

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

PATRICK JAMES HELTON,

Plaintiff,

v.

OPINION & ORDER

SLUMBERLAND FURNITURE, GREGORY STUMP,
JESSE SMITH, and MARY HESCH,¹

15-cv-531-jdp

Defendants.

Pro se plaintiff Patrick James Helton filed a complaint against his former employer and several of his former coworkers and supervisors. Plaintiff alleged that a former coworker sexually assaulted him and that defendants retaliated against him after he reported the assault. After considering plaintiff's allegations, I dismissed his complaint for failing to comply with Federal Rule of Civil Procedure 8, and I directed him to file an amended complaint that clarified his Title VII claim. Dkt. 4.

Plaintiff has filed an amended complaint. Dkt. 5. Now that I have reviewed plaintiff's allegations, I will grant plaintiff leave to proceed on a Title VII retaliation claim against defendant Slumberland Furniture. I will deny plaintiff leave to proceed against defendants Gregory Stump, Jesse Smith, and Mary Hesch.

ALLEGATIONS OF FACT

I draw the following facts from plaintiff's amended complaint.

¹ Plaintiff removed several defendants from the caption in his amended complaint, naming only Slumberland Furniture, Gregory Stump, Jesse Smith, and Mary Hesch. I have updated the caption accordingly.

Plaintiff and the individual defendants worked for Slumberland Furniture during the events plaintiff describes. In June 2014, plaintiff attended sales training at Slumberland's corporate headquarters in Minnesota. At that time, defendant Gregory Stump sexually harassed and sexually assaulted plaintiff; Stump was charged with fifth-degree sexual assault. Plaintiff reported the incident, and, as a result, defendants Mary Hesch and Jesse Smith demoted plaintiff and transferred him from the Marshfield, Wisconsin, store to the Stevens Point, Wisconsin, location. They also denied him the opportunity to train for an assistant store manager position (although Hesch and Smith maintain that they never promised plaintiff the position). Plaintiff alleges that around that same time, "commissions and certain things were being done to [his] pay," also in response to him reporting the sexual assault. *Id.* at 2-3. At one point, defendant Smith told plaintiff that he moved him to the Stevens Point location because "we don't need another incident to happen like Minnesota, to happen here." *Id.* at 3.

ANALYSIS

Plaintiff has clarified his claim for retaliation for reporting Stump's assault, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*

As I discussed in my previous order, "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." *Tomanovich v. City of Indianapolis*, 457 F.3d 656, 662 (7th Cir. 2006) (internal quotation marks and alterations omitted). A plaintiff may prove Title VII retaliation under either the direct method or the indirect method of proof. *Id.* "Under the direct method, a plaintiff must show that '(1) he

engaged in statutorily protected activity; (2) he suffered an adverse action taken by the employer; and (3) [there was] a causal connection between the two.” *Id.* at 663 (quoting *Moser v. Ind. Dep’t of Corr.*, 406 F.3d 895, 903 (7th Cir. 2005)). Under the indirect method, plaintiff must make out a prima facie case of retaliation by alleging that: (1) he engaged in statutorily protected activity; (2) he met his employer’s legitimate expectations; (2) he suffered an adverse employment action; and (4) he was treated less favorably than similarly situated employees who did not engage in statutorily protected activity. *Id.* Of particular relevance to plaintiff’s claim, “Title VII prohibits employers from retaliating against employees who ‘oppose’ sexual harassment. Moreover, we have previously held that sexual contact may constitute sexual harassment.” *Worth v. Tyer*, 276 F.3d 249, 265 (7th Cir. 2001) (internal citation omitted) (concluding that when an employee reported that a coworker had sexually assaulted her while in her office, she engaged in protected activity).

Plaintiff has stated a Title VII retaliation claim. He alleges that he engaged in a protected activity when he reported the sexual assault and harassment, and his employer demoted him as a result. Plaintiff names several individual defendants, but he may sue only his employer under Title VII; Title VII prohibits *employers* from discriminating or retaliating against employees. Title VII defines employer as “a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person[.]” 42 U.S.C. § 2000e(b). Supervising employees—such as Hesch and Smith—are not employers and may not be held individually liable under Title VII. *See Williams v. Banning*, 72 F.3d 552, 555 (7th Cir. 1995); *see also Triplett v. Midwest Wrecking Co.*, 155 F. Supp. 2d 932, 938 (N.D. Ill. 2001) (“Liability for employment discrimination under Title VII can only be imposed

against an individual who qualifies independently as an employer.” (citing *EEOC v. AIC Sec. Investigations, Ltd.*, 55 F.3d 1276, 1279-82 (7th Cir. 1995))). I will grant plaintiff leave to proceed on a Title VII retaliation claim against his employer, Slumberland Furniture. But I will deny plaintiff leave to proceed against defendants Hesch, Smith, and Stump because they are not “employers” under Title VII. (And, regardless, although Stump sexually assaulted and harassed plaintiff, he played no role in retaliating against him. If, however, plaintiff intends to bring a state law claim for assault against Stump—his amended complaint appears to drop all state law claims—then he will need to file a notice with the court clarifying his intentions.)

One final note: plaintiff appears to have abandoned all state law claims against any defendant and all claims against Craig Cask, Paige Palmer, and Ryan Mattson. I will dismiss these individuals from the case.

ORDER

IT IS ORDERED that:

1. Plaintiff Patrick James Helton is GRANTED leave to proceed on a Title VII retaliation claim against defendant Slumberland Furniture.
2. Plaintiff is DENIED leave to proceed against Gregory Stump, Jesse Smith, and Mary Hesch, and they are DISMISSED.
3. Plaintiff has not stated any claims against Craig Cask, Paige Palmer, and Ryan Mattson, and they are DISMISSED.
4. The clerk of court is directed to ensure that the United States Marshals Service serves defendant with a copy of plaintiff’s amended complaint and this order. Plaintiff should not attempt to serve defendant on his own at this time.
5. For the time being, plaintiff must send defendant a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendant, he should serve the lawyer directly. The court

will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendant or to defendant's attorney.

6. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.
7. If plaintiff moves while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendant or the court are unable to locate him, his case may be dismissed for his failure to prosecute it.

Entered June 27, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge