

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MICHAEL O'GRADY,

Plaintiff,

v.

WILLIAM J. GROSSHANS, DENISE  
SYMDON, MARIE FINLEY, MARILYN  
ZURBUCHEN, JAY TAYLOR and  
ADAM WATKINS,

Defendants.  
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OPINION AND ORDER

01-C-0706-C

This is a civil action for monetary and injunctive relief brought pursuant to 42 U.S.C. § 1983 and the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-64. Although it is very difficult to discern plaintiff Michael O'Grady's claims from his long, rambling and at times incomprehensible amended complaint, I understand him to allege six causes of action: (1) violation of his equal protection rights because he was given three mismanaged cases, making him a "scapegoat"; (2) violation of his equal protection and due process rights because he was constructively discharged; (3) sexual harassment, assault, hostile work environment and retaliation for filing a complaint; (4) violation of his equal

protection and due process rights by fraudulent termination of his employment; (5) violation of his equal protection rights by denying him unemployment insurance benefits; and (6) wrongful termination and violations of RICO.

In April 2001, plaintiff filed this case in the Circuit Court for Columbia County, Wisconsin. In May 2001, defendants removed the case to the District Court for the Eastern District of Wisconsin. On December 17, 2001, the case was transferred to this district.

Presently before the court is defendants' motion for summary judgment. Because plaintiff fails to propose facts that support his legal conclusions, I will grant summary judgment in favor of defendants.

From the proposed findings of fact and the record, I find the following material facts to be undisputed.

#### UNDISPUTED FACTS

At all relevant times, the parties in this lawsuit were employees of the Wisconsin Department of Corrections, Division of Community Corrections. Plaintiff Michael O'Grady was a probation/parole officer. Defendant William Grosshans was the administrator. Defendant Denise Symdon was a regional chief. Defendant Marie Finley was an assistant regional chief. Defendant Marilyn Zurbuchen was a corrections field supervisor. Defendant Jay Taylor was a human resources coordinator. Defendant Adam Watkins was a

probation/parole officer.

On October 16, 1995, plaintiff began working as a probation/parole officer.

On October 13, 1997, plaintiff filed a “notice of complaint” with defendant Zurbuchen, stating (in its entirety) that he had “filed a formal complaint against [Zurbuchen] based on Membership in the Army National Guard (Military Service) and Gender.”

On October 19, 1997, plaintiff filed a grievance with his union steward against defendant Zurbuchen in which he stated that Zurbuchen violated the union contract by discriminating against him on the basis of his military status.

On October 27, 1997, plaintiff wrote a memorandum (with the subject line “complaint of retaliation/harassment”) to defendant Zurbuchen in which he stated that Zurbuchen was negligent in her duties, obstructed plaintiff’s work efforts and made false statements.

On October 29, 1997, defendant Zurbuchen ordered plaintiff into her office, closed the door and interrogated him aggressively by ordering him to remain seated while she leaned very close to his face, almost stuck her face in his lap and refused to allow him to leave. (Although defendants attempted to dispute this proposed fact, they failed to cite to the record in support of their position.) The next day, plaintiff filed an incident report. The report stated that defendant Zurbuchen “was aggressively interrogating me while leaning out

of her chair heavily toward me getting very close” and that he felt threatened. Plaintiff did not allege in the report that defendant Zurbuchen “almost stuck her face in his lap.” Plaintiff asked for “private security or police protection” and enforcement of “regulations regarding [Zurbuchen’s] strange behavior.”

By letter dated November 14, 1997, plaintiff was assigned another supervisor pending the investigation of his oral allegations (with his union representative) that defendant Zurbuchen had discriminated against him on the basis of his military reserve membership and gender.

On November 22, 1997, plaintiff filed a retaliation complaint against defendant Zurbuchen with the Veterans Employment and Training Service. Plaintiff stated that his employer had taken action “to construct my discharge.” Plaintiff stated further that he had received a memorandum on November 17, 1997, that was dated October 31, 1997, in which defendant Zurbuchen alleged “poor work performance and incomplete work assignments claiming that they were to be done before leaving on military duty. Since [plaintiff] was on military leave on October 31, 1997, it is blatantly evident that [Zurbuchen] waited until I was gone to make such a false allegation.” Plaintiff stated further that on October 29, 1997, defendant Zurbuchen “conducted an interrogation that left me in fear for my safety and pending disciplinary action.”

On January 30, 1998, plaintiff filed a complaint of an unspecified nature with the

Wisconsin Personnel Commission. (Only the first page of the complaint was submitted to the court. See Plt.'s Proposed Findings of Fact, dkt. #24, at Exh. H.)

On December 14, 2000, plaintiff attempted to return to work in accordance with a rehabilitation plan. That same day, plaintiff requested medical leave without pay, asking that it commence retroactively on September 20, 2000. Plaintiff explained that he had "atypical chest pains, difficulty breathing, high pressure related to work stress." On December 27, 2000, defendant Grosshans approved plaintiff's request for medical leave.

On January 3, 2001, plaintiff reported "defendants" activity to Wisconsin Attorney General James Doyle. Plaintiff asked Doyle to investigate issues such as whether it is "lawful for Supervisor David White or [defendant] Symdon to arbitrarily decide the life expectancy of their subordinates in the liberty or employment without cause" and whether it is "considered extortion to threaten making a[n] allegation of misconduct unless a client is release[d] from custody in a correctional facility." According to plaintiff, Doyle should have known or discovered the racketeering and corrupt activities in the Department of Corrections.

On January 22, 2001, Dr. Gina Utrie recommended that plaintiff "not participate in a pre-disciplinary hearing until re-evaluation by Dr. Gross."

On March 20, 2001, plaintiff returned to work part-time. Defendant Zurbuchen "confronted" plaintiff, which resulted in his filing an assault and a sexual harassment

complaint that same day. According to the complaint, defendant Zurbuchen “appeared to be staring at [his] crotch area” and she “appeared to attempt to muscle her way into [his] office causing the door to push up against [him] while [he] thought she was reciting [his] home telephone number.” Plaintiff stated that defendant Zurbuchen was causing a hostile work environment.

On March 22, 2001, defendant Grosshans suspended plaintiff with pay because of “concerns over fitness for duty.” At a later (unspecified) date, defendant Grosshans changed plaintiff’s suspension status to without pay.

On March 27, 2001, Tom Corcoran informed plaintiff that he was in “serious trouble” and that he recommended union steward Adam Watkins to represent plaintiff at the investigatory hearing. (It is unclear who Corcoran is.) Plaintiff informed Watkins that his services were not needed. Instead, plaintiff contacted union steward Jo Reed. Watkins attended the hearing anyway. At the hearing, defendant Finley refused to allow plaintiff to review any records of an offender’s (Barajas) pre-sentence investigation report.

On an unspecified date, the Wisconsin Department of Employee Trust determined that plaintiff was “totally disabled.” Plaintiff received disability pay from Wisconsin.

After reporting the assault by defendant Zurbuchen, plaintiff’s medical condition deteriorated.

## OPINION

In order to survive defendants' motion for summary judgment, plaintiff must provide sufficient evidence in support of each of his claims. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986) ("plaintiff could not rest on his allegations . . . without any significant probative evidence tending to support the complaint") (internal citation omitted). Although plaintiff's amended complaint and proposed findings of fact are relatively long, there are very few facts that support his legal conclusions. See Lujan v. National Wildlife Federation, 497 U.S. 871, 888 (1990) ("The object of [summary judgment] is not to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit."). Nevertheless, plaintiff puts forth enough facts with respect to two of his claims to warrant discussion. First, I understand plaintiff to allege that he was discriminated against because of his sex and his membership in the National Guard when he was given three mismanaged cases and made a scapegoat. However, he fails to propose facts in support of these allegations or show that similarly situated employees were treated differently. Instead, plaintiff alleges merely a conclusion (gender and military status discrimination) and not the facts or events that would lead a factfinder to conclude that he was subjected to such discrimination. (Plaintiff alludes to age discrimination in his brief, but his amended complaint never mentions age discrimination and, once again, there are no facts to support this allegation.)

Second, to the extent that plaintiff's nebulous claims for sexual harassment, hostile work environment, retaliation and constructive discharge on the basis of gender fall within Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, these claims fail because his employer was not named as a defendant. See Alexander v. Rush North Shore Medical Center, 101 F.3d 487, 492 (7th Cir.1996) ("The simple fact that the plaintiffs . . . could not demonstrate the existence of an employment relationship, render[s] them without the ambit of Title VII protection and preclude[s] them from bringing discrimination actions alleging violations of the Act."). Nevertheless, even if plaintiff had named his employer in this lawsuit, he has failed to establish a prima facie case of gender discrimination. In an indirect evidence case, plaintiff must show that he (1) is in a protected class; (2) was performing his job well enough to meet the employer's legitimate expectations; (3) suffered an adverse employment action; and (4) was treated less favorably than similarly situated employees who were not in her protected class. McNabola v. Chicago Transit Authority, 10 F.3d 501, 513 (7th Cir. 1993); see also McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). As is clear from the undisputed facts, plaintiff has failed to adduce evidence that he was performing his job well enough to meet his employer's legitimate expectations and that he was treated less favorably than similarly situated female employees. In fact, it not entirely clear whether plaintiff suffered any adverse employment action because at one time he requested medical leave without pay.



As to plaintiff's remaining claims, they are wholly without factual support. In his amended complaint, proposed findings of fact and brief in opposition to defendants' motion for summary judgment, plaintiff simply asserts legal conclusions. For example, plaintiff alleges that defendant Zurbuchen "assaulted" him, but fails to propose facts in support of that conclusion. In another example, plaintiff asserts that he was "terminated through fraud" without giving a hint as to what he means. And other than bandying about the acronym RICO and asserting "conspiracies," plaintiff fails to adduce facts in support of a RICO violation or, for that matter, a conspiracy. In fact, it is a mystery how defendants Symdon, Taylor and Watkins fit into this lawsuit. Simply put, plaintiff fails to connect the factual dots to support his legal conclusions. His lawsuit is legally frivolous. Accordingly, defendants' motion for summary judgment will be granted.

#### ORDER

IT IS ORDERED that

1. The motion by defendants William J. Grosshans, Denise Symdon, Marie Finley, Marilyn Zurbuchen, Jay Taylor and Adam Watkins for summary judgment is GRANTED; and

2. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 27th day of August, 2002.

BY THE COURT:

BARBARA B. CRABB  
District Judge