

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

TINA HATLEVIG,

Plaintiff,

OPINION & ORDER

v.

13-cv-769-wmc

PATRICK R. DONAHOE and
GREAT LAKES AREA U.S. POSTAL
SERVICE,

Defendants.

In this proposed civil action, *pro se* plaintiff Tina Hatlevig alleges that her employer, the United States Postal Service, retaliated against her for participating in a sexual harassment investigation, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* While Hatlevig was granted leave to proceed *in forma pauperis* without prepayment of fees in this action, the court must also screen her complaint pursuant to 28 U.S.C. § 1915. Because the court concludes Hatlevig has stated a claim under Title VII, she will be allowed to proceed with this action.

ALLEGATIONS OF FACT

In addressing any *pro se* litigant's pleadings, the court must read the allegations in the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For the purposes of this order, the court accepts plaintiff's well-pled allegations as true and assumes the following facts:

Tina Hatlevig is employed at the Great Lakes Area U.S. Postal Service in Rhinelander, Wisconsin; she is currently "on removal" from that position and is in the

process of appealing. At least one member of the Post Office management had been sexually harassing female employees in the workplace. Hatlevig informed management of the sexual harassment on her coworker's behalf. As a result, she was allegedly targeted by management, suffering from harassment and bullying. Management also began tampering with her paychecks, making Hatlevig fearful of losing her job.

Hatlevig attaches a large number of documents to her complaint. Because they are unlabeled and out of order, they are difficult to follow. As best the court can discern, it appears that Hatlevig filed a claim for retaliatory hostile work environment with the EEOC premised on her involvement in the sexual harassment investigation. In January of 2012, the EEOC Administrative Judge concluded that Hatlevig had not been subjected to a hostile work environment and entered judgment. (*See* Compl. Ex. (dkt. #1-2) ECF 37; ECF 68.) Hatlevig appealed, and the Equal Employment Opportunity Commission affirmed. (*See id.* at ECF 72.) By a letter dated September 24, 2013, the EEOC denied Hatlevig's motion for reconsideration and advised that she had no further right to administrative appeal, but had the right to file a civil action in United States District Court within 90 days of receipt of the decision. (*See id.* at ECF 76-77.)

Hatlevig alleges that her previous attorney wrongfully represented her and that the Postal Service continues to retaliate against her.¹ She asks the court to help her find an attorney and to grant her a new trial, presumably referring to the EEOC proceedings.

¹ Hatlevig has not named her attorney as a defendant in this case.

OPINION

Title VII makes it unlawful “for an employer to discriminate against any of his employees or applicants for employment . . . because he has opposed any practice made an unlawful employment practice by [Title VII].” 42 U.S.C. § 2000e-3(a); *Tomanovich v. City of Indianapolis*, 457 F.3d 656, 662 (7th Cir. 2006). To state a retaliation claim under this section, Hatlevig must show that: (1) she engaged in statutorily protected activity; (2) she suffered an adverse action taken by the employer; and (3) there was a causal connection between the two. *See Stephens v. Erickson*, 569 F.3d 779, 786 (7th Cir. 2009).

With respect to the first element, Hatlevig alleges that she opposed sexual harassment on behalf of a female coworker, and that the manager in question had been sexually harassing female employees in general in the workplace. “Title VII prohibits employers from harassing employees ‘because of [their] sex.’” *Hamner v. St. Vincent Hosp. & Health Care Ctr., Inc.*, 224 F.3d 701, 704 (7th Cir. 2000) (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 78-79 (1998)). Thus, Hatlevig has adequately alleged she opposed a practice that Title VII makes unlawful.

Hatlevig also alleges that she was harassed and bullied because of her actions, including that her employer began tampering with her paychecks. Harassment amounting to a humiliating, degrading or significant negative alteration in the workplace environment can constitute a materially adverse action under Title VII, as can any action affecting the employee’s “current wealth.” *See Lewis v. City of Chicago*, 496 F.3d 645, 653 (7th Cir. 2007). Hatlevig also appears to allege that her current status on “removal” from her employment is also part of her employer’s retaliation against her. (*See* Compl. (dkt. #1) 3.) Employment

actions affecting “the employee’s career prospects” can also constitute materially adverse actions. *See Lewis*, 496 F.3d at 653.

Finally, Hatlevig claims that her whistleblowing on behalf of a co-worker is the cause of the adverse actions being taken against her. (*See Compl.* at 2.) While going forward she will need to produce evidence of causation -- such as suspicious timing, ambiguous oral or written statements, evidence that similarly situated employees were treated differently, and/or evidence of pretext for the adverse actions she alleges, *see Coleman v. Donahoe*, 667 F.3d 835, 860 (7th Cir. 2012) -- Hatlevig has alleged enough facts to place defendants on notice of the claims against them, and she may proceed on her Title VII retaliation claim past the screening stage.

Hatlevig has also moved for a new trial (dkt. #4), again presumably referring to the EEOC trial. The court is unaware of any authority that would permit it to enter such an order. *Cf. Stewart v. Shinsiki*, No. 12-cv-337-bbc, 2012 WL 2328213, at *2 (W.D. Wis. June 19, 2012) (“I am not aware of any cause of action for unfair treatment a party believes he received during administrative proceedings. If a party is not happy with the result he received from the EEOC, he is free to file a discrimination lawsuit in federal court[.]”). At the same time, the results of the EEOC proceedings do not matter for purposes of the present lawsuit. This is because Hatlevig is entitled to a trial *de novo* on her Title VII claim before this court, which also has the discretion to determine what weight, if any, should be given the earlier EEOC determination. *See Silverman v. Bd. of Educ. of City of Chi.*, 637 F.3d 729, 732-33 (7th Cir. 2011). Therefore, Hatlevig’s motion for a new trial is denied, but Hatlevig should be aware that the results of the EEOC proceedings are not binding here, and she may freely pursue her claim for monetary relief in this court.

Hatlevig has also moved for assistance in recruiting counsel. (Dkt. #5.) Under the *in forma pauperis* statute, the court may exercise its discretion to recruit counsel *pro bono* to assist an eligible plaintiff. *See* 28 U.S.C. § 1915(e)(1). Before deciding whether it is necessary to recruit counsel, however, a court must find that the plaintiff has made reasonable efforts to find a lawyer on her own and has been unsuccessful, or that she has been prevented from making such efforts. *Jackson v. County of McLean*, 953 F.2d 1070, 1072-73 (7th Cir. 1992). This court generally requires the names and addresses of three attorneys to whom a plaintiff has written and who have refused her, but Hatlevig has not provided any such information. Her complaint merely alleges that she has “called ads and talked with other attorneys,” but she does not provide any information as to who those attorneys were, nor does she state she has been refused. (*See* Compl. at 3.) Her motion will, therefore, be denied, but Hatlevig may move for reconsideration once she shows that she has made a substantial effort to recruit her own counsel, but was unable to do so.

ORDER

IT IS ORDERED that:

- 1) Plaintiff Tina Hatlevig is GRANTED leave to proceed on her claims of retaliation under Title VII.
- 2) The summons and complaint are being delivered to the U.S. Marshal for service on defendant.
- 3) For the time being, plaintiff must send defendant a copy of every paper or document she files with the court. Once plaintiff has learned what lawyer will be representing defendant, she should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court’s copy that she has sent a copy to defendant or to defendant’s attorney.

- 4) Plaintiff should keep a copy of all documents for her own files. If plaintiff does not have access to a photocopy machine, she may send out identical handwritten or typed copies of her documents.
- 5) Plaintiff's motion for a new trial (dkt. #4) is DENIED.
- 6) Plaintiff's motion for assistance in recruiting counsel (dkt. #5) is DENIED without prejudice as to later reconsideration.

Entered this 9th day of September, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge