IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ROSETTA R. JORENBY,

Plaintiff,

v.

DATEX-OHMEDA, INC.,

Defendant.

OPINION AND ORDER

01-C-0699-C

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This is a civil action for monetary, declaratory and injunctive relief in which plaintiff is suing defendant for failing to prevent and terminate gender-based harassment by her co-workers, pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e. Plaintiff alleges that she experienced a hostile work environment for more than seven years and that because of defendant's failure to stop such harassment, she was constructively discharged from her employment. Jurisdiction is present under 42 U.S.C. § 2000e-5(f)(3).

This case is before the court on defendant's motion for summary judgment. Defendant contends that plaintiff is barred (1) from pursuing her harassment claim because she did not file a timely Equal Rights Division complaint within the meaning of 42 U.S.C. § 2000e-5(e)(1) and (2) from making her constructive discharge claim because the

allegations do not fall within the scope of the charges contained in her ERD complaint.

Because it is a question of fact whether being called a "dizzy bitch" is gender-based harassment, I will deny defendant's motion for summary judgment as to plaintiff's hostile work environment claim. Because I find that plaintiff's constructive discharge claim is not within the scope of her ERD charge, I will grant defendant's motion for summary judgment as to this claim. Although the parties requested permission to submit supplemental briefs to address the recent Supreme Court decision in National Railroad Passenger Corp. v. Morgan, No. 00-1614, slip op. (June 10, 2002), additional briefing is not necessary.

From the proposed findings of fact and the record, and for the sole purpose of deciding defendant's motion for summary judgment, I find that no genuine issue exists with respect to the following material facts.

UNDISPUTED FACTS

A. Background

Plaintiff Rosetta Jorenby is a female Wisconsin resident. Defendant Datex-Ohmeda, Inc. is a corporation headquartered in New Jersey with a facility located in Madison, Wisconsin. Defendant produces and tests various products.

Defendant employed plaintiff sometime in 1978 as a custodian. Beginning in 1983, plaintiff held various light manufacturing positions. Before she was moved to the first shift

in early 1990, plaintiff worked the second shift without incident. Plaintiff was represented by the International Aerospace and Machinist Union for an unspecified amount of time.

B. Incidents Outside Limitations Period (pre-October 8, 1997)

In the fall of 1990, co-worker Chuck Juda-Jahn pushed plaintiff up against the time clock in a sexual way, twice. The second time, plaintiff asked Juda-Jahn what his wife would do or say if a man did that to her. He told plaintiff that he hoped she would think it was a cheap thrill. Plaintiff told him not to touch her again.

On October 30, 1991, co-worker Steve Kelly commented to a group of co-workers, "I know a rumor I can start. I can say Rose is a lesbian." Kelly later received a verbal warning but only after Union Representative Dan Vandekolk went to Rick Beale in human resources and told him that the situation was serious and he had better do something about it. The rumor continued to be used as a way for co-workers to harass plaintiff for several years. Around this time, employee Larry Bardwell commented to plaintiff, very loudly, "After all this time, you must be pretty good at masturbating."

In December 1991, co-worker Jim Evans asked plaintiff whether she was wearing a bra. He stated that women did not belong at Ohmeda; all they did was cause trouble.

In December 1991, while a new co-worker was being trained, employee Mary Diettert told the new employee, "Don't have anything to do with that fucking bitch," meaning

plaintiff.

On or about May 31, 1994, employee Judy Hurda told plaintiff to take some estrogen and then get laid. Hurda called plaintiff a "skinny bitch."

In or around June 1994, employee Kaz made a comment to employee Tony Haro about plaintiff stating, "when you're hot, you're hot." On June 2, 1994, while plaintiff was getting ready to go outside for a walk at 11:30 a.m., she overheard employee Stillman say to Hurda, "I'd love to see her face when she comes back in." When plaintiff returned, there was a witch display on her work bench.

On August 9, 1994, employee Oscar Toslino made a comment to plaintiff, "Steve Kelly said maybe the truth hurts," referring to earlier lesbian rumors regarding plaintiff.

On September 8, 1994, Bob Drabanski told the employee who worked next to plaintiff, Steve Francis, "if you're going to work here, you're going to horny [sic]." On another occasion, Drabanski threatened to castrate Francis in front of plaintiff.

On or about December 29, 1994, employee Dan Martinelli frequently shouted to plaintiff, "hi babe." He did this in a sexually suggestive manner. Around this time, plaintiff's supervisor Haro frequently approached plaintiff at work, in front of other people, and yelled or said very loudly, "Rose, I'm coming!" He said this in a sexually suggestive manner. On several occasions, Haro would also stand so close to plaintiff that she would have to step away.

In 1995, employee Bill Schmid constantly referred to plaintiff as "Rosie baby" although she had asked him to stop. In 1995, employee Herb Graham walked over to plaintiff and told her that "her inner thighs were heavier since [she] stopped doing aerobics." He then asked plaintiff, "Do you still get wet?" On another occasion, Haro and another male employee came over to plaintiff's work area. The other male employee stopped to speak with a female employee situated near plaintiff. Graham commented to Haro, "I'm over here getting a blow job!" Haro answered, "Not here!"

On December 15, 1995, employee Tom Soules came into plaintiff's work area and told her that all women look good in sweaters. Plaintiff was wearing a sweater at the time.

On January 19, 1996, Dawn Odegard referred to plaintiff as a "numb-nuts" in plaintiff's presence. Around this time, plaintiff made a comment about her eyes feeling dry. Employee Donna McCormick then asked plaintiff whether she was "all dried up." Around this time, Dennis Gerling got very close to plaintiff and gave her an appraising look, commenting, "not bad." On August 23, 1996, once again, Gerling got very close to plaintiff and said in a sexual manner, "not bad."

In September 1996, plaintiff accused two individuals, Mike Buege and J.C. Johnson, of staring at her. The human resources department was notified of this complaint.

On October 1, 1996, plaintiff's supervisor at the time, Dan Bingham, talked with her about her claim that someone was stalking and harassing her. Plaintiff indicated that she

did not want the matter investigated and instructed him to drop the issue.

On October 7, 1996, plaintiff met with Nancy Forkel, who was in charge of defendant's human resources department, and asked that another employee, Terry Ellison, join the meeting. At this meeting, plaintiff proceeded to tell Forkel that there were a variety of incidents that plaintiff claimed were directed at her inappropriately, including a dead rose in a vase in a bathroom, an employee who walked around her that morning and stared at her and another employee who was fixing something in another room near plaintiff's work station who had been staring at her.

On October 31, 1996, someone posted several pictures of witches up around the assembly area with plaintiff's name on them. Specifically, plaintiff found a picture of a witch on a broomstick with the name "Rose" above it in her work area. Plaintiff was so embarrassed and humiliated that she became too upset to walk around the work area for fear that employees would stare at her. After an investigation, defendant stated that it could not determine who created the witch picture or who posted it. (Here and elsewhere in the undisputed facts, it is unclear who acted or spoke on behalf of defendant, a corporate entity.) On the following day, Forkel met with plaintiff and told plaintiff that in order to do a more thorough investigation, plaintiff would need to provide exact details of incidents and the names of the employees involved. Plaintiff indicated that she would attempt to get as much information as she could as soon as possible.

On November 15, 1996, plaintiff called Forkel to inform her that plaintiff's newspaper and lottery numbers were stolen from her personal drawer. Forkel inquired into the matter but could not determine whether anyone had taken the items. Forkel reiterated to plaintiff that she needed names and specifics to investigate plaintiff's allegations fully.

In December 1996, Ernie Kraus, defendant's vice president of human resources, met with Forkel to discuss plaintiff's allegations as well as plaintiff's behavior. At the meeting, it was noted that despite at least two requests by Forkel for more specific information regarding plaintiff's allegations, plaintiff had failed to provide more information. It was discussed that Forkel had suggested plaintiff see a counselor. There was no commitment from plaintiff to do so, although plaintiff indicated that she had a counselor.

Later, a meeting was scheduled for December 17, 1996, with plaintiff, Vandekolk, Kraus and Forkel, to discuss plaintiff's allegations and other matters. However, a couple of days before the meeting, plaintiff left a voicemail for Forkel at her home, asking her to cancel the meeting because "there just isn't anything you guys can do."

A number of incidents occurred in 1997 for which plaintiff cannot pinpoint specific dates. In 1997, plaintiff saw Mark Pollock moving parts on a cart when she noticed that parts were falling off. Plaintiff said, "Mark, you need a bigger cart." Mark grabbed his crotch and answered, "Rose, are you saying I need a bigger . . ." Plaintiff cut him off and called him a pig. This incident took place in the presence of other people. At an unknown

date in 1997, someone put a notice in plaintiff's work area that said, "Hot parts. Expedite." This was meant to be of a sexual nature. On unknown day in 1997, Ron Krueger approached plaintiff and asked how her "hole" was. Plaintiff thought she misunderstood him and asked, "What?" He repeated, "How's your hole?" He then laughed and walked back to his work area.

In August 1997, plaintiff made a complaint to the human resources department that her co-workers were erecting cardboard walls dividing their work areas from plaintiff's. When the employees were asked why they were doing this, they replied that they were tired of plaintiff accusing them of staring at her. Defendant instructed the employees to remove the cardboard and they complied.

On August 15, 1997, plaintiff went to her locker and found liquid on the door of the locker above hers. When plaintiff opened her locker, she found it full of the same liquid, which had a foul smell. Plaintiff asked co-worker Dwayne Babler to look at it because his locker was the one above hers. He told plaintiff that it smelled like deer scent, specifically "doe heat." It appeared to have been shot through the locker door vents. Plaintiff then contacted a union representative, who contacted defendant's human resources department immediately. All of the employees in plaintiff's work area were taken off the work floor and asked whether they had placed the liquid in plaintiff's locker. Even with a promise of confidentiality, no one responded to defendant's inquiries. On the same day, a memo was

posted regarding harassment of fellow employees. Defendant states that it was unable to determine who had placed the liquid in plaintiff's locker.

C. Incidents Within Limitations Period (post-October 8, 1997)

Sometime in late October 1997, plaintiff alleged that someone had emptied a small vial of hand cream and a small vial of pills into her purse that she kept in her personal drawer. At this time, plaintiff claimed that Haro had "investigated" her medical files. Plaintiff made these complaints to Larry Bardwell in the human resources department. Plaintiff stated that at this time Bob Bristol had "picked on her" and that other employees were "out to get her." Plaintiff mentioned several times that she would like to take an early retirement.

On October 28, 1997, plaintiff left for the day with two female co-workers. After she realized that Bristol was behind her, plaintiff stepped to one side to let him pass. As Bristol walked passed her, plaintiff said to him, "I'd rather have you in front of me." He then said, "I bet you would, you dizzy bitch."

On October 30, 1997, three different employees made complaints to the human resources department about plaintiff's behavior. Bristol stated that plaintiff had confronted him and said, "I have to walk behind you, because I don't trust you enough to walk in front of you." Bristol admitted that he replied, "Get out of my face, you silly bitch." Plaintiff was

later reprimanded for provoking the "dizzy bitch" comment.

In early November 1997, plaintiff inquired as to what was being done about the hand cream and pills that had been spilled in her purse. Forkel replied that the matter had been investigated but that there was no concrete proof. Forkel again suggested counseling but plaintiff replied that counseling was not helpful.

In early December 1997, plaintiff filed a grievance pursuant to the union's collective bargaining agreement regarding her allegations of harassment. On December 15, 1997, plaintiff, a grievance committee, Brian Mitchard (the plant manager) and Kurt Ramsett (plaintiff's immediate supervisor) met to discuss her grievance. At that time, plaintiff listed a variety of incidents dating back seven years.

A follow-up meeting was held with plaintiff on December 19, 1997. At this meeting, defendant's representatives said that defendant did not condone harassment or intimidation. Defendant's agents stated that there was not enough proof of plaintiff's allegations to warrant disciplinary action against any of the 44 different people who allegedly engaged in improper conduct. However, defendant stated that given the nature of plaintiff's allegations, it was possible that all of the evidence had not been reviewed. Defendant noted that there are always going to be people who tease and who may be cruel in their teasing, but without proof, nothing could be done other than to provide sensitivity training and post notices about harassment.

Sensitivity training took place during or after January 1998. It was not directed toward sexual harassment or discrimination. The materials dealt solely with respectful and courteous behavior towards co-workers. Plaintiff did not notice any difference in the level of daily harassment she experienced after the sensitivity training.

Plaintiff made no other internal complaints. On August 4, 1998, she filed a complaint with the Equal Rights Division of the Wisconsin Department of Industrial Labor and Human Relations, alleging harassment beginning in "summer, 1990 and continuing at present." The complaint was never amended and it contains only a "hostile work environment" claim.

After plaintiff left work on Friday, September 18, 1998, she collapsed emotionally over the weekend and decided to take some time off. Plaintiff did not return to work on the following Monday. Some time during her first week away from work, plaintiff received a letter from defendant stating that plaintiff could be terminated unless she provided a medical reason for her absence.

On September 22, 1998, plaintiff filed a worker's compensation claim with defendant's human resources department, alleging work-related stress. The claim was denied preliminarily. Plaintiff saw her psychologist, Holly Jellinek, who advised her not to return to work for the time being and referred her to Dr. Karen Brungard. Brungard advised plaintiff not to return to work at that time because of clinical depression.

Plaintiff did not return to work. (It is unclear when plaintiff terminated her employment officially. Plaintiff asserts that she did not decide to end her employment permanently until December 1998 and defendant does not dispute this fact.)

Plaintiff filed this cause of action on December 17, 2001.

OPINION

A. Standard of Review

To succeed on a motion for summary judgment, the moving party must show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); Celotex v. Catrett, 477 U.S. 317, 324 (1986). All evidence and inferences must be viewed in the light most favorable to the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). The Seventh Circuit has recognized that courts must apply the summary judgment standard with rigor in employment discrimination cases because "motive, intent and credibility are crucial issues." Crim v. Board of Education of Cairo School Dist. No. 1, 147 F.3d 535, 540 (7th Cir. 1998). However, even in employment discrimination cases, the non-moving party must set forth specific facts sufficient to raise a genuine issue for trial, see Celotex, 477 U.S. at 324, carrying his or her burden with more than mere conclusions and allegations. See id. at 321-22.

B. Hostile Work Environment

Before suing in federal court, a plaintiff alleging a Title VII violation must file a claim with the Equal Employment Opportunity Commission. See 42 U.S.C. § 2000e-5. Generally, parties must file their claims within 180 days of the alleged "unlawful employment practice," but where an aggrieved employee files first with a state or local agency possessing the authority to address the discrimination, the limitations period is extended to 300 days. See 42 U.S.C. § 2000e-5(e); Russell v. Delco Remy Division of General Motors Corp., 51 F.3d 746, 750 (7th Cir. 1995). Wisconsin is one of many states that have entered into a work sharing agreement with the EEOC in which both agencies treat a complaint filed with one agency as cross-filed with the other and the state agency waives its right to exclusive jurisdiction over the initial processing of a complaint. Therefore, in Wisconsin, a charge of discrimination actionable under federal law is timely if it is filed with the ERD within 300 days of the alleged discriminatory act. See Wisconsin Employment Law, §§ 14.182, 14.247 (1998).

Generally, conduct that occurred outside the limitations period may not be challenged under Title VII. See Galloway v. General Motors Service Parts Operations, 78 F.3d 1164, 1167 (7th Cir. 1996). However, the Supreme Court recently differentiated between claims of discrete discriminatory acts and claims of hostile work environments in National Railroad

Passenger Corp. v. Morgan, No. 00-1614, slip op. at 11-12 (June 10, 2002). Although the Court agreed with the approach taken in Galloway with respect to discrete acts ("acts such as termination, failure to promote, denial of transfer, or refusal to hire"), it disagreed that the same approach should be applied to allegations of hostile work environments. Id. at 25-31.

Because hostile work environment claims involve repeated conduct spanning days, weeks or even years, "the 'unlawful employment practice' . . . cannot be said to occur on any particular day." Id. at 27-28. The timely filing provision requires only that plaintiff file an ERD charge within 300 days of the alleged "unlawful employment practice." See 42 U.S.C. § 2000e-5(e).

> It does not matter, for purposes of the statute, that some of the component acts of the hostile work environment fall outside the statutory time period . . . The statute does not separate individual acts that are part of the hostile environment claim from the whole for the purposes of timely filing and liability. And the statute does not contain a requirement that the employee file a charge prior to 180 or 300 days "after" the single unlawful practice "occurred."

National Railroad, No. 00-1614, slip op. at 31-32. Therefore, plaintiff need only file an ERD charge within 300 days of any act allegedly part of the hostile work environment to have a timely filing. Id. at 33. As a result, "[a] court's task is to determine whether the acts about which an employee complains are part of the same actionable hostile work environment practice, and if so, whether any act falls within the statutory time period." Id.

at 37.

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, prohibits discrimination based on race, gender, religion or national origin that creates a hostile or abusive work environment. See Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 78 (1998); Harris v. Forklift Systems, Inc., 510 U.S. 17, 22 (1993). In order to have an actionable Title VII claim, a plaintiff must allege that discrimination took place because of his or her race, gender, religion or national origin. In this case, plaintiff alleges that the acts giving rise to a hostile work environment occurred because of her gender. Clearly, the pre- and post-limitations period conduct alleged by plaintiff involve the same type of ongoing harassment by co-workers. (For the purpose of resolving this motion, I assume without deciding that the alleged acts constituted harassment on the basis of gender.)

Unless, however, at least one act that is part of the hostile work environment claim falls within the statutory time period, the pre-limitations period allegations cannot be considered. See National Railroad, No. 00-1614, slip op. at 31 ("Provided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered by a court for the purposes of determining liability."). In other words, plaintiff must have alleged at least one gender-related act occurring after October 8, 1997 (the outside limit of the statutory time period).

On October 28, 1997, Bristol allegedly called plaintiff a "dizzy bitch" and admittedly

a "silly bitch." Defendant was made aware of this incident on October 30, 1997, when Bristol made a complaint about plaintiff to human resources. I agree with defendant that the "dizzy bitch" incident is the only arguably gender-based allegation that falls within the statutory period. I am not persuaded that being called a "dizzy bitch" can never be sex discrimination. As in any case, when the undisputed facts are capable of supporting two competing inferences, such conflicts must be resolved "by the factfinder after trial, not [by] the court on summary judgment." Shepard v. Slater Steels Corp., 168 F.3d 998, 1010 (7th Cir. 1999). In this case, a reasonable factfinder could infer either that the harassment was gender-based or that it occurred merely because Bristol disliked plaintiff. See Galloway, 78 F.3d at 1168 (stating that word "bitch" may figure in sex discrimination case but that there is not automatic inference from use of word "bitch" that harassment was motivated by gender rather than personal dislike unrelated to gender). Evaluating Bristol's alleged behavior requires "one to weigh the tone and nuances of his words and deeds and a host of other intangibles that the page of a deposition or an affidavit simply do not reveal." Shepard, 168 F.3d at 1010; see also Galloway, 78 F.3d at 1168 ("when a word is ambiguous, context is everything," referring to word "bitch").

Therefore, because I find that a reasonable factfinder could infer that the alleged "dizzy bitch" incident occurred because of plaintiff's gender, defendant's motion for summary judgment will be denied as to plaintiff's hostile work environment claim. (The

answer to this question determines whether plaintiff filed a timely complaint under National Railroad and, in turn, whether the pre-limitations period allegations can be considered.)

C. Constructive Discharge

Defendant argues that plaintiff is barred from making her constructive discharge claim because the allegations do not fall within the scope of the charges she filed in her ERD complaint.

As a general rule, a Title VII plaintiff may bring only those claims included in his or her EEOC or, in this case ERD, charge. See Cheek v. Western & Southern Life Ins. Co., 31 F.3d 497, 501 (7th Cir. 1994). This rule affords the ERD an opportunity to investigate the allegations in the charge, affords the ERD a conciliatory role in settling the parties' dispute and provides the employer notice of the charge. See id. at 500.

However, alleged discriminatory conduct not included in the ERD charge may be actionable if the so-called Jenkins test is satisfied. Id. (citing Jenkins v. Blue Cross Mutual Hospital Ins., Inc., 538 F.2d 164, 167 (7th Cir. 1976)). First, under Jenkins, the conduct must be within the scope of the charge. Id. In other words, the unreported conduct must be "like or reasonably related" to the claims contained in the charge, see Conley v. Village of Bedford Park, 215 F.3d 703, 710 (7th Cir. 2000), meaning that the charge and the unreported conduct "must, at a minimum, describe the same conduct and implicate the same

individuals," Cheek, 31 F.3d at 501. Second, the unreported conduct must be reasonably "expected to grow out of an EEOC investigation of the allegations in the charge." Id. at 500.

In light of these two requirements, because most EEOC (and ERD) charges are filed by laypersons, "a Title VII plaintiff need not allege in an EEOC charge each and every fact that combines to form the basis of each claim in her complaint." Id. In addition, when applying the rule, "courts are to construe the EEOC charges liberally to ensure that the remedial purposes of Title VII are served." Taylor v. Western and Southern Life Ins. Co., 966 F.2d 1188, 1195 (7th Cir. 1992).

It is undisputed that plaintiff did not allege constructive discharge in her ERD charge. (The parties agree that plaintiff alleged only a gender-based hostile work environment.) Therefore, the question is whether plaintiff's constructive discharge claim is within the scope of the ERD charge she filed on August 4, 1998. In her charge, plaintiff alleged that she was the victim of harassment by co-workers for seven years. Specifically, plaintiff alleged that she was a target of ongoing sexual harassment and discrimination based on her gender at the hands of her co-workers such that she experienced a hostile work environment. In addition, plaintiff alleged that despite numerous complaints to supervisors and defendant's human resources department, nothing was done. On the ERD form itself, plaintiff indicated that the alleged conduct began in "summer, 1990" and was "continuing at present" and that the basis of her complaint was "sex-female." Plaintiff's charge includes an attachment almost

30 pages in length listing various incidents of alleged harassment ending in December 1997.

Plaintiff's constructive discharge claim is not actionable because it is not "like or reasonably related" to the allegations in her ERD charge. The acts included in plaintiff's charge involve alleged incidents of harassment by co-workers forming a hostile work environment. Nowhere in the charge is it mentioned that plaintiff's employment with defendant had ended, let alone ended as a result of a constructive discharge. In fact, plaintiff herself indicated on the ERD complaint form that the harassment was "continuing at present." There is nothing in the ERD charge to indicate that plaintiff might be forced to terminate her employment with defendant under the circumstances. Moreover, defendant could have reasonably concluded that plaintiff was unlikely to resign given the significant amount of time plaintiff had tolerated the alleged harassment without suggesting a need to resign.

In addition, plaintiff did not file a new charge or amend her existing ERD charge after she terminated her employment, although she could have done so. See 29 C.F.R. § 1601.12(b) ("A charge may be amended to . . . clarify and amplify allegations made therein."). This reaffirms my finding that the charge failed to give defendant notice of plaintiff's constructive discharge claim and also failed to afford the ERD an opportunity to investigate the unreported claim.

Nonetheless, plaintiff argues that defendant had an opportunity to investigate her

constructive discharge claim for two reasons. First, plaintiff argues that defendant was not unduly burdened because the constructive discharge claim does not require any more evidence than would be required to prove a hostile work environment claim. Plaintiff's argument is refuted by Tutman v. WBBM TV, Inc., 209 F.3d 1044, 1050 (7th Cir. 2000), in which the court stated that "working conditions for constructive discharge must be even more egregious than the high standard for hostile work environment." By not identifying and reporting her claim, plaintiff denied defendant an opportunity to fully investigate plaintiff's reasons for terminating her employment after she had dealt with harassment for seven years without an indication that she would resign.

Second, plaintiff argues that defendant had notice of plaintiff's constructive discharge claim because defendant was aware that plaintiff did not return to work after September 18, 1998, and that plaintiff filed a worker's compensation claim the next week. However, plaintiff asserts that she did not terminate her employment officially until December 1998. Moreover, shortly after plaintiff stopped going to work in September, she was asked to provide a medical excuse for her absence or face termination. Presumably, she provided a medical excuse because she was not terminated. This would have led defendant to believe that she was on medical leave. Therefore, despite plaintiff's absence from work, defendant was not aware that plaintiff's employment with defendant was going to end permanently. Defendant did not have notice of plaintiff's constructive discharge claim until after the ERD

charge was filed. In addition, even if I were to find that defendant had notice of the claim, none of plaintiff's arguments address the deprivation of the ERD's opportunity to investigate the constructive discharge claim or to engage in conciliation efforts.

Because I have determined that plaintiff's constructive discharge claim is not like or reasonably related to the allegations in her ERD charge, I do not need to determine whether the conduct was reasonably expected to grow out of an ERD investigation of the allegations in the charge. Accordingly, defendant's motion for summary judgment as to plaintiff's constructive discharge claim will be granted.

ORDER

IT IS ORDERED that defendant Datex-Ohmeda, Inc.'s motion for summary judgment is DENIED as to plaintiff Rosetta R. Jorenby's hostile work environment claim and GRANTED as to plaintiff's constructive discharge claim.

Entered this 16th day of July, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge