UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JILLIAN LANKFORD,

Plaintiff,

v

THE SALVATION ARMY

Defendant.

Case No. 2:20-cv-12656
Hon. Nancy G. Edmunds
Magistrate Kimberly G. Altman

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DEFENDANT, THE SALVATION ARMY'S MOTION FOR SUMMARY JUDGMENT

Defendant, The Salvation Army ("Defendant" or "TSA") moves this Court under Fed. R. Civ. P. 56 for entry of summary judgment in its favor as to all claims asserted by Plaintiff Jillian Lankford ("Plaintiff" or "Lankford"). For the reasons stated in the accompanying Brief in Support, Defendant respectfully requests that its motion be granted and judgment entered in its favor.

Pursuant to L.R. 7.1, on October 14, 2021, Defendant's Attorney John T. Below conferred with Plaintiff's Attorney Judith A. Champa regarding the nature and legal bases of this motion and requested but did not obtain concurrence in the relief sought.

Respectfully Submitted,

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By: /s/ John T. Below

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Date: October 18, 2021

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DEFENDANT, THE SALVATION ARMY'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
STATEMENT OF ISSUES PRESENTED iii
CONTROLLING AUTHORITY iv
INTRODUCTION 1
STATEMENT OF FACTS 2
I. TSA's Structure 2
II. Lankford's Employment History and Request for an Exorbitant Raise. 3
III. Lankford Commences her New Executive Assistant Position. 6
IV. Lankford Takes FMLA Leave for the Birth of her Second Child 7
V. TSA Determines that Termination of Lankford's Employment is Warranted and Necessary. 9
LAW AND ARGUMENT 11
I. Plaintiff's FMLA Claim Must be Dismissed 12
a. Plaintiff cannot establish a *prima facie* case. 12
b. TSA relied on legitimate, non-discriminatory, and non-retaliatory reasons for terminating Plaintiff. 16
c. Plaintiff has no evidence of pretext. 18
II. Plaintiff's PDA Claim Must be Dismissed 21
a. Plaintiff cannot establish a *prima facie* case of pregnancy discrimination. 22
b. Plaintiff cannot show that TSA's legitimate non-*discriminatory* reason was pretextual. 23
CONCLUSION 25

TABLE OF AUTHORITIES

Cases

Allen v. Mich. Dep't of Corr., 165 F.3d 405, 413 14
Asmo v. Keane, Inc., 471 F.3d 588, 592 (6th Cir. 2007) 22
Blosser v. AK Steel Corp., 520 Fed. Appx. 359, 363-365 (6th Cir. 2013) 15
Donald v. Sybra, Inc., 667 F.3d 757, 761-762 (6th Cir. 2012) 12
Donald v. Sybra, Inc., 667 F.3d 757, 763 (6th Cir. 2012) 18
Edgar v. JAC Products, Inc., 443 F.3d 501, 508 (6th Cir. 2006) 12
Galeski v. City of Dearborn, 690 F. Supp. 2d 603, 620-621 (E.D. Mich. 2010) 14
Hafford v. Seidner, 183 F.3d 506, 515 (6th Cir. 1999) 15
Hardesty v. Kroger, 758 Fed. Appx 490, 496 (6th Cir. 2019) 20
Henderson v. Chrysler Grp., LLC, 610 Fed. Appx. 488, 494 (6th Cir. 2015) 13
Joostberns v. United Parcel Servs., Inc., 166 Fed. Appx. 783, 794 (6th Cir. 2006) 18
Kubik v. Central Michigan Bd. of Trustees, 717 Fed. Appx. 577, 581 (6th Cir. 2017) 22
Kuhn v. Washtenaw Cnty., 709 F.3d 612, 628 (6th Cir. 2013) 16
McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) 12
Megivern v. Glacier Hills, Inc., 519 Fed. Appx. 385, 398 (6th Cir. 2013) 24
Michael v. Caterpillar Fin. Servs. Corp., 496 F.3d 584, 596 (6th Cir. 2007) 13
Nguyen v. City of Cleveland, 229 F.3d 559, 566-567 (6th Cir. 2000) 14
Seeger v. Cincinnati Bel Tel. Co., 681 F.3d 274, 284 (6th Cir. 2012) 17
Skrjanc v. Great Lakes Power Serv. Co., 272 F.3d 309, 317 (6th Cir. 2001) ... 14, 21
Smith v. Leggett Wire Co., 220 F.3d 752, 763 (6th Cir. 2000) 21

Statutes

Fed. R. Civ. P. 56 11

STATEMENT OF ISSUES PRESENTED

1. Can Plaintiff Jillian Lankford maintain a claim that The Salvation Army violated the Family and Medical Leave Act?

Defendant, The Salvation Army answers: "No."

2. Can Plaintiff Jillian Lankford maintain a claim that The Salvation Army violated the Pregnancy Discrimination Act of 1978?

Defendant, The Salvation Army answers: "No."

CONTROLLING AUTHORITY

Fed. R. Civ. P. 56

Donald v. Sybra, Inc., 667 F.3d 757 (6th Cir. 2012).

Henderson v. Chrysler Grp., LLC, 610 Fed. Appx. 488 (6th Cir. 2015).

Kubik v. Central Michigan Bd. of Trustees, 717 Fed. Appx. 577 (6th Cir. 2017).

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Nguyen v. City of Cleveland, 229 F.3d 559 (6th Cir. 2000).

Seeger v. Cincinnati Bel Tel. Co., 681 F.3d 274 (6th Cir. 2012).

Skrjanc v. Great Lakes Power Serv. Co., 272 F.3d 309 (6th Cir. 2001).

INTRODUCTION

Defendant, The Salvation Army ("Defendant" or "TSA") provided Plaintiff Jillian Lankford ("Plaintiff" or "Lankford") with significant promotional opportunities throughout her 11 years of employment, extending to her increasing levels of responsibility and discretion. Citing such "accomplishments," Lankford presented TSA with a proposal for a $20,000 raise, effective May 2016, in accordance with which she agreed to un-enroll in health insurance benefits for 3 years, which she anticipated would save TSA "upwards of $10,000 annually." TSA agreed and granted Lankford's pitch for the unprecedentedly large raise.

Lankford sought leave under the Family and Medical Leave Act ("FMLA") for the births of her children in 2017 and 2018, both of which TSA swiftly approved without issue. Shortly before her 2018 FMLA leave, Lankford requested a copy of her personnel file. TSA reviewed Lankford's file in preparation for its production and discovered that she had fraudulently re-enrolled in TSA's health insurance benefits, violating Lankford's own proposal and contradicting the trust she knew TSA afforded her. Lankford's coworkers simultaneously highlighted Lankford's deteriorating interpersonal skills, including her impatience and unprofessionalism. TSA, therefore, made the decision to terminate Lankford's employment. TSA permitted Lankford to complete the entirety of her FMLA leave, allowing Lankford to maintain her deceptively-acquired health insurance benefits during the birth and

early care of her newborn son, and waited to communicate the termination decision upon her return to work on October 1, 2018.

Lankford's termination is entirely unrelated to her FMLA leaves and/or pregnancies. It was Lankford's request for her personnel file that prompted the discovery of her insurance re-enrollment, and it was Lankford's absence that emboldened her coworkers to finally and openly express their concerns. TSA's termination decision was legitimate, non-discriminatory, and non-retaliatory, and Lankford cannot demonstrate otherwise, entitling TSA to summary judgment.

STATEMENT OF FACTS

I. TSA's Structure

TSA's Southeastern Michigan Adult Rehabilitation Center ("ARC") is managed by "administrators." Ex. 1: J. Idzior Dep., pp. 18:25-19:25. As of 2018, the administrators were Major Larry Manzella ("Manzella"), Envoy Robert Idzior ("R. Idzior"), and Envoy Jacqulynn Idzior ("J. Idzior") (collectively, the "Administration").[1] Ex. 1: J. Idzior Dep., pp. 34:14-16, 97:8-11. Manzella was the

[1] Manzella, an Officer and Pastor, oversaw the Southeastern Michigan ARC. R. Idzior and J. Idzior reported to Manzella, and then the additional staff, including human resources, store management, and the finance team, reported to them. In terms of titles, Manzella explains, "The Salvation Army is set up like the military and . . . promotions are based on years of service, so the first five years I was a Lieutenant and then the second five years I was promoted to Captain, and then from that point on, you serve as a Major unless you get a specific rank for a specific responsibility such as a Colonel or Lieutenant Colonel . . . Envoys are folks who

highest ranking official at TSA's Southeastern Michigan ARC at that time. Ex. 2: Manzella Dep., p. 9:23-25. The ARC is part of The Salvation Army's Central Territory ARC Command, Headquartered in Hoffman Estates, Illinois. Ex. 1 J. Idzior Dep., p. 19:15-19; Ex. 2: Manzella Dep., p. 10:1-4.

II. Lankford's Employment History and Request for an Exorbitant Raise.

TSA hired Lankford as a cashier at the St. Clair Shores thrift store in August 2007. Ex. 3: Lankford Dep., p. 21:6-13. Lankford worked in various positions for TSA, and, between 2007 and 2015, she was given increasing levels of responsibilities. Ex. 3: Lankford Dep., pp. 23:15-22, 24:17-25:11, 27:7-28:3, 28:10-20; 29:11-16, 30:21-31:8, 41:11-14. As of May 2015, Lankford was employed as the Assistant Director of Operations and received an annual salary of $55,000. Ex. 4: May 2015 Payroll Change Notice. Lankford described her Assistant Director of Operations duties as including assisting store supervisors, creating training manuals, overseeing "logistics and donations and communications," and handling "the director of operation's paperwork." Ex. 3: Lankford Dep., pp. 41:17-42:6. In this position, Lankford was supervised by and reported to J. Idzior. Ex. 4: May 2015 Payroll Change Notice (identifying J. Idzior as the "Manager").

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have not gone through The Salvation Army seminary or training experience, but are recommended to serve in some capacity." Ex. 2: Manzella Dep., pp. 9:15-11:21.

It is undisputed that, in May 2016, after approximately one year in the Assistant Director of Operations position, Lankford requested an exorbitant compensation raise of more than 36 percent and, in exchange, offered certain concessions, including un-enrollment from TSA's health insurance plan for 3 years. Ex. 5: Lankford Salary Proposal. Specifically, Lankford proposed:

> My current salary is $55,000 annually with the use of a company car, gas card, $10,662.00 per year in insurance and a $1,000.00 guaranteed bonus through May 2016; and **I am proposing an increase of $20,000** bringing my annual salary to $75,000 along with the continued use of a [TSA] vehicle and gas card.
>
> **In exchange for the salary increase**, I am prepared to make the following commitments and take the following cost saving initiatives:
>
> 1. Continued employment within the Southeast Michigan ARC for a minimum of 3 years (June 2019) at the proposed salary;
> 2. No expectation of any future merit increases until my June 2019 annual review;
> 3. Forfeiture of all discretionary bonuses, and elimination of any additional pay, saving up to $12,000 annually; and
> 4. **Unenrollment in [TSA] insurance beginning May 2017 which will result in an expected savings to the company of upwards of $10,000 annually.**

Ex. 5 (emphasis added). Because an increase of this size is "unheard of in [TSA]," it required approval by ARC's Administration and Command. Ex. 6: R. Idzior Dep., pp. 18:12-19:22; Ex. 1, J. Idzior Dep., pp. 45:22-46:12.

Ultimately, TSA agreed to Lankford's proposed terms – a $20,000 increase in her annual salary in exchange for the "cost saving initiatives" that she proposed, *including the promise to un-enroll from TSA-provided health insurance benefits*. Ex.

5: Lankford Salary Proposal; Ex. 7: 2016 Payroll Change Notice (incorporating Lankford's proposal). There is no dispute that TSA and Lankford agreed that she would not re-enroll in such benefits until at least 3 years had passed. Ex. 3: Lankford Dep., p. 49:15-18; Ex. 1: J. Idzior Dep., pp. 41:10-42:15; Ex. 2: Manzella Dep., pp. 33:18-35:1.

Lankford secured her $20,000 raise and un-enrolled in benefits, effective July 1, 2017 (two months later than promised). Ex. 8: 2017 Enrollment/Change Form. However, *only four months later*, Lankford re-enrolled in benefits covering both herself and her family under TSA's health, dental, vision, and hearing insurance plan, effective January 1, 2018. Ex. 9: 2018 Election Summary; Ex 3: Lankford Dep., p. 48:20-24. At her deposition, Lankford claimed that she re-enrolled in benefits because she had been placed in the new "Executive Assistant" position, and she saw that "nothing had changed" on her payroll change notice, so she decided that she would switch from her husband's insurance to TSA's insurance, allowing him to earn "one dollar more per hour." Ex. 3: Lankford Dep., pp. 68:5-14, 18-22. Lankford conceded that the move to Executive Assistant was a "neutral" job action – it was not a promotion. Ex. 3: Lankford Dep., p. 51:1-14. Lankford did not inform J. Idzior "or anybody else in management" about her re-enrollment, meaning she knew that she was not authorized to re-enroll in benefits *and* keep the $20,000 increase. Ex. 3: Lankford Dep., p. 49:7-10. In fact, Administration had no idea that

Lankford had reenrolled in health insurance.[2] Ex. 2: Manzella Dep., p. 64:18-23; Ex. 3: Lankford Dep., p. 56:12-18. Lankford does not dispute that Administration had no knowledge of her secret re-enrollment in the TSA health insurance plan. Ex. 3: Lankford Dep., p. 49:11-14.

III. Lankford Commences her New Executive Assistant Position.

Lankford first reported to J. Idzior and R. Idzior upon the commencement of her Executive Assistant position; Major Manzella was added as a supervisor in March 2018. Ex. 2: Manzella Dep., p. 38:5-23; Ex. 3: Lankford Dep., p. 67:12-19; Ex. 10: 3/1/18 Email. Lankford understood that the Executive Assistant position was "[a]bsolutely" an "important job," with "a lot of responsibility." Ex. 3: Lankford Dep., p. 112:4-7.[3] Nonetheless, Manzella endorsed a "[f]lexible hours" and "family first" mentality, and he "was in favor of work-life balance." Ex. 11: Plaintiff's Notes from 3/6/18 Meeting; Ex. 2: Manzella Dep., p. 43:6-15; Ex. 3: Lankford Dep., p. 114:1-15.

[2] Lankford was certain that, if she re-enrolled, Administration would not receive notification thereof because she knew that Administration would not have access to her personnel file without help from human resources given that employees' personnel files are "locked under key by the human resources director." Ex. 3: Lankford Dep., p. 93:10-19.

[3] Lankford delineates the many job duties she claims to have performed. Ex. 3: Lankford Dep., pp. 65:18-67:19.

IV. Lankford Takes FMLA Leave for the Birth of her Second Child.

Lankford informed TSA that she was pregnant with her second child in January 2018. Ex. 3: Lankford Dep., pp. 115:17-116:5. Lankford estimated that her leave would begin in July 2018, and that she would "be absent as much as [she] was approved for." *Id.* [4] Of her own volition, Lankford initially planned to conduct some work during her FMLA leave, but, "[a]fter careful consideration," she "decided to be completely unavailable during FMLA once it is approved." Ex. 12: 5/15/18 Email, p. 1. Included with the email communication is a summary of Lankford's job duties and anticipated projects that would require coverage during her leave. *Id.* Manzella responded, "You know I totally get this. The most important thing in your life isn't your job[;] it's your family. I think [you're] making the right call." *Id.*, p. 5. R. Idzior and J. Idzior echoed Manzella's sentiments. R. Idzior was "[a]bsolutely not" "angry about having to reassign any of [Lankford's] job duties," and TSA "got them all covered." Ex. 6: R. Idzior Dep., pp. 30:19-25, 33:13-15. J. Idzior had "no" problems finding "cover" for Lankford's duties and was "[n]ot at all" "upset" that Lankford was taking FMLA leave; J. Idzior herself had just returned from FMLA

[4] In January 2017, TSA approved Lankford's request for FMLA leave due to the birth of her first child between April 2017 and July 2017. Ex. 3: Lankford Dep., p. 63:7-10. There is no dispute that Lankford returned without incident to a similar position at the conclusion of the leave. *Id.*, pp. 51:1-10, 65:17-23. Lankford admits that no TSA Administrator or anyone else said or did anything to make her "feel that [her] job was in jeopardy" during her first FMLA leave. *Id.*, p. 65:4-7.

leave and had experienced no hostility or pushback because of her absences. Ex. 1: J. Idzior Dep., pp. 89:22-24, 148:10-149:2. TSA approved Lankford's FMLA leave, beginning approximately July 15, 2018 and concluding September 29, 2018. Ex. 3: Lankford Dep., pp. 134:23-135:1; Ex. 1: J. Idzior Dep., p. 124:20-23.

Shortly before her FMLA leave was to commence, on July 9, 2018, Lankford submitted her "position review" to the Administrators, in which she made troubling revelations and bluntly expressed frustration with her superiors. Ex. 13: 7/9/18 Position Review. For example, Lankford claims: she received "little to no direction" and "contradictory information [that] impeded [her] ability to see many tasks through completion"; her "position encompasses the duties of four people," which "someone off the street could [not] handle," as evidenced by "the number of people needed to assign" Lankford's duties during her anticipated leave; "[t]here is an overwhelming amount of misdirection"; "unclear direction often interposes the flow and growth of some relationship dynamics"; and, the sense that employees should do what they are told "leaves much to be desired." *Id*., pp. 1-4.

Lankford met with Manzella on the morning of July 10, 2018, secretly recorded their meeting, and referred vaguely to allegations that she was labelled defiant. Ex. 3: Lankford Dep., pp. 89:20-90:2, 140:2-14. Manzella planned to discuss Lankford's "attitude" and "work through that particular issue" when she came back from FMLA leave. Ex. 2: Manzella Dep., p. 59:11-22.

On July 11, 2018, with Manzella's approval, Lankford started her leave earlier than expected. Ex. 3: Lankford Dep., pp. 134:23-135:21. Lankford was asked to return her TSA computer while on FMLA leave but refused to do so. Ex. 3: Lankford Dep., p. 151:4-13 (claiming, "I don't take direction from my assistant"); Ex. 1: J. Idzior Dep., pp. 95:19-96:5.

After giving birth on July 25, 2018, Lankford completed a "special enrollment," and added her newborn son to her health insurance plan, which covered health, dental, vision, and hearing for herself and her family. Ex. 14: Special Enrollment Form. Soon thereafter, on August 27, 2018, Lankford received a text message from the former Director of Human Resources, Dea Weathers ("Weathers"), about a "formality in question" as to the enrollment. Ex. 15: Text Messages, p. 15. Lankford hypothesized, "Ugh . . . [W]hat's wrong with my insurance[?] . . . My negotiated contract from [Assistant Director of Operations] that got me that raise?" *Id.* Lankford admits that her re-enrollment "first came to the attention of the [A]dministrators" while she was on FMLA leave. Ex. 3: Lankford Dep., p. 56:12-18. Lankford took the entirety of her FMLA leave with full benefits and returned to work on October 1, 2018, as planned. Ex. 1: J. Idzior Dep., p. 124:20-23.

V. TSA Determines that Termination of Lankford's Employment is Warranted and Necessary.

On or around July 5, 2018, shortly before her second FMLA leave, Lankford requested a copy of her personnel file. Ex. 16: Personnel File Request. According to its "normal procedure," TSA reviewed Lankford's personnel file with local counsel and ARC Command in preparation for its production to Lankford, at which point TSA discovered that Lankford had re-enrolled herself and her family in its health insurance plan. Ex. 1: J. Idzior Dep., pp. 97:2-98:17; Ex. 2: Manzella Dep., p. 56:6-21; Ex. 6: R. Idzior Dep., pp. 43:23-44:23. Manzella, J. Idzior, and R. Idzior all agreed that, due to Lankford's secret and fraudulent re-enrollment in benefits in violation of her agreement with TSA, termination was warranted. Ex. 1: J. Idzior Dep., p. 109:4-20; Ex. 2: Manzella Dep., pp. 66:7-67:1; Ex. 6: R. Idzior Dep., p. 41:2-8. TSA waited until her October 1, 2018 return-to-work date to communicate and effectuate the termination because TSA "did not want to disturb her leave." Ex. 1: J. Idzior Dep., p. 100:5-12.

Upon the determination that Lankford had engaged in deceitful conduct that warranted employment termination, J. Idzior also solicited written statements from ARC employees, because she had received complaints about Lankford's "behavior," and, according to J. Idzior, Lankford "deserved a thorough investigation on every claim that was brought against her." Ex. 1: J. Idzior, pp. 111:3-14, 122:1-16; *see* Ex. 17: Written Statements, in which Lankford's coworkers described her infamously rude and discourteous conduct. Regardless of her many interpersonal conflicts, TSA

terminated Lankford for fraudulently re-enrolling in health insurance benefits. Ex. 1: J. Idzior Dep., p. 123:1-12; Ex. 6: R. Idzior Dep., pp. 38:5-12, 41:2-8; Ex. 2: Manzella Dep., pp. 61:16-62:23 (explaining, "There was no intention of firing [Lankford] until we discovered she committed the fraud").

The investigation and termination decision were summarized in the Termination Report and accompanying memorandum. Ex 18: Termination Documentation. J. Idzior met with Lankford and Weathers on October 1, 2018, and J. Idzior "read directly off of the termination report" in communicating the separation to Lankford. Ex. 1: J. Idzior Dep., p. 100:13-18. Lankford admits that she was told that she was being terminated "[f]or signing up on [TSA's] insurance without permission." Ex. 3: Lankford Dep., pp. 147:17-148:7. Manzella, J. Idzior, and R. Idzior all testified that, regardless of any other issue, Lankford would have been terminated for her misconduct regarding health insurance reenrollment. Ex. 1: J. Idzior Dep., p. 109:4-20; Ex. 2: Manzella Dep., pp. 66:19-67:1; Ex. 6: R. Idzior, p. 41:2-8.

LAW AND ARGUMENT

Summary judgment is appropriate where the record evidence, including depositions, demonstrate "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56.

I. Plaintiff's FMLA Claim Must be Dismissed

In Count I of the Complaint, Plaintiff alleges that TSA violated the FMLA by terminating her employment in retaliation "for taking the leave" and "for refusing to work during her protected medical leave." Ex. 19: Complaint, ¶¶ 34-35; *see also* Ex. 3: Lankford Dep., p. 58:20-22 (reiterating her claim that termination was "discrimination" for having taken FMLA leave). In this case, Plaintiff attempts to establish her allegation of retaliatory discharge through circumstantial evidence. Therefore, the familiar *McDonnell-Douglas* burden-shifting analysis will apply. *Edgar v. JAC Products, Inc.*, 443 F.3d 501, 508 (6th Cir. 2006), citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Under this analysis, the plaintiff must establish a *prima facie* case of retaliation, and, if successful, the defendant can rebut the *prima facie* case by articulating a legitimate, non-discriminatory, non-retaliatory reason for its actions. *Donald v. Sybra, Inc.*, 667 F.3d 757, 761-762 (6th Cir. 2012). To survive summary judgment, the plaintiff must then demonstrate that the legitimate reason asserted is "pretext" for unlawful retaliation. *Donald*, 667 F.3d at 761-762.

a. Plaintiff cannot establish a *prima facie* case.

"To establish a prima facie claim of FMLA retaliation, [Lankford] must show that: (1) she was engaged in an activity protected by the FMLA; (2) [TSA] knew that she was exercising her rights under the FMLA; (3) after learning of [her] exercise of

FMLA rights, [TSA] took an employment action adverse to her; and (4) there was a causal connection between the protected FMLA activity and the adverse employment action." *Donald* at 761. Here, Plaintiff cannot establish a "causal connection" between her leave and termination. "'To establish a causal connection, a plaintiff must proffer evidence sufficient to raise the inference that her protected activity was the likely reason for the adverse action.'" *Henderson v. Chrysler Grp., LLC*, 610 Fed. Appx. 488, 494 (6th Cir. 2015) (affirming the district court's grant of summary judgment in defendant's favor where the plaintiff could not establish a causal connection), citing *Michael v. Caterpillar Fin. Servs. Corp.*, 496 F.3d 584, 596 (6th Cir. 2007).

In this matter, Plaintiff has no evidence of a connection between her 2018 FMLA leave and her termination.[5] She also makes no allegation that anyone in Administration was upset about her taking FMLA leave. With regard to Major Manzella, the presiding officer in Administration, Plaintiff admits that he was supportive of her leave. Ex. 3: Lankford Dep., p. 121:19-23; Ex. 12: 5/15/18 Email, p. 5. With regard to R. Idzior, Plaintiff admits that he never told her not to go on leave. Ex. 3: Lankford Dep., pp. 92:15-17, 123:9-12. She merely "speculated" that he was upset. Ex. 3: Lankford Dep., p. 92:18-23. Finally, with regard to J. Idzior,

[5] Plaintiff previously took an FMLA leave due to the birth of her first child in 2017 and returned to work without incident.

who had recently returned from an FMLA leave herself, Plaintiff simply claimed that J. Idizor was "cold" towards her. Ex. 3: Lankford Dep., p. 89:17-19. These allegations are insufficient to establish a causal connection between Plaintiff's FMLA leave and her discharge.[6] *See Allen v. Mich. Dep't of Corr.*, 165 F.3d 405, 413 (affirming the dismissal of plaintiff's retaliation claim because his "vague," "generalized," and "conclusory allegations are insufficient to establish causation"); *see also Galeski v. City of Dearborn*, 690 F. Supp. 2d 603, 620-621 (E.D. Mich. 2010) (citing *Allen* in finding that the plaintiff failed to show a causal connection because he submitted no "corroborating evidence to demonstrate causation").

Plaintiff will likely argue that the timing of her discharge is enough to establish a causal connection for the purpose of establishing a *prima facie* case.[7]

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[6] Plaintiff relies (deficiently) on her "overall feeling" of being discriminated or retaliated against for taking FMLA leave because "[i]t was regularly discussed [by her co-workers] that when you went on FMLA, . . . your job could be in jeopardy." Ex. 3: Lankford Dep., p. 59:5-12. This subjective belief is not evidence of a causal connection. Moreover, Plaintiff only identifies one person who had taken an FMLA leave and was fired, but she admits that he was actually terminated because R. Idzior "didn't enjoy supervising him in the warehouse and didn't think that he was capable of running the kitchen." *Id.*, pp. 95:14-96:25.

[7] As discussed here and below, timing alone is never enough to survive summary judgment because timing alone will not satisfy a plaintiff's burden to establish a causal connection or show pretext. *Nguyen v. City of Cleveland*, 229 F.3d 559, 566-567 (6th Cir. 2000) (emphasizing that "temporal proximity in the absence of other evidence of causation is not sufficient to raise an inference of a causal link"); *see also Skrjanc v. Great Lakes Power Serv. Co.*, 272 F.3d 309, 317 (6th Cir. 2001) (affirming the district court's grant of summary judgment in defendant's favor where the plaintiff's only evidence of pretext was that he was terminated one month after informing the defendant that he intended to take FMLA leave).

However, the termination in this case did not occur close in time to when TSA learned of Plaintiff's intent to take leave.

> The temporal proximity between the protected activity and the adverse employment action may be sufficient to establish a causal connection for establishing a prima facie case in certain circumstances . . . "Where an adverse employment action occurs *very close in time after an employer learns of a protected activity*, such temporal proximity between the events is significant enough to constitute evidence of a causal connection for the purposes of satisfying a prima facie case of retaliation. But where some time elapses between when the employer learns of a protected activity and the subsequent adverse employment action, *the employee must couple temporal proximity with other evidence of retaliatory conduct to establish causality*."

Henderson, 610 Fed. Appx. at 494-495 (emphasis in original) (finding that "the passage of six to seven months" between protected activity and the adverse employment action is not "very close" in time, and, "without more, cannot sustain an inference of a causal connection") (internal citations omitted). *See also Blosser v. AK Steel Corp.*, 520 Fed. Appx. 359, 363-365 (6th Cir. 2013) (holding that the plaintiff needed to "couple temporal proximity with other evidence of retaliatory conduct to establish causality," which he could not do, because four months separated his FMLA leave commencement and termination); *Hafford v. Seidner*, 183 F.3d 506, 515 (6th Cir. 1999) (refusing to find a causal connection and dismissing plaintiff's retaliation claim because the adverse action "occurred two to five months" after the engagement in protected activity, and the plaintiff presented no "additional evidence" to support the "insufficient" and "loose" temporal proximity).

In this case, Plaintiff informed J. Idzior that she was pregnant and intended to take FMLA leave in January 2018, meaning her October 2018 termination transpired almost ten months after TSA "learned" of her protected activity (i.e., request for FMLA leave). Ex. 3: Lankford Dep., pp. 115:17-116:5. No causal connection can be established due to this significant gap in time. Also, the timing of the discharge should be discounted in this case because the discovery of Plaintiff's fraudulent re-enrollment in health insurance constitutes a significant intervening event between the date of her request for FMLA leave and her termination.[8] *Kuhn v. Washtenaw Cnty.*, 709 F.3d 612, 628 (6th Cir. 2013) (finding that the plaintiff failed to show a causal connection because "an intervening legitimate reason" for the termination decision "dispel[led] an inference of retaliation based on temporal proximity") (internal citations omitted).

b. TSA relied on legitimate, non-discriminatory, and non-retaliatory reasons for terminating Plaintiff.

Plaintiff cannot establish a *prima facie* case, but, even if she could, TSA clearly has met its burden of presenting a legitimate, non-discriminatory, non-retaliatory reason for the termination. Here, the facts undeniably show that Plaintiff proposed an exorbitant $20,000 raise to which TSA agreed *on the condition* that Plaintiff would waive health insurance for *three years*. There is no dispute that

[8] TSA actually gave Plaintiff a break by allowing her to continue her FMLA leave and stay on the fraudulently obtained health insurance for the duration thereof.

Plaintiff violated the terms of her own proposition by re-enrolling in TSA's health insurance plan, and that Plaintiff did so in secret, specifically refusing to inform Administration. This resulted in Plaintiff's selfish and deceitful receipt of both health insurance benefits *and* the inflated salary. It is also undisputed that Administration did not learn of Plaintiff's deception until she requested her personnel file as she was going on FMLA leave. In a nutshell, Plaintiff pulled a fast one on TSA – first, she made a deal to waive health insurance to obtain an unprecedented salary increase of more than 36 percent, then, after having secured the increase, she re-enrolled in health insurance, only months later, so that her husband could get a $1.00 per hour wage increase. Plaintiff relied upon the assurance that there was little chance of her actions being detected because she knew Administration would not have general access to her personnel file without help from human resources. Ex. 3: Lankford Dep., p. 93:15-19. And, when an issue arose with regard to her insurance, Plaintiff knew exactly why and immediately and nervously referenced her breached agreement: "Ugh . . . [W]hat's wrong with my insurance[?] . . . My negotiated contract from [Assistant Director of Operations] that got me that raise?" Ex. 3: Lankford Dep., p. 56:12-18; Ex. 15: Text Messages, p. 15.

It is well-established that, "Fraud and dishonesty constitute lawful, non-retaliatory bases for termination." *Seeger v. Cincinnati Bel Tel. Co.*, 681 F.3d 274, 284 (6th Cir. 2012) (internal citations omitted); *see also Joostberns v. United Parcel*

Servs., Inc., 166 Fed. Appx. 783, 794 (6th Cir. 2006) (affirming the dismissal of the plaintiff's FMLA retaliation claim where the defendant's legitimate, non-retaliatory business reason was plaintiff's dishonesty, in accordance with which the plaintiff utilized the defendant's mailing services for personal gain without payment or permission). Plaintiff's stealth re-enrollment in health insurance was dishonest, fraudulent, and clearly in violation of her agreement with TSA. The record testimony of the Administrators (Manzella, R. Idzior, and J. Idzior) is consistent – regardless of the other issues cited in the termination report, including Plaintiff's unprofessional and condescending attitude and her unauthorized use of a gas card, Plaintiff's fraudulent re-enrollment in health insurance solely warranted, necessitated, and prompted her employment termination. Ex. 2: Manzella Dep., pp. 66:19-67:1; Ex. 6: R. Idzior Dep., p. 41:2-8; Ex. 1: J. Idzior Dep., p. 109:4-20.

c. Plaintiff has no evidence of pretext.

Under the *McDonnell Douglas* framework, once TSA establishes a legitimate reason for termination, the burden shifts back to Plaintiff to demonstrate that said reason is pretext for unlawful conduct. *Donald* at 762.

> "'[A] reason cannot . . . be a pretext for discrimination unless **it is shown both that the reason was false, and that discrimination was the real reason**' . . . A plaintiff may establish pretext by showing that the employer's proffered reasons (1) have no basis in fact; (2) did not actually motivate the action; or (3) were insufficient to warrant the action . . . 'Whichever method the plaintiff employs, [she] always bears the burden of producing sufficient evidence from which the jury could

> reasonably reject [the defendant's] explanation and infer that the defendant[] intentionally discriminated against [her]."

Seeger at 285 (internal citations omitted) (emphasis added) (holding that the plaintiff's "good employment record" was irrelevant because the defendant terminated the plaintiff's employment based upon its honest belief that he committed fraud, affirming dismissal of plaintiff's FMLA retaliation claim).

In this case, Plaintiff has come forward with no evidence that TSA's reason for discharging her was false. While Plaintiff tried to explain that she believed she was justified in re-enrolling in benefits because her position had changed, she also admitted that she knew that her position change was "neutral," not a promotion, and could not, therefore, rationalize a $20,000 raise. Ex. 3: Lankford Dep., p. 65:15-23. Moreover, the agreement regarding salary increase and un-enrollment in group health benefits does not state that it is tied to any one position. *See* Ex. 5. In fact, Plaintiff agreed to "[c]ontinued employment within the Southeast Michigan ARC for a minimum of 3 years," meaning she specifically chose not to link her salary increase to any position. Plaintiff also never asked that her salary be decreased upon the neutral change. Furthermore, Plaintiff purposefully kept her re-enrollment a secret from Administration, and she became concerned when an issue with her insurance arose while she was on FMLA leave and specifically referenced the 2016 agreement, collectively demonstrating the insincerity of Plaintiff's single ad hoc explanation. Ex. 3: Lankford Dep., pp. 49:7-10, 56:12-18. Regardless, Plaintiff's

explanation for re-enrollment does not show that TSA's reason for terminating her was "false," let alone pretext for discrimination.

In assessing pretext, the Sixth Circuit follows the "honest belief rule":

> Where the employer can demonstrate an honest belief in its proffered reason, however, the inference of pre-text is not warranted . . . [A]n employer's proffered reason is considered honestly held where the employer can establish it reasonably reli[ed] on particularized facts that were before it at the time the decision was made. Thereafter, the burden is on the plaintiff to demonstrate that the employer's belief was not honestly held. An employee's bare assertion that the employer's proffered reason has no basis in fact is insufficient . . . and fails to create a genuine issue of material fact." . . .
>
> The ground rules for application of the honest belief rule are clear. A plaintiff is required to show 'more than a dispute over the facts upon which the discharge was based.' We have not required that the employer's decision-making process under scrutiny 'be optimal or that it left no stone unturned. Rather, the key inquiry is whether the employer made a reasonably informed and considered decision before taking an adverse employment action' . . . Furthermore, 'the falsity of [a] [d]efendant's reason for terminating [a] plaintiff cannot establish pretext as a matter of law' . . . As long as the employer held an honest belief in its proffered reason, 'the employee cannot establish pretext even if the employer's reason is ultimately found to be mistaken, foolish, trivial, or baseless.'"

Seeger at 285-286 (internal citations omitted).

Here, Plaintiff has not come forward with evidence that TSA Administrators did not honestly believe that she breached her 2016 agreement and fraudulently re-enrolled in health insurance. Despite any subjective protestation by Plaintiff that her termination was "unfair," a court cannot substitute their judgment for the judgment of the employer. *See Hardesty v. Kroger*, 758 Fed. Appx 490, 496 (6th Cir. 2019)

("[T]hough [the plaintiff] protests that his firing was unfounded and unfair, a court does not sit as a 'super-personnel department,' second-guessing management decisions"); *see also Smith v. Leggett Wire Co.*, 220 F.3d 752, 763 (6th Cir. 2000) ("It is inappropriate for the judiciary to substitute its judgment for that of management").

To the extent that Plaintiff attempts to rely on temporal proximity to establish pretext, "the law in this circuit is clear that temporal proximity cannot be the sole basis for finding pretext." *Donald* at 763 (holding that temporal proximity "alone is not enough," even where the plaintiff was terminated immediately upon her return from FMLA leave); *see also Skrjanc*, 272 F.3d at 317 (noting, "[T]emporal proximity is insufficient in and of itself to establish that the employer's nondiscriminatory reason for discharging an employee was in fact pretextual."). As stated above, no inference can be drawn from the timing of Plaintiff's discharge, which occurred 10 months after TSA learned of her intent to take FMLA leave.

II. Plaintiff's PDA Claim Must be Dismissed

In her Complaint, Plaintiff alleges that TSA terminated her employment due to her pregnancy in violation of The Pregnancy Discrimination Act ("PDA"), an amendment to Title VII of the Civil Rights Act of 1964, which extended the prohibition on discharging employees "on the basis of sex" to firing women because of pregnancy. 42 U.S.C. 2000e(k). Plaintiff's pregnancy discrimination claim also

relies on circumstantial evidence, and, as such, the *McDonnell-Douglas* burden-shifting framework applies. *See Kubik v. Central Michigan Bd. of Trustees,* 717 Fed. Appx. 577, 581 (6th Cir. 2017).

a. Plaintiff cannot establish a *prima facie* case of pregnancy discrimination.

In the "specific context of pregnancy discrimination claims," the test for establishing a *prima facie* case requires the plaintiff to show that: "1) she was pregnant, 2) she was qualified for her job, 3) she was subjected to an adverse employment decision, and 4) there is a nexus between her pregnancy and the adverse employment decision." *Id.* Here, Plaintiff has not and cannot assert facts sufficient to establish the requisite causal nexus. Plaintiff makes vague allegations that her pregnancy was a factor in her termination, but she has no evidence to support a finding that Manzella, J. Idzior, or R. Idzior discriminated against her on the basis of her pregnancy.

Presumably, Plaintiff will argue that the timing of her discharge establishes the nexus. While a court may consider timing at the *prima facie* stage of a pregnancy discrimination case (*Asmo v. Keane, Inc.*, 471 F.3d 588, 592 (6th Cir. 2007)), ultimately, a Plaintiff will need to establish something more than timing to survive summary judgment. *Skrjanc* at 317. When considering timing at the *prima facie* stage, courts look to when the defendant learned of the pregnancy. *Asmo*, 471 F.3d

at 593 (considering the time elapsed between the date that the employer learned of the pregnancy and the discharge).

The timing of Plaintiff's discharge does not support a causal connection or nexus. First, Plaintiff had a prior pregnancy and returned without incident. Second, she announced her pregnancy in January of 2018 (Ex. 3: Lankford Dep., pp. 115:17-116:5), ten months before her discharge, which is not close enough in time to support a finding of a causal connection even at the *prima facie* stage. *See Nguyen*, 229 F.3d at 566-567 (adopting the six-month threshold, meaning temporal proximity alone is insufficient to establish a *prima facie* case where more than six months separates the protected activity and the adverse employment action). Third, the effect of the timing of the discharge, again, must be discounted because there was a significant intervening event (i.e., TSA's discovery that Plaintiff had secretly and fraudulently re-enrolled in TSA's health insurance plan).

b. Plaintiff cannot show that TSA's legitimate non-*discriminatory* reason was pretextual.

As outlined in Section I, b., above, TSA has satisfied its burden of articulating its legitimate, non-discriminatory, non-retaliatory reasons for Plaintiff's termination. TSA terminated Plaintiff for fraudulently, and in breach of contract, re-enrolling in TSA's health insurance plan despite her promise to waive such benefits in exchange for a $20,000 salary increase.

Again, "Pretext may be demonstrated if 'the proffered reason (1) has no basis in fact, (2) did not actually motivate the defendant's challenged conduct, or (3) was insufficient to warrant the challenged conduct' . . . At all times, '[t]he plaintiff retains the burden of persuasion.'" *Megivern v. Glacier Hills, Inc.*, 519 Fed. Appx. 385, 398 (6th Cir. 2013) (internal citations omitted) (affirming the dismissal of the plaintiff's pregnancy discrimination claim where the termination report reflected the termination rationale and the temporal proximity of one day was not supported by "other, independent evidence of pretext").

Plaintiff has not met, and will not meet, her burden of establishing pretext. It is undisputed that she requested, and TSA agreed to grant, a $20,000 raise in exchange for waiving benefits, and that she re-enrolled in benefits four months later without notifying Administration. Ex. 5: Salary Increase Proposal; Ex. 7: May 2016 Payroll Change Notice; Ex. 8: 2017 Enrollment/Change Form; Ex. 9: 2018 Election Summary. It is also undisputed that TSA only discovered Plaintiff's re-enrollment while reviewing her personnel file in preparation for its production to Plaintiff *at her request*. Plaintiff also has no evidence that her fraudulent re-enrollment did not motivate the termination. Ex. 18: Termination Documentation; Ex. 3: Lankford Dep., pp. 57:4-6, 147:25-148:7; Ex. 2: Manzella Dep., pp. 66:19-67:1; Ex. 6: R. Idzior Dep., p. 41:2-8; Ex. 1: J. Idzior Dep., p. 109:4-20. Finally, and objectively, Plaintiff's fraudulent re-enrollment is sufficient to warrant termination. TSA

provided Plaintiff with significant responsibilities, and her deception jeopardized and outright violated its trust, making her continued employment impossible.

CONCLUSION

Defendant should be granted summary judgment, and Plaintiff's Complaint should be dismissed with prejudice. Considering the undisputed genuine and material facts, and for the reasons stated above, Plaintiff Jillian Lankford cannot establish her claims under the Family and Medical Leave Act and the Pregnancy Discrimination Act.

Respectfully Submitted,

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