IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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LORI BENSON,

Plaintiff,

OPINION and ORDER

06-C-198-C

v.

PER MAR SECURITY,

Defendant.

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In this civil action for monetary relief, plaintiff Lori Benson, proceeding pro se, contends that she was the victim of sexual harassment at the hands of her former employer, defendant Per Mar Security. Plaintiff has brought suit under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. §§ 2000e – 2000e-17. Jurisdiction is present. 28 U.S.C. §§ 1331, 1367.

This case is presently before the court on defendant's unopposed motion for summary judgment, in which defendant contends that plaintiff has adduced no evidence showing that she was subject to any form of sexual harassment. Plaintiff has not proposed any facts to support her claim and the facts proposed by defendant do not support an inference that plaintiff was subject to any sexual harassment, much less to harassment that was severe or

pervasive. Consequently, defendant's motion will be granted.

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

UNDISPUTED FACTS

A. Parties

Defendant Per Mar Security is a provider of residential, commercial and institutional security services. Plaintiff Lori Benson was employed by defendant Per Mar Security from October 22, 2005 to December 16, 2005.

B. Plaintiff's Employment

Plaintiff was employed by defendant as a security officer at the Wal-Mart Distribution Center in Beaver Dam, Wisconsin. Her job duties included scanning identification badges, checking trucks and construction vehicles in and out, and patrolling the perimeter of the distribution center site. When plaintiff commenced work with defendant, she was provided with a copy of defendant's anti-harassment policy.

When plaintiff began work for defendant, her immediate supervisor was her mother, Janis Stephens. Stephens also supervised Gary Pepin, another security officer employed by defendant at the Wal-Mart Distribution Center.

On November 30, 2005, plaintiff and Pepin were assigned to work together on third shift. During the shift, Pepin turned off the lights in the guard shack, stating that it would make it easier to see vehicles approaching. While it was dark, Pepin took a laser scanner that was used to scan identification badges and ran the light from the ceiling, down the wall and down plaintiff's body to her waist, giggling or smirking as he did so. Pepin made no sexual statements or overtures toward plaintiff and did not focus the laser scanner on her chest or other private body parts. After he did this, plaintiff avoided Pepin for the rest of the shift and immediately reported the incident to Stephens, who reprimanded Pepin and warned him that any similar conduct in the future would result in his termination. Stephens assured (and may have promised) plaintiff that she would no longer have to work with Pepin.

On December 13, 2005, Stephens left her job with defendant. As a result of staffing shortages caused by her departure, plaintiff and Pepin were scheduled to work the same shift on December 15, 2005. Pepin did not engage in any offensive behavior toward plaintiff during the December 15, 2005; nevertheless, plaintiff left work in the middle of the shift and did not return to work.

OPINION

When faced with a motion for summary judgment, a court applies well-established standards. Summary judgment is appropriate when there are no disputed issues of material

fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Weicherding v. Riegel, 160 F.3d 1139, 1142 (7th Cir. 1998). If the non-moving party fails to adduce evidence on any essential element on which she would bear the burden of proof at trial, summary judgment for the moving party is proper. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When considering a motion for summary judgment, the court examines the facts in the light most favorable to the non-moving party. Sample v. Aldi, Inc., 61 F.3d 544, 546 (7th Cir. 1995).

Courts have long recognized that employers may be responsible for sexual harassment in the workplace under Title VII. Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 751-55 (1998). To survive summary judgment on a sexual harassment claim, an employee must introduce evidence from which an inference can be drawn that the behavior of a coworker or supervisor towards her was unwelcome, severe or pervasive and predicated on sex. Robinson v. Sappington, 351 F.3d 317, 328 (7th Cir. 2003); Reed v. Shepard, 939 F.2d 484, 491 (7th Cir. 1991). In her complaint, plaintiff alleged that Gary Pepin, her co-worker, sexually harassed her on November 30, 2005, when he turned out the lights and ran a laser scanner light in a line from the ceiling down her body, smirking as he did so. Defendant argues that Pepin's conduct was immature and inappropriate but was not of a sexual nature and was not severe or pervasive enough to be actionable under Title VII.

I agree with defendant that plaintiff has not shown that she was subjected to severe

or pervasive sexual harassment. Although Pepin's behavior on November 30, 2005 may have made plaintiff uncomfortable, it is undisputed that Pepin made no sexual comments or overtures toward plaintiff, that his behavior was isolated and that his superiors took immediate action to sanction him for it. To be actionable under Title VII, sexual harassment must be subjectively and objectively offensive. In other words, the harassment must be severe enough for a reasonable person to consider it hostile or abusive and the employee must perceive it as such. McPherson v. City of Waukegan, 379 F.3d 430, 438 (7th Cir. 2004). The Supreme Court has held that an isolated comment susceptible to more than one reasonable interpretation is wholly insufficient to create an objectively hostile work environment. Faragher v. City of Boca Raton, 524 U.S. 775 (1998) (isolated comments or incidents, unless extremely serious, not actionable under Title VII); see also Adusumilli v. City of Chicago, 164 F.3d 353, 361-62 (7th Cir. 1998) (ambiguous comments, staring and one unwelcome touch to employee's buttocks not objectively severe for purpose of Title VII); Baskerville v. Culligan International Co., 50 F.3d 428, 430 (7th Cir. 1995) (nine comments over seven–month period could not "reasonably be thought to add up to sexual harassment"). Because plaintiff has failed to present facts from which a jury could infer that she was subjected to objectively severe sexual harassment, defendant is entitled to summary judgment on plaintiff's sexual harassment claim.

ORDER

IT IS ORDERED that defendant Per Mar Security's motion for summary judgment is GRANTED. The clerk of court is directed to enter judgment in favor of defendant and close this case.

Entered this 29th day of December, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge