

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

AMY L. GABEL,

Plaintiff,

v.

NORTHWESTERN MUTUAL,

Defendant.

OPINION & ORDER

14-cv-352-jdp

Pro se plaintiff Amy Gabel has filed a proposed complaint in which she alleges that defendant Northwestern Mutual engaged in discriminatory employment practices. Dkt. 1. Plaintiff alleges that she applied for a position with defendant but received unfavorable treatment during the interview because of her sex. Plaintiff was not hired and has since been unable to secure employment because she believes defendant is passing bad information about her to prospective employers.

The court granted plaintiff leave to proceed without prepayment of her filing fees. Dkt. 3. The next step in this case is for the court to screen plaintiff's complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for monetary damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915. In screening any pro se litigant's complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). After reviewing the complaint with this principle in mind, I conclude that plaintiff has stated a claim against defendant under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, for unlawful discrimination on the basis of sex. I will therefore allow plaintiff to proceed with portions of her complaint.

ALLEGATIONS OF FACT

In her complaint, plaintiff alleges the following facts.

In November 2011, plaintiff applied for the position of HVAC/Boiler and Building Systems Operator with defendant and was invited to an interview. When plaintiff arrived for her interview on the scheduled date, a clerk informed her that she was not on the calendar to interview that day. Plaintiff showed the clerk an e-mail confirming the interview date and the clerk responded that his calendar must have had an error. Another candidate, who was male, had also arrived that day to interview for the same position. Realizing the scheduling conflict, the clerk told plaintiff that “the guys” would not have time to interview two candidates on the same day so he would arrange for plaintiff to have a “quick interview” with the human resources department. Plaintiff alleges that “the guys” were the hiring managers for the department to which she was applying, and notes that she is usually the lone woman in a male-dominated field.

The male candidate was allowed to complete a full interview with human resources and the hiring managers while plaintiff received only a rushed interview with human resources that day. Plaintiff was asked to return later for an interview with the hiring managers. Plaintiff lived thirty-five miles from defendant’s facility and alleges that there were jokes about how far she would have to drive to attend the second interview and about the likelihood of snow during the drive. (Plaintiff does not indicate who told these jokes). Plaintiff ultimately was not hired.

Plaintiff filed a grievance after the incident, but alleges that defendant responded by calling her “aggressive” and voicing concerns that she could not be a team player because she “relayed a positive experience about working with a single co-worker when [she] had been asked during [her] interview.”¹ Dkt. 1, at 3. Plaintiff’s complaint does not discuss the result of her

¹ Plaintiff does expand on this allegation, but appears to suggest that defendant expressed an unfounded concern over her preference for working with single co-workers instead of married or

grievance but she has attached a notice of dismissal and right to sue from the Equal Employment Opportunity Commission. Dkt. 1-1. Since filing her grievance, plaintiff alleges that she has been unable to secure employment. She concedes that she “could be wrong [but that she] believe[s] Northwestern Mutual is passing bad information about [her] in [her] very small field.” Dkt. 1, at 3. Plaintiff alleges that as a result, she has lost her home of ten years and had to take medication that she never needed before the incident.

OPINION

I understand plaintiff to assert claims against defendant for violations of Title VII of the Civil Rights Act of 1964. Specifically, I understand plaintiff to allege that defendant unlawfully discriminated against her on the basis of her sex when it refused to hire her. I conclude that plaintiff’s allegations are sufficient to state a claim against defendant for discrimination but not for retaliation.

Title VII makes it unlawful for an employer “to fail or refuse to hire or to discharge any individual . . . because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1). If plaintiff shows that she was subjected to an adverse employment action—here, defendant’s failure to hire her—she can prevail on her discrimination claim by submitting direct or indirect evidence of discrimination. *Whitfield v. Int’l Truck & Engine Corp.*, 755 F.3d 438, 442 (7th Cir. 2014). Plaintiff’s allegations, although sparse, are enough to state a claim under Title VII because they offer direct, circumstantial evidence of discrimination. Plaintiff alleges that a male candidate for the same position received better treatment at an interview than she did. Plaintiff also alleges that defendant’s employees repeatedly referred to the hiring managers as “the guys,” and states that her field is “male-dominated.” Dkt. 1, at 2.

otherwise romantically involved co-workers.

Coupled with defendant's statements to plaintiff that she was "aggressive" and "couldn't be a team player," these allegations, if true, may be enough to create a "convincing mosaic" of circumstantial evidence of discrimination and thus plaintiff has stated a claim under Title VII. *See Coleman v. Donahoe*, 667 F.3d 835, 860 (7th Cir. 2012).

Plaintiff may also be able to prove discrimination by using the "indirect method." Under this approach, plaintiff would have to offer evidence "that she: 1) is a female; 2) applied for, and was qualified for, an open position; 3) was rejected; and 4) the employer filled the position with a person not in the plaintiff's protected class, or the position remained open." *Rudin v. Lincoln Land Cmty. Coll.*, 420 F.3d 712, 724 (7th Cir. 2005) (internal citations and quotation marks omitted); *see also McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). Plaintiff's complaint directly alleges the first and third of these elements, and at least suggests the second. Although plaintiff does not discuss whether defendant eventually hired someone outside her protected class, she alleges that she works in a male-dominated field so the inference seems reasonable. If plaintiff chooses to pursue the indirect method of proof, she will eventually need to provide evidence of these elements, but at this stage of the case, her complaint need not specifically allege each of them. *See Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 510 (2002) ("The prima facie case under *McDonnell Douglas* . . . is an evidentiary standard, not a pleading requirement.").

The remaining allegations in plaintiff's complaint attempt to state a claim against defendant for retaliation under Title VII, but they are insufficient. Under Fed. R. Civ. P. 8, a plaintiff must present "a short and plain statement of the claim showing that [she] is entitled to relief." The purpose of the requirement is "to provide the defendant with 'fair notice' of the claim and its basis." *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011). Here, plaintiff offers only the vague suggestion that defendant could be passing bad information about her to other

prospective employers, but does not identify any facts that would make her allegation plausible. Moreover, plaintiff qualifies her statements by admitting that she “could be wrong.” Dkt. 1, at 3. Without more, these two sentences in plaintiff’s complaint fail to provide a short and plain statement of a claim. I will therefore deny plaintiff leave to proceed on the portions of her complaint that attempt to state a claim against defendant for retaliation. If plaintiff feels there is support for such a claim, she may of course amend her complaint to comply with the requirements of Rule 8. *See* Fed. R. Civ. P. 15(a).

Because I conclude that plaintiff’s complaint provides a short and plain statement of a discrimination claim under Title VII, I will grant her leave to proceed. I note, however, that discrimination and retaliation claims are classic examples of claims that are easy to allege but hard to prove. Many pro se plaintiffs make the mistake of believing that they have nothing left to do after filing the complaint, but that is far from accurate. Plaintiff will not be able to prove her claim with just the allegations in her complaint, *Sparing v. Vill. of Olympia Fields*, 266 F.3d 684, 692 (7th Cir. 2001), or her personal beliefs, *Fane v. Locke Reynolds, LLP*, 480 F.3d 534, 539 (7th Cir. 2007). To prove her claims at summary judgment or trial, plaintiff will have to come forward with specific facts showing that a reasonable jury could find in her favor. Fed. R. Civ. P. 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

ORDER

IT IS ORDERED that:

- 1) Plaintiff Amy Gabel is GRANTED leave to proceed on her Title VII claims against defendant Northwestern Mutual for its refusal to hire her because of her sex;
- 2) Plaintiff is DENIED leave to proceed on her Title VII claims against defendant for retaliation;
- 3) The court will send copies of plaintiff’s complaint and this order to the United States Marshal for service on defendant;

- 4) For the time being, plaintiff must send defendant a copy of every paper or document that she files with the court. Once plaintiff learns the name of the lawyer who will be representing defendant, she should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not show on the court's copy that she has sent a copy to defendant or to defendant's attorney;
- 5) Plaintiff should keep a copy of all documents for her own files. If she is unable to use a photocopy machine, she may send out identical handwritten or typed copies of her documents; and
- 6) Plaintiff is obligated to pay the \$350 filing fee for this case.

Entered this 21st day of August, 2014.

BY THE COURT:
/s/
JAMES D. PETERSON
District Judge