IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BONNIE PHILLIPS, Plaintiff vs. MUNCY VALLEY LODGE NO. 866 LOYAL ORDER OF MOOSE and FRED COCHRAN, Defendants	:	NO. 08 – 02,020 CIVIL ACTION Motion for Summary Judgment

OPINION AND ORDER

Before the Court is Defendants' Motion for Summary Judgment, filed October 31, 2011. Argument on the motion was heard January 3, 2012. Defendants' responsive brief was filed January 6, 2011.

In her Complaint, brought pursuant to the Pennsylvania Human Relations Act, Plaintiff contends her hours of employment at the Muncy Valley Lodge No. 866 Loyal Order of Moose were reduced, and that her employment there as a bartender was then terminated, "on account of her age." Plaintiff seeks reinstatement and compensation. Defendants contend Plaintiff was not subject to age discrimination but, rather, was fired for poor work performance and insubordination and that her hours were reduced along with all employees due to finances. In the instant motion for summary judgment, Defendants contend Plaintiff has failed to come forward with evidence of "pretext". The Court does not agree.

In an employment discrimination case, the plaintiff must first establish that he is in a protected class, that he is qualified for the position, that he suffered an adverse employment action, and that the employer needed someone to perform the work following the plaintiff's dismissal. *See* Spanish Council of York, Inc. v. Pennsylvania Human Relations Commission, 879 A.2d 391 (Pa. Comm. 2005). Once these factors are established, the burden shifts to the defendant to articulate a legitimate, non-discriminatory motive for its actions. Id. If the defendant does so, the plaintiff must then demonstrate that the proffered reasons were pretextual. Id. In the instant case, Defendants concede Plaintiff has met her initial burden of proof, and the Court finds Defendants have offered a legitimate, non-discriminatory motive for

their actions. The focus of the instant motion, as noted above, is Defendants' contention Plaintiff has failed to come forward with evidence of pretext.

With respect to the allegations of poor work performance, Plaintiff offers her own testimony that three patrons told her that they had complained about the slow service provided by another bartender but not her,[1] that no one had ever complained to her about slow service,[2] and that the manager, Mr. Cockrum[3], had never said anything to her about it prior to her termination.[4] With respect to the allegation of insubordination, in response to Defendants' allegation that Plaintiff refused to cooperate with the manager's directive that bartenders get their own ice and not ask the dishwasher to do it, that she yelled at the dishwasher to get ice for her and then told the manager she would not get it herself after being confronted by him, Plaintiff offers the testimony (by way of affidavit) of the dishwasher that "I was never yelled at by Bonnie Phillips insisting that I get ice for the bar … and I never stated to anyone that Bonnie Phillips yelled at me concerning ice." Finally, with respect to the contention by Defendants that the hours of all the bartenders were cut, Plaintiff offers her own testimony that she observed that although the hours of others were cut, they were not cut as much as her own hours.[5] The Court believes this evidence is sufficient to create factual issues which must be submitted to a trier of fact and, thus, that summary judgment is not appropriate.[6]

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[1] N.T. February 7, 2011, Deposition of Bonnie Phillips, at p. 32-33.
[2] Id. at p. 32, 55.
[3] Although the caption was amended to change the original reference from Fred Cochman to Fred Cochran, *See* Order of April 1, 2009, it appears the correct spelling is Cockrum.
[4] N.T. February 7, 2011, Deposition of Bonnie Phillips, at p. 47-48
[5] Id. at p. 40-42, 48-49.
[6] While Defendants argue that the factual issues are illusory due to "Plaintiff's deposed admission that she has no actual evidence whatsoever beyond her own personal assumptions that she was terminated due to illegal age discrimination" (See Defendants' brief filed January 6, 2012, at p. 5), the Court does not read Plaintiff's deposition testimony to constitute such an admission. Plaintiff did say "I don't have any evidence", at page 41 of the transcript, but this cannot be interpreted to refer to her age discrimination claim. The entire line of questioning follows:

Q	You had indicated in your complaint that the Lodge discriminated on account of you because of your age.
A	Yes.
Q	What evidence do you have of that?
A	Because everyone under me seemed to get more hours.
Q	You use the word seemed. Do you have any proof that they actually got more hours?

ORDER

AND NOW, this 6th day of January 2012, for the foregoing reasons, Defendants' motion for summary judgment is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Joseph C. Borland, Esq.
69 Public Square, Suite 1100, Wilkes-Barre, PA 18701
W. Jeffrey Yates, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

A	I could see for myself like bar servers. The bar servers that were there longer they brought younger girls in. I had seen that Janelle was – they were giving her more liberty other than just serving.
Q	You use again the pronoun we. Who?
A	Whoever was working with me at the time.
Q	But who was giving Ms. Haines more hours?
A	I would say Mr. Cockrum, the manager.
Q	What evidence do you have of that?
A	I don't have any evidence. He's the one that gives the hours to the people so I'm assuming that he's the one that did it.

The Court notes that Defendants do not point to the specific place in the deposition where Plaintiff supposedly made the "admission", and the Court could not find any other "admission".