

Plaintiff,

v.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS; and SAM SCHNEITER, BRUCE SCHNEIDER, MARC CLEMENTS, and BRUCE THOMURE, in their individual capacities,

Defendants.

OPINION AND ORDER

01-C-480-C

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This is a civil action for monetary relief brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, and 42 U.S.C. § 1983. Plaintiff Lee Brice was employed formerly as a sergeant by defendant Wisconsin Department of Corrections. Plaintiff alleges that she was discriminated against because of her gender, subjected to a hostile work environment, retaliated against and constructively discharged, all in violation of Title VII. Plaintiff brings her Title VII claims against defendant Wisconsin Department of Corrections only. Plaintiff alleges that defendants Schneiter, Schneider, Clements and Thomure violated her Fourteenth Amendment right to equal protection when they

discriminated against her on the basis of her gender. Jurisdiction is present. 28 U.S.C. § 1331. Presently before the court are defendants' motions to dismiss and for summary judgment. Because I find that plaintiff's amended complaint states claims under Title VII and the Fourteenth Amendment's equal protection clause, defendants' motion to dismiss will be denied. However, because I find that plaintiff's Title VII claims are time barred, I will grant defendant Wisconsin Department of Corrections' summary judgment motion as to those claims. Finally, I will grant the individual defendants' summary judgment motion on plaintiff's equal protection claims because plaintiff has failed to show either that she was treated less favorably than similarly situated male correctional officers or that there is an adequate link between the individual defendants and the alleged violations of her constitutional rights.

For the purpose of deciding the pending motions, I find from the parties' proposed findings of fact that the following material facts are undisputed.

## UNDISPUTED FACTS

Plaintiff Lee Brice is a former employee of defendant Wisconsin Department of Corrections. Defendant Wisconsin Department of Corrections is a department in the executive branch of the government of the State of Wisconsin. At all times relevant to this lawsuit, defendant Bruce Schneider was personnel director at Columbia Correctional

Institution, where defendant Sam Schneiter was security director, defendant Bruce Thomure was a relief third-shift commander and defendant Marc Clements was a captain.

Plaintiff began working for defendant Wisconsin Department of Corrections in April 1984 as a Correctional Officer I. In that position, plaintiff worked at both the Fox Lake Correctional Institution and Dodge Correctional Institution. At that time, no more than five percent of the correctional officers employed by the department were women. After about two years, plaintiff was promoted to Officer III status, which brought about her transfer to the security unit at the University of Wisconsin Hospital in Madison. After she completed her promotion probationary period, plaintiff transferred to Columbia Correctional Institution in order to reduce the time she spent commuting to work. Plaintiff worked in Columbia's vocational complex for approximately 11 years.

In 1991, plaintiff wanted to apply for a first-shift job in the segregation unit at Columbia. At the time, female officers were not eligible to apply for jobs in the segregation unit because the jobs were designated as "bona fide occupational qualification" positions, meaning that only males were allowed to apply for them. In 1991, plaintiff participated in a lawsuit against defendant Department of Corrections, alleging that the bona fide occupational qualification designation amounted to illegal gender discrimination. One of the primary goals of the lawsuit was to allow female correctional officers to be eligible for positions designated for males only. In November 1997, defendant Wisconsin Department

of Corrections entered into an agreement with a prison employees' labor union that resulted in the elimination of the bona fide occupational qualification designation for certain positions at correctional institutions throughout the state. This allowed female correctional officers to work in positions that were once reserved exclusively for males, including positions in the segregation units.

On or around August 17, 1997, just before the resolution of the bona fide occupational qualifications suit, plaintiff transferred from her position in Columbia's vocational complex to a position in the barracks of Secure Detention Unit 1. The barracks was a new housing complex at Columbia. Plaintiff and her third-shift staff and the first- and second-shift staffs were responsible for getting the barracks ready to open in September 1997. The barracks have a maximum capacity of 150 inmates. Inmates in the barracks are not locked in cells, but separated into two living areas where they sleep in bunks. A glass encased "bubble" in the middle of the barracks contains all of the controls and locking mechanisms in the unit. As a Correctional Officer III, plaintiff had the rank of sergeant, became the lead worker for the third shift in the barracks (10 p.m. - 6 a.m) and was the first woman to hold this position in the barracks. As the third-shift lead worker, plaintiff supervised two correctional officers assigned to the unit. (Generally, one officer works each side of the barracks; the third must be present in the bubble at all times.) The barracks were informally referred to by staff and inmates as the "hostage hut" because staff in the barracks

have no escape route in the event that the inmates riot or take a hostage. In a barracks housing unit, where corrections officers must sit or walk among a large group of inmates, an officer has two main sources of protection: his or her own skills and training and the ability to call for help.

During the third shift, inmates were allowed to leave their bunks in case of an emergency or to use the bathroom; otherwise, inmate movement was severely restricted during the shift. The first two nights that the barracks were open there were three or four inmates at a time in the bathroom on each side of the barracks. More inmates sat at tables in the day room, waiting for their turn in the bathroom. On the third night, there were at least 20 inmates who got out of bed to use the bathroom in the first ten minutes after the routine inmate count was completed. With inmates getting out of bed to use the bathrooms and congregating while waiting for their turn, the situation in the barracks was getting out of hand and creating a security risk. To address this problem, plaintiff implemented an acknowledgment system for after-hour bathroom use whereby an inmate was not allowed to leave his bunk to use the bathroom unless his request was first acknowledged by an officer. This system eliminated the noise, crowding and growing security risk inside and outside the bathrooms.

On September 28, 1997, Unit Manager Jim Parisi circulated a memorandum to all barracks staff regarding inmate movement during the third shift. Parisi's memo, which asked

for "a bit of latitude" regarding the movement of inmates on the third shift, was directed to the system plaintiff had implemented. Parisi indicated that he wanted to allow inmates to move to the bathroom with relative ease, without first being acknowledged by an officer. Plaintiff wrote a note to Parisi stating that she had serious concerns about allowing inmates too much freedom of movement. Plaintiff invited Parisi to call her at work or at home to discuss her concerns. Plaintiff continued using the acknowledgment system out of concern for the safety of her staff. On October 4, 1997, Parisi circulated another memo in a similar vein to all barracks staff that was clearly directed at the third-shift acknowledgment system. In response, plaintiff wrote Parisi a memo voicing her objections and concerns about the efficacy of his directive. Plaintiff expressed her disappointment that Parisi had not talked to her personally but instead had sent his two memos to all 15 barracks workers, which she believed had the result of eroding her authority. Plaintiff concluded her note by stating,

> It appears that you don't feel that my concerns need to be addressed, but rather that I can be 'handled' with memos. I can document my concerns regarding security. Are you willing to take responsibility for staff or inmate incidents using *your* system for movement? Perhaps you could have some transfer papers sent to me, and then you will be able to staff this *popular* area with more qualified staff who are willing to put security second. Or perhaps to be more qualified one simply needs to be male.

In a memo to plaintiff dated October 8, 1997, Parisi stated that his earlier memo was not directed at any one individual or intended to erode plaintiff's authority. Parisi also wrote that he was "disturbed by the personal tone of your correspondence. I hope that

future interactions, whether they be personal or in writing (as is often necessary due to the shifts we work), be professional and productive, not condescending or disrespectful." In Parisi's December 1997 "Performance Planning and Development Report" on plaintiff, he noted,

> Sgt. Brice does well in evaluating unit policies and procedures and is willing to provide input and/or trouble shooting ideas to problems/concerns. However, she does at times fall short of 'appropriate' communication exchanges with supervisors, choosing to address an issue in disrespectful manners rather than appropriate dialog. This having been addressed with her, there has been very good dialog and team work.

In the section of the report for her comments, plaintiff responded by noting,

> I feel my communication skills have been as 'appropriate' as those directed toward me. My officers' safety is my primary concern and if it takes 'extra effort' to make my point - that's what I'll do. Dialog with all other supervisors has been excellent. The barracks seems to be coming along fine.

On October 6, 1997, the second-shift barracks officer allowed the barracks inmates to watch the Monday Night Football game in accordance with Unit Manager Parisi's instructions. After the game, one inmate became loud, abusive and confrontational. Plaintiff was out on the barracks floor at the time and managed to get the inmate back to his bunk, but he continued to be loud and confrontational. Plaintiff telephoned for security assistance at 11:20 p.m., and spoke with defendant Thomure, a relief third-shift commander. The disruptive inmate got up from his bunk and started moving toward plaintiff, as did two other inmates. Plaintiff told defendant Thomure that two other inmates had gotten out of

bed. Plaintiff informed defendant Thomure of the serious nature of the situation and the need for assistance. On the phone, defendant Thomure asked plaintiff repeatedly what she had done to cause the inmate to be upset. Defendant Thomure arrived at the barracks fifteen minutes after plaintiff called him. The ability for a sergeant in the barracks to summon assistance from a superior officer is an important feature of the prison's security protocol. Disturbances such as an inmate's yelling at an officer are more serious in a barracks situation, where no bars separate inmates from officers and where one inmate's dangerous behavior can incite other inmates to act in the same way. The logbook from that evening shows that defendant Thomure removed the disruptive inmate from the barracks and no concerns are noted. The logbook policy states that it should be used to pass on information "of a significant concern . . . when communicating with other staff."

Plaintiff's husband was employed as a correctional officer at Columbia also. He injured his knee while responding to a call for assistance in the barracks. In November 1997, plaintiff took two days off work to drive her husband to his doctor for knee surgery. When she returned to work, plaintiff submitted documentation of the surgery to defendant Thomure, along with a verbal and written explanation that the documentation was intended to explain her absence, not her husband's, and a request that this information be noted in her file. Defendant Thomure assured plaintiff that he would note the excuse in her file. However, neither day was marked as an excused absence, meaning that the absence was

considered "unanticipated." As a result of defendant Thomure's failure to mark plaintiff's absences as excused, plaintiff was subject to a sick leave review in February 1998 because she allegedly had two absences over the limit for unanticipated leave. Plaintiff had to get copies of the original documentation for her absence and resubmit those materials. Both days were then marked as excused.

At some point in December 1997 or January 1998, plaintiff met with Warden Jeffrey Endicott for more than two hours and related to him a variety of issues having to do with gender and racial harassment at Columbia. Plaintiff expressed concern that some of the individuals at Columbia responsible for educating staff about the prison's harassment policy engaged in harassment themselves. In particular, plaintiff told Endicott that defendant Thomure was one of the prison's worst perpetrators of harassment. Plaintiff told Endicott she had heard defendant Thomure make remarks of a sexual nature at harassment training sessions. Endicott expressed his support for plaintiff and indicated he would look into the matters she raised. Endicott and plaintiff met again in January and February 1998, when plaintiff finally asked to be transferred out of the barracks because she believed the situation there to be intolerable.

On December 17, 1997, while plaintiff was still stationed in the barracks, she received an anonymous note alleging that Dick Wech, a fellow Columbia officer, was spreading rumors of an affair between her husband and another female officer. The note alleged that

photographs had been taken documenting the affair. Plaintiff immediately submitted a complaint alleging that the rumor amounted to "harassment" and could create "a hostile, intimidating, and/or offensive working environment" and asking that an investigation be conducted regarding the rumor. Defendant Sam Schneiter, the prison security director, was assigned to investigate the rumor incident to see whether it rose to the level of malicious gossip. Although the Columbia Correctional Institution employee handbook states that investigations shall be completed within 15 working days, defendant Schneiter did not complete his investigation until February 17, 1998, about two months after plaintiff's request. Twice in January, plaintiff asked about the delays. Defendant Schneider, the prison human resource director, wrote plaintiff to confirm that the standard procedure is to complete investigations in 15 days, but noted that the time may be extended to accommodate staff schedules and the need for additional information. Defendant Schneiter interviewed eight individuals, including plaintiff and her husband, as part of his investigation, told all those interviewed to refrain from any discussion of the matter and told supervisors to intervene and report any incidents involving the rumor. He presented his findings to defendant Schneider on February 4, 1998. After defendant Schneider received the report, it was reviewed by Warden Endicott and an employee of the Department of Corrections Affirmative Action Office. In a letter dated February 17, 1998, defendant Schneider informed plaintiff that defendant Schneiter had completed his investigation into

the rumor allegedly being spread by Wech and had concluded that staff did have some discussion about an alleged affair between plaintiff's husband and another officer but that no evidence supported the finding that any officer or supervisor had acted inappropriately or that the incident had risen to the level of malicious gossip.

On January 14, 1998, an interview request slip addressed to plaintiff was found in the B-side unit barracks mailbox. Both staff and inmates have access to this mailbox. Attached to the interview request were two pages of pornographic advertisements with the words, "You only wish you were half as much a woman as these beautiful woman [sic]." Plaintiff filed an incident report and turned the note over to Captain Bergh. Bergh assured plaintiff that a search would be conducted the next morning in the barracks to determine whether a booklet or magazine with torn or missing pages could be found. Bergh told the incoming first-shift supervisor, Captain Trattles, to have the barracks searched. Separately, the incident was referred to the new unit manager, Sue DeHaan. The next morning, no search was conducted. At this time in the barracks, inmates' personal property was severely restricted. Any personal reading material, including magazines, would have been considered contraband. A few days later, DeHaan and Trattles arranged a "shakedown" of the barracks, but no magazine was found. Staff were alerted and directed to confiscate any unauthorized materials and to forward the material to DeHaan for review in an attempt to identify the sender of the offensive correspondence. There was no investigation into whether a staff

member had written the note.

On January 17, 1998, plaintiff had to deal with a disruptive inmate. Plaintiff was stationed in the bubble at the time and spoke to the inmate over a phone. When their conversation ended, the inmate yelled, "Fuck you, bitch." The officer on the floor of the barracks ordered the inmate back to his bunk. The inmate then yelled, "Fuck off, you mother fucking racist bitch," prompting the other 36 inmates in the area to start yelling. Plaintiff telephoned defendant Clements, the third-shift commander, and requested immediate security assistance. Defendant Clements told plaintiff he would be there right away. In the meantime, the disruptive inmate got up from his bunk, approached the correctional officer on the barracks floor and yelled, "If I see you on the street I'm going to kick your wannabe cop ass." This caused more inmates to begin yelling and screaming loud enough to be heard in a courtyard outside. Approximately five minutes after plaintiff's call, at 10:05 p.m., defendant Clements arrived at the barracks with another officer and took the disruptive inmate away. When defendant Clements arrived at the barracks, he never entered the bubble to speak with plaintiff, although she was the sergeant in charge. At 10:15 p.m., defendant Clements sent another officer to the barracks for added security, but instead of instructing this officer to report to plaintiff, Clements told the officer to staff the bubble so plaintiff could go into the barracks. Circumventing the chain of command can diminish a sergeant's apparent authority. Later, Clements contacted the officer in the bubble to

determine whether the unit was calm. The logbook indicates no further problems after the disruptive inmate was removed. Because plaintiff believed Clements's actions were inappropriate, she wrote a letter to Captain Bergh, the third-shift commander, outlining her complaints. Defendant Schneiter responded to her complaints in a January 27, 1998 memo, indicating his opinion that Clements had responded appropriately to the situation.

On February 7, 1998, plaintiff received a threatening note addressed to her and placed in the barracks B-side mailbox. The note threatened sexual violence and stated, "Keep up the bullshit or you gonna get it in the ass." Receiving this sort of note was somewhat unusual. Although plaintiff has received threatening notes before, she had never received a sexual threat in such an open setting. Both corrections staff and inmates had access to the mailbox. The note was actually discovered by another officer, Sergeant Drohste. Plaintiff reported receiving the note to her supervisor. Drohste submitted an incident report regarding the note. On the incident report, supervising officer William Parker wrote under "Action Taken,"

> Interview request was taken from mail drop box on B side of SDU-1. Message was printed, not written, so possibly could be difficult to identify author by handwriting analysis. Refer to 1st and 2nd shift regular SDU-1 staff for assistance in identification. Suggest referral to Unit Manager for follow-up. Interview request accompanies this report. Noted on daily report. In further action, the incident was referred to Unit Manager DeHaan for investigation 'in attempt to determine author of note.'

According to Department of Corrections policy, Drohste should have recorded the note in

the logbook but he did not. Nevertheless, Drohste was not disciplined. In the wake of the incident, the mailboxes were not "locked," as they sometimes had been in the past in similar circumstances, in order to force inmates to physically hand in mail.

On March 1, 1998, the ink ribbon was missing from plaintiff's work typewriter. On two previous occasions, plaintiff's typewriter had been damaged, although she had not made defendants aware of this. No inmates have ever had access to plaintiff's typewriter. Plaintiff filed an incident report on March 1, 1998, regarding the missing ribbon. Defendant Clements interviewed all staff members who had access to the typewriter. Each staff member denied tampering with or seeing someone else tamper with the typewriter. Clements also asked plaintiff about staff that "tease" her about the typewriter, which she uses because she has arthritis. Plaintiff responded that she did not take it seriously, that it was not a problem and that she did not want supervisory follow-up on that issue. The missing ribbon turned up the next morning on a shelf next to the typewriter. Defendant Clements deemed the matter closed when the ribbon was found. After plaintiff's shift ended on March 1, 1998, two officers who had been questioned about the incident told plaintiff, "I hear someone has been tampering with your typewriter. I can hardly believe something like that would happen." Following the typewriter incident, plaintiff never returned to work at Columbia Correctional Institution.

On March 3, 1998, plaintiff submitted a complaint to defendants Schneider and

Schneiter regarding what she perceived to be ongoing, institutionally sanctioned harassment by certain fellow officers and supervisors. The complaint involved the following incidents: (1) the May 10, 1996 discovery of the contents of plaintiff's and her husband's mailboxes in a trash barrel; (2) the December 17, 1997 anonymous note regarding rumors of her husband's alleged affair; and (3) the March 1, 1998 typewriter incident. Defendant Clements is one of the supervisors who plaintiff thought were treating her differently because of her gender and whose actions plaintiff complained about as a result of his treatment of her on the night of January 17, 1998. On March 28, 1998, defendant Clements interviewed plaintiff by telephone about her complaints, in place of defendant Schneider, the personnel director, or defendant Schneiter, the security director. Defendant Clements drafted a summary of his interview with plaintiff and sent it to defendant Schneider. The summary indicates that plaintiff informed defendant Clements that there were other additional incidents of harassment at Columbia, but that she wished to speak with a neutral party about them, rather than to Clements. Defendant Clements never arranged for a neutral party to interview plaintiff and plaintiff never contacted defendant Schneider or anyone else at the Department of Corrections about the problems. In a letter dated July 15, 1998, defendant Schneider informed plaintiff that the investigation of her March 3, 1998 complaint was complete and that no further action would be taken.

On January 25, 1999, plaintiff filed a discrimination complaint with the Wisconsin

Personnel Commission. The complaint was investigated by a commission equal rights officer, who concluded there was no probable cause to believe that the Department of Corrections had harassed or discriminated against plaintiff in 1997 or 1998 because of her sex or her participation in fair employment activities.

## OPINION

### A. Motion to Dismiss

In support of their motion to dismiss, defendants argue that plaintiff's amended complaint fails to allege facts sufficient to support a claim for gender discrimination, retaliation or constructive discharge. This argument can be dealt with summarily. As the Court of Appeals for the Seventh Circuit has noted, "'I was turned down for a job because of my race' is all a complaint has to say" to state a claim under Title VII. Bennett v. Schmidt, 153 F.3d 516, 518 (7th Cir. 1998). This is no less true when a Title VII plaintiff alleges that she was discriminated against on the basis of her gender, rather than her race, or when the challenge to the alleged discrimination is brought under 42 U.S.C. § 1983 as a violation of the Fourteenth Amendment's equal protection clause. Under the Federal Rules of Civil Procedure, the "complaint [is] just the starting point" and plaintiffs are to avoid "larding their complaints with facts and legal theories." Id. To the extent defendants suggest that plaintiff's complaint is insufficient to state a claim under Title VII or § 1983, they are

incorrect. Defendants' motion to dismiss will be denied.

B. Defendants' Motion for Summary Judgment

1. Title VII claims

Plaintiff has asserted only claims under Title VII against defendant Wisconsin Department of Corrections. Defendant contends that plaintiff's Title VII claims are barred because she failed to comply with the administrative statute of limitations applicable to such claims in Wisconsin. In Wisconsin, "[a] person claiming discrimination under Title VII is required to file a complaint with either the Equal Employment Opportunity Commission or [the Wisconsin Personnel Commission] within 300 days of the alleged discrimination." Alexander v. Wisconsin Dept. of Health & Family Services, 263 F.3d 673, 680 n.1 (7th Cir. 2001); 42 U.S.C. 2000e-5(e). Plaintiff did not file a discrimination complaint with the Wisconsin Personnel Commission until January 25, 1999, rendering untimely any claim founded upon discriminatory acts that occurred before March 30, 1998, absent some showing that an exception to the 300-day statute of limitations applies.

All of the discrete acts of discrimination alleged by plaintiff occurred before March 30, 1998. See Plt.'s Br. in Opp'n to Dfts.' Mot. to Dismiss and for Summ. J., dkt. #28, at 8. The first act of discrimination identified by plaintiff occurred on September 28, 1997, when a unit manager circulated a memo that allegedly dealt a blow to plaintiff's authority

in the eyes of her subordinate officers and the inmates confined to the prison barracks. The last act of alleged discrimination occurred on March 1, 1998, when an ink ribbon was taken from plaintiff's typewriter. Plaintiff never returned to work after March 1, 1998. However, plaintiff argues that her Title VII claims are timely because she filed her administrative complaint with the Wisconsin Personnel Commission on January 25, 1999, a date within 300 days of July 15, 1998, when defendant Schneider wrote her that the investigation into the complaint she had filed with prison officials on March 3, 1998, had uncovered no evidence that she had been harassed. According to plaintiff, the July 15, 1998 letter puts into play all the alleged discriminatory acts she was subjected to between September 1997 and March 1, 1998.

In support of her argument, plaintiff relies principally on Frazier v. Delco Electronics Corp., 263 F.3d 663 (7th Cir. 2001). In Frazier, the plaintiff filed a sexual harassment complaint with the Equal Employment Opportunity Commission in March 1994, meaning that ordinarily the 300-day statute of limitations would have barred her from complaining about discrimination that occurred before May 1993. However, the worst incident of harassment the plaintiff had suffered occurred months earlier in November 1992. The plaintiff had complained immediately to the defendant about the November 1992 incident and later a union representative had told her not to file a formal grievance because he was working with the defendant to find a solution. Nevertheless, the defendant argued that the

plaintiff should have filed her EEOC complaint within 300 days of the November 1992 incident.

The Court of Appeals for the Seventh Circuit rejected the defendant's argument, reasoning that because the plaintiff had complained promptly to management after the 1992 incident and had later received assurances of remedial action from her union representative, she "had every reason to believe the matter well in hand." Id. at 666-67. Relying on language in Frazier, plaintiff alleges that the clock did not begin to tick on her claim until she received the July 15, 1998 letter because "a violation of Title VII that is based on a claim of harassment by a coworker doesn't occur until the employer has failed to take reasonable steps to bring the harassment to an end." Id. at 666. Plaintiff maintains that only when she received the July 15, 1998 letter was it clear that defendants would not take steps to end the alleged harassment.

Plaintiff's argument is untenable. In her March 3 complaint to prison officials, plaintiff raised three incidents of alleged harassment: (1) the May 10, 1996 discovery of the contents of plaintiff's and her husband's mailboxes in a trash barrel; (2) the December 17, 1997 anonymous note regarding rumors of her husband's alleged affair; and (3) the March 1, 1998 typewriter incident. As an initial matter, the March 3 grievance does not even raise most of the incidents that plaintiff alleges were discriminatory in her amended complaint in this lawsuit. As to these incidents, it makes no sense for plaintiff to argue that she had to

wait for defendants to act before she had evidence of discrimination by her employer. She knew from her unsuccessful efforts to get the department to act on her complaints that it was not going to do what she wanted. As for those incidents plaintiff did raise in her March 3 grievance, she has proposed no facts regarding the May 10, 1996 incident in the context of this lawsuit, which focuses only on events between September 1997 and March 1998. As for the second incident, plaintiff had already submitted a complaint to prison officials regarding the anonymous note immediately after she discovered it, in which she alleged that the rumors amounted to "harassment" and could create "a hostile, intimidating, and/or offensive working environment." In a February 17, 1998 letter, defendant Schneider informed plaintiff that the investigation into the rumors had been completed and that there was no evidence that any officer or supervisor had acted inappropriately. Similarly, plaintiff had already filed a complaint regarding the missing typewriter ribbon on March 1, 1998. Defendant Clements interviewed all staff members who had access to the typewriter and each staff member denied tampering with or seeing someone else tamper with the typewriter. When the missing ribbon turned up the next morning, defendant Clements considered the matter closed. In short, the March 3 complaint on which plaintiff relies involved recycled claims that prison officials had already investigated and on which they had declined to take any action.

The quality or comprehensiveness of the original investigations that defendants

conducted is not relevant. Rather, plaintiff's argument is based on the proposition that "a violation of Title VII . . . doesn't occur until the employer has failed to take reasonable steps to bring the harassment to an end." Id. As of February 17, 1998, plaintiff was on notice that no further action would be taken regarding the anonymous note. Similarly, she knew on March 1 or 2, 1998, that prison officials considered the typewriter incident closed. Under Frazier, these alleged violations of Title VII were complete when plaintiff's original complaints were acted upon because plaintiff knew then that her employer did not intend to take further steps to put an end to the behavior that she deemed harassing. No reasonable jury could conclude that plaintiff was unaware that prison officials viewed her allegations as baseless before they were rejected for a second time in defendant Schneider's July 15, 1998 letter. Title VII's timeliness requirement would be rendered meaningless if the limitations period could be extended indefinitely by the simple expedient of recycling complaints that had already been acted upon.

As the Court of Appeals for the Seventh Circuit has noted, "Congress chose a short period of limitations for employment discrimination cases, providing employers with a valuable entitlement offsetting the portions of Title VII that assist employees, and courts may not second-guess that decision." Lever v. Northwestern Univ., 979 F.2d 552, 554 (7th Cir. 1992). Plaintiff did not file a timely charge of discrimination with the EEOC or the Wisconsin Personnel Commission. Accordingly, I will grant the motion for summary

judgment of defendant Wisconsin Department of Corrections on all of plaintiff's Title VII claims.

2. 42 U.S.C. § 1983 claims

Plaintiff alleges that her treatment at the hands of defendants violated her rights under the Fourteenth Amendment's equal protection clause. Even though I have concluded that plaintiff is not entitled to relief under Title VII, the Court of Appeals for the Seventh Circuit has held that "Title VII does not preempt a cause of action for intentional discrimination in violation of the Constitution." Waid v. Merrill Area Public Schools, 91 F.3d 857, 862 (7th Cir. 1996). Plaintiff lodges her equal protection claim only against the individual defendants, not against defendant Wisconsin Department of Corrections. "In order to make out an equal protection claim, [a plaintiff must] present evidence that the defendants treated her differently from others who were similarly situated" and that they "intentionally treated her differently because of her membership in the class to which she belonged." Hedrich, 274 F.3d at 1183.

In addition, to establish individual liability under § 1983, plaintiff must allege that the individual defendants were involved personally in the alleged constitutional deprivation or discrimination. Under § 1983, individual defendants cannot be held liable under a theory of respondeat superior. See Hearne v. Board of Education of City of Chicago, 185 F.3d 770,

776 (7th Cir. 1999). "'Section 1983 creates a cause of action based on personal liability and predicated upon fault; thus, liability does not attach unless the individual defendant caused or participated in a constitutional deprivation.'" Vance v. Peters, 97 F.3d 987, 991 (7th Cir. 1996) (quoting Sheik-Abdi v. McClellan, 37 F.3d 1240, 1248 (7th Cir.1994)); see also Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983) ("A causal connection, or an affirmative link, between the misconduct complained of and the official sued is necessary."). It is not necessary that the defendant participate directly in the deprivation. The official is sufficiently involved "if she acts or fails to act with a deliberate or reckless disregard of plaintiff's constitutional rights, or if the conduct causing the constitutional deprivation occurs at her direction or with her knowledge and consent." Smith v. Rowe, 761 F.2d 360, 369 (7th Cir. 1985). See also Kelly v. Municipal Courts of Marion County, Indiana, 97 F.3d 902, 908 (7th Cir. 1996); Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995 ).

No reasonable jury could conclude that plaintiff was treated differently from similarly situated male correctional officers on the basis of the meager evidence plaintiff had adduced on that point. In her proposed findings of fact, plaintiff identifies four incidents in which she claims she was treated differently from similarly situated male officers. Two can be dealt with summarily. Plaintiff alleges that in the fall of 1997, Jim Parisi, then the barracks unit manager, circulated two memos to all barracks staff rescinding a system that plaintiff had implemented to control inmates' use of the bathroom. Citing only her own affidavit,

plaintiff alleges that "other male lead workers have not had memoranda directed to them, circulated to all barracks staff." In January 1998, plaintiff called for assistance in dealing with a disruptive inmate and objected to defendant Clements's response because he removed the inmate without first consulting her and generally did not show her the deference to which she was entitled as the officer in charge. Again citing only her own affidavit, plaintiff alleges that "no male sergeant in charge would have been treated in this manner." There is no basis on which to conclude that plaintiff's general statements about the treatment of male officers are anything more than her own speculation, albeit speculation repeated under oath in an affidavit. Plaintiff does not claim to have first hand knowledge of how her male colleagues have been treated. Her allegations do not raise a triable issue of fact regarding plaintiff's treatment as compared to similarly situated male officers. In addition, the allegations regarding the 1997 memoranda incident are flawed for another reason: Parisi, the memos' author, is not named as a defendant in this case and plaintiff has not explained how the individual defendants she has named were personally involved in this incident, as she must do if she wants to sue them under § 1983.

The other two incidents plaintiff identifies have similar flaws for purposes of her equal protection claim. On January 14, 1998, an interview request slip addressed to plaintiff was found in the barracks mailbox bearing the message "You only wish you were half as much a woman as these beautiful woman [sic]," along with two pages of pornographic

advertisements. Plaintiff contends that the investigation into this incident was perfunctory at best and alleges that "[i]n a 1995 incident involving a threatening note directed at other, male, staff, the Conduct Report circulated to [plaintiff] in her capacity as a witness indicated that handwriting analysis had been done and had resulted in identification of the writer." Even assuming that a single incident occurring some three years in the past about which plaintiff provides few details demonstrates that she was treated less favorably than similarly situated male officers because no handwriting analysis was performed on the note to her, plaintiff has not tied any of the individual defendants named in this suit to the failure to conduct such analysis or to otherwise investigate the incident adequately. See Vance, 97 F.3d at 991 (no liability unless individual defendant caused or participated in the constitutional deprivation). The same is true with respect to a threatening note addressed to plaintiff that was found in the barracks mailbox in February 1998.

In each instance in which plaintiff claims her equal protection rights were violated, she has failed either to show that she was treated less favorably than similarly situated male correctional officers or to link the individual defendants to the alleged rights violations. Accordingly, I will grant the individual defendants' summary judgment motion on plaintiff's equal protection claims.

ORDER

IT IS ORDERED that

1. Defendants' motion to dismiss is DENIED;

2. The motion for summary judgment of defendant Wisconsin Department of Corrections on plaintiff's Title VII claims is GRANTED;

3. The motion for summary judgment of defendants Sam Schneiter, Bruce Schneider, Marc Clements and Bruce Thomure on plaintiff's Fourteenth Amendment equal protection claims is GRANTED; and

4. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 6th day of August, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge