

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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CORA HOUSTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 04-2218 (RWR)
	)	
SECTEK, INC.,	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM OPINION

Plaintiff Cora Houston brings claims under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981 against defendant SecTek, Inc., alleging under each statute race discrimination, a racially hostile work environment, and constructive discharge. SecTek moves for summary judgment, contending that Houston did not establish a prima facie case of either racially disparate treatment or a racially hostile work environment; that even if she did, she has not rebutted the legitimate, nondiscriminatory reasons offered by Sectek for its actions and has not established that she availed herself of SecTek's corrective process; and that she was not constructively discharged. While Houston has established that she was subject to an adverse employment action, she has not shown that SecTek's intent was discriminatory even if its proffered reason was pretextual, and she has failed to establish her hostile work environment and constructive discharge

claims. Accordingly, SecTek's motion for summary judgment will be granted.

BACKGROUND

Houston worked as a Level 3 Information Security Specialist for USATREX, a company which provided security services to the U.S. Environmental Protection Agency ("EPA"). (Compl. ¶ 6; Pl.'s Stmt. of Material Facts ("Pl.'s Stmt.") ¶ 38.) Houston worked with Jose Martinez, a Level 4 Senior Information Security Specialist. (Pl.'s Stmt. ¶ 40.) Houston provided technical support to the EPA's National Security Information program by, among other things, providing briefings, delivering documents, and working with EPA security representatives and document control officers. (Compl. ¶ 6.) During her time as a USATREX employee, Houston regularly performed higher level tasks that were officially Martinez's responsibilities. (Pl.'s Mem. of P. & A. in Opp'n to Def.'s Mot. ("Pl.'s Mem."), Ex. A at 76.)

In July 2000, SecTek replaced USATREX as the contract provider of security services to the EPA. (Compl. ¶ 8.) SecTek offered and Houston accepted a position as a Level 3 Information Security Specialist for a ninety-day probationary period. (Id.) Her job description did not change, as her responsibilities were set out in the EPA contract. (Pl.'s Mem., Ex. A at 248-49.) SecTek also hired Martinez as a Level 4 Senior Information Security Specialist. (Def.'s Mem. of P. & A. in Supp. of Def.'s

Mot. for Summ. J. ("Def.'s Mem."), Ex. 4 at 44.) At SecTek, Andrea Czeck, a Deputy Program Manager of Information Security, supervised both Houston and Martinez. (Pl.'s Stmt. ¶ 47.) Czeck determined that Houston was performing duties that were not assigned to her position.<sup>1</sup> (Id. ¶ 49.) Czeck later took away the level 4 duties Houston had been performing, assigned them to another employee, and diminished Houston's level 3 duties, leaving her mostly administrative and clerical duties such as destroying and delivering classified documents. (Compl. ¶ 9; Pl.'s Stmt. ¶¶ 49-53.)

Houston also alleges that on a daily basis Czeck treated her in an unprofessional and belittling manner. (Compl. ¶ 11.) On one occasion, Czeck "threw [a memorandum] on Ms. Houston's desk and sarcastically instructed her to, 'Try again.'" (Pl.'s Stmt. ¶ 56.) Czeck also "often accused Ms. Houston of not telling her the truth or having 'something to hide'" and accused her of missing deadlines. (Id. ¶¶ 57, 60.) When Houston would leave the

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<sup>1</sup> The job description for a Level 3 Security Specialist provided that

[u]nder the supervision of the DPM/IS, shall provide technical support for the Agency nationwide NSI program[,] [s]hall prepare and conduct NSI training for EPA Security Representatives and Document Control Officers (DCO) nationwide[,] [s]hall act as a courier to carry NSI up to TOP SECRET between EPA and other Federal departments and agencies, [and s]hall conduct initial and annual refresher NSI briefings.

(Pl.'s Mem., Ex. D at 0136.)

office to deliver confidential documents to the EPA, Czeck would "quiz[] Ms. Houston with suspicion about the lengths of her travels" and would time the length of Houston's trips. (Id. ¶ 58.) Czeck required that Houston be accompanied by a co-worker when meeting government clients, even though no other Sectek employee was subject to such a requirement. (Id. ¶ 62.) Houston's classified document safe was removed and placed in Czeck's office. (Id. ¶ 63.) Upon the conclusion of Houston's ninety-day probationary period, Czeck extended it by an additional forty-five days "because her performance had been less than satisfactory." (Id. ¶ 72 (internal quotations omitted).) Ten days after Czeck extended her probationary period, Houston received Czeck's performance evaluation, which rated Houston's performance as either "unsatisfactory" or "needs improvement" in each rating category. (Id. ¶¶ 75, 78.) Czeck also provided a written list of the duties she believed Houston was responsible for performing, based on the EPA contract.<sup>2</sup> (Pl.'s Mem., Ex. A at

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<sup>2</sup> Czeck believed that Houston's responsibilities were to

1. Provide technical support to EPA NSI programs.
2. Primary courier for NSI material. Responsible for couriering material between EPA facilities and other government agencies in a timely manner.
3. Responsible for receiving, logging, controlling, and destroying NSI information that comes in and goes out of EPA.
4. Maintain a NSI document database. Ensuring it is kept current.
5. On an as needed basis, provide administrative/clerical support to the Security Office.
6. On an as needed basis, schedule, prepare and conduct NSI training for EPA Security Representatives and Document Control Officers

77; Ex. I at 47.) Houston believed that the performance evaluation was wholly inaccurate (Pl.'s Stmt. ¶¶ 79-80), and she alleges that she heard rumors that she was going to be fired. (Id. ¶ 92.) She submitted her resume to another employer, and upon receiving an offer for a position, Houston tendered her resignation to SecTek. (Id. ¶ 94; Pl.'s Mem., Ex. A at 169.)

SecTek moves for summary judgment, arguing that Houston has failed to establish a prima facie case of disparate treatment and that she has failed to rebut the proffered legitimate, nondiscriminatory reason for her treatment; that Houston has failed to establish a prima facie case of hostile work environment and that she never availed herself of SecTek's corrective or preventative procedures to avoid the harm; and that she was not constructively discharged. Houston opposes summary judgment, arguing that there are disputed material facts bearing on whether SecTek discriminated against her.

#### DISCUSSION

On a motion for summary judgment, "[t]he inquiry performed is the threshold inquiry of determining whether there is a need for a

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nationwide. 7. On an as needed basis, prepare, conduct and update initial, annual refresher, termination, and foreign travel briefings. 8. On an as needed basis, provide support in preparing and sending memoranda and materials to EPA sites for briefing assistance on cleared individuals. This includes tracking to ensure briefings are conducted and documented.

(Def.'s Mem., Ex. 11 at 0108.)

trial -- whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986).

Summary judgment may be granted only where "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Moore v. Hartman, 571 F.3d 62, 66 (D.C. Cir. 2009). A material fact is one that is capable of affecting the outcome of the litigation. Liberty Lobby, Inc., 477 U.S. at 248. A genuine issue is one where the "evidence is such that a reasonable jury could return a verdict for the nonmoving party," id., as opposed to evidence that "is so one-sided that one party must prevail as a matter of law." Id. at 252. A court considering a motion for summary judgment must draw all "justifiable inferences" from the evidence in favor of the nonmovant. Id. at 255. The nonmoving party, however, must do more than simply "show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Rather, the nonmovant must "come forward with 'specific facts showing that there is a genuine issue for trial.'" Id. at 587 (emphasis omitted). In the end, "the plain language of Rule 56(c) mandates the entry of summary

judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The burdens of persuasion and production are identical under Title VII and § 1981. Killian v. Georgetown Day School, Civil Action No. 05-1925 (EGS), 2007 WL 1541391, at \*4 (D.D.C. May 24, 2007).

#### I. DISPARATE TREATMENT

A plaintiff bringing discrimination claims under Title VII or § 1981 without direct evidence may employ the burden-shifting framework approved in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973), when the defendant denies that its actions were motivated by the plaintiff's race. Munqin v. Katten Muchin & Zavis, 116 F.3d 1549, 1553-54 (D.C. Cir. 1997); see also Iweala v. Operational Techs. Servs., Inc., 634 F. Supp. 2d 73, 81 (D.D.C. 2009) (noting that the "same framework applies to § 1981 claims" as applies to Title VII claims). Under McDonnell Douglas, the plaintiff first "has the burden of proving by the preponderance of the evidence a prima facie case of discrimination." Wiley v. Glassman, 511 F.3d 151, 155 (D.C. Cir. 2007). The prima facie case for a disparate treatment claim requires that Houston show: "(1) that [she] is a member of a protected group; (2) that [she] suffered an adverse employment action; and (3) the unfavorable

action gives rise to an inference of discrimination.” Felder v. Johanns, Civil Action No. 06-910 (CKK), 2009 WL 187778, at \*15 (D.D.C. Jan. 27, 2009). However, the D.C. Circuit has clarified the application of McDonnell Douglas and concluded that

[i]n a Title VII disparate-treatment suit where an employee has suffered an adverse employment action and an employer has asserted a legitimate, non-discriminatory reason for the decision, the district court need not - *and should not* - decide whether the plaintiff actually made out a prima facie case under McDonnell Douglas. Rather, in considering an employer’s motion for summary judgment or judgment as a matter of law in those circumstances, the district court must resolve one central question: Has the employee produced sufficient evidence for a reasonable jury to find that the employer’s asserted non-discriminatory reason was not the actual reason and that the employer intentionally discriminated against the employee on the basis of race, color, religion, sex, or national origin?

Brady v. Office of Sergeant at Arms, 520 F.3d 490, 494 (D.C. Cir. 2008). This condensed inquiry does not change the plaintiff’s burden. “The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff.” Texas Dept. of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). A court looks to whether a reasonable jury could infer intentional discrimination from all of the evidence including: 1) the plaintiff’s prima facie case, 2) evidence presented to attack the employer’s proffered explanation for its actions, and 3) further evidence of discrimination such as evidence of discriminatory statements or attitudes by the employer. Carter v. George Washington Univ., 387



F.3d 872, 878 (D.C. Cir. 2004). A plaintiff can show in a number of ways that the employer's proffered explanation for its actions is a pretext, including by "produc[ing] evidence suggesting that the employer treated other employees of a different race . . . more favorably in the same factual circumstances" or "demonstrat[ing] that the employer is making up or lying about the underlying facts that formed the predicate for the employment decision." Brady, 520 F.3d at 495. A plaintiff can also discredit the employer's reason by "pointing to[] changes and inconsistencies in the stated reasons for the adverse action; the employer's failure to follow established procedures or criteria; the employer's general treatment of minority employees; or discriminatory statements by the decisionmaker." Id. at 495 n.3. However, to show pretext, a plaintiff "'must show *both* that the reason was false, *and* that discrimination . . . was the real reason.'" Weber v. Battista, 494 F.3d 179, 186 (D.C. Cir. 2007) (quoting St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 515 (1993)).

A. Adverse employment action

SecTek argues that Houston did not suffer an adverse action because she "did not undergo any change in employment status, never sought any promotion, was never reassigned, and there was never any change in her benefits, hours, work, location or compensation." (Def.'s Mem. at 14.) Adverse employment actions

are "not confined to hirings, firings, promotions, or other discrete incidents." Halcomb v. Powell, 433 F.3d 889, 902 (D.C. Cir. 2006). In this circuit, entirely subjective injuries such as dissatisfaction with a reassignment, embarrassment, or loss of reputation do not qualify as adverse actions, but "the threshold is met when an employee 'experiences materially adverse consequences affecting the terms, conditions, or privileges of employment or future employment opportunities such that a reasonable trier of fact could find objectively tangible harm.'" Id. (quoting Forkkio v. Powell, 306 F.3d 1127, 1131 (D.C. Cir. 2002)). If "a reasonable juror could find that [a] reassignment left the plaintiff with significantly diminished responsibilities[,]" the question of whether the reassignment constitutes an adverse employment decision should not be taken from the jury. Czekalski v. Peters, 475 F.3d 360, 365 (D.C. Cir. 2007). In Halcomb, the court noted that the plaintiff "never suffered a reduction in grade, pay, or benefits[,]" but still concluded that a reasonable jury could conclude that the plaintiff suffered an objectively tangible harm due to "an extraordinary reduction in responsibilities that persisted for years[.]" 433 F.3d at 902.

SecTek concedes that Czek took job responsibilities away from Houston and reassigned them to another employee.<sup>3</sup> (Def.'s

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<sup>3</sup> Houston also argues that she received a poor evaluation from Czek. However, "poor performance evaluations are [not]

Stmt. ¶ 10.) Houston further argues that the removal of responsibilities left her with a position requiring less skill and knowledge. (Pl.'s Mem. at 35 (stating that after the reassignment, Houston's duties were primarily "clerical" and she no longer performed briefings and training for agency staff); Ex. A at 70-73.) Because a reasonable jury could find that Houston suffered from "diminished [] programmatic responsibilities" (Pl.'s Mem. at 35), Houston has provided sufficient evidence to establish that she has suffered an adverse employment action.

B. Legitimate non-discriminatory reason and pretext

SecTek asserts as a legitimate non-discriminatory reason for Houston's treatment that a "realignment of Plaintiff's duties [was] necessary to conform to the terms of the EPA contract." (Def.'s Mem. at 17.) Prior to the realignment, Houston "was doing more than she was supposed to be doing." (Id., Ex. 4 at 45.) Czek wanted Houston's job duties to conform to a position description and reassigned tasks "based on what's in the contract as to exactly what their specific functional areas were." (Id., Ex. 4 at 47.) Czek believed that Houston should not be doing work above her level because Czek "could not fairly evaluate her

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necessarily adverse actions" under Title VII when they do not affect the employee's grade or salary. Taylor v. Small, 350 F.3d 1286, 1293 (D.C. Cir. 2003) (alteration in original). Houston does not allege any changes to her grade or salary.

if she was doing more than what was required of her.” (Id., Ex. 4 at 46.)

Houston argues that SecTek’s reason is a pretext because Czeck not only removed the Level 4 duties that Houston had been performing, but she also “took away Ms. Houston’s duties that were to be specifically performed by the [L]evel 3 specialist under the contract” (Pl.’s Mem. at 42), and she relegated Houston to performing the duties of a lower, non-technical position. (Id. at 23.) In coming to this conclusion, Houston relies on the job description for a Level 3 Information Security Specialist, which does not include administrative duties. (Pl.’s Mem., Ex. D at 0136.) She also relies on her affidavit asserting that she “was only allowed to perform minor duties including some clerical duties that did not fall within the job description for a technical Information Security Specialist Level 3.” (Id., Ex. C at 11.<sup>4</sup>)

The Level 4 duties Houston performed for USATREX were outside of her job responsibilities, and Czeck’s removal of these duties would be consistent with Sectek’s proffered legitimate non-discriminatory reason. On the other hand, inconsistencies between Czeck’s list of Houston’s duties and the EPA contract do cast doubt on the genuineness of Czeck’s explanation for the reassignment of duties. For example, the updated job description

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<sup>4</sup> This page number, missing from the document, is supplied by the Court.

includes as a responsibility providing administrative and clerical support to the Security Office, a duty that does not appear in the EPA contract. Czeck's list of duties also modifies some of the contractually required duties, such as conducting initial and annual refresher National Security Information briefings, to be performed on an "as needed basis." (Compare Def.'s Mem., Ex. 11 at 0108 with Pl.'s Mem. Ex. D at 0136.)

Even if SecTek's reason was false, however, Houston offers insufficient evidence to support her assertion that discrimination was the real reason for the change in her duties. In Czekalski, relied on by Houston, the plaintiff offered "independent evidence that [her supervisor] harbored discriminatory attitudes toward women." 475 F.3d at 368. The Czekalski plaintiff provided evidence of other employees who testified that the supervisor acted in a discriminatory manner toward women and substantiated their testimony by detailing specific events that had occurred. Id. Here, to establish a discriminatory motive, Houston proffers statements by other SecTek employees alleging that "Czeck appeared to have a general enmity toward African-American employees." (Pl.'s Mem. at 37.)

Houston cites a statement made by Anne Caffee, an office manager holdover from USATREX, in an interview with an investigator that Czeck "had a problem with black women" and "thought that black women should bow down to her." (Pl.'s Mem.,

Ex. O at 1.) Title VII forbids an employer from letting precisely that type of attitude prompt an adverse employment action. However, unlike in Czekalski, Caffee does not detail any specific facts or events that corroborate or place in context her conclusory assertion about Czeck's discriminatory attitude toward African-Americans. In fact, in the same interview, Caffee provided an alternative explanation for Czeck's behavior, an explanation for which she did provide specific events as corroboration: "[Czeck] was jealous of [Houston's] relationship with the EPA clients." (Id.) To support this claim, Caffee explained that "[Czeck] began to time [Houston] when she went upstairs to the EPA. Later [Czeck] insisted that [Houston] not deal with the EPA, but the EPA people did not like [Czeck] and went over her head to deal with the company." (Id.)

Houston also cites a statement by Vivian Porter, a former SecTek employee, who believed that Czeck treated Houston differently than Czeck treated other employees. (Id., Ex. P at 0041.) While Porter noted that the office was staffed by "predominately African American personnel[,]" she never stated that the demographics of the office motivated Czeck's behavior. (Id.) Instead, Porter, too, believed that the true motivation for Czeck's behavior was that "[Czeck] felt that Ms. Houston was going over her head[.]" Id. Houston also relies on a statement by Ernest Howe, an EPA government program officer, that Czeck's poor

evaluations of Caffee, who is also an African-American woman, and Houston may have been motivated by discrimination. (Pl.'s Mem. at 29.) However, Howe explicitly stated that he was "not implying racial discrimination" and instead believed that SecTek may have been treating employees hired from the previous contract differently than newly hired employees. (Id., Ex. U at 0035.)

The evidence Houston cites, considered in its full context, is not enough from which to reasonably infer that Czeck's true motivation for her treatment of Houston was racially discriminatory. Because Houston has not shown "sufficient evidence for a reasonable jury to find that the employer's asserted non-discriminatory reason was not the actual reason and that the employer intentionally discriminated against the employee on the basis of race," Brady, 520 F.3d at 494 (emphasis added),<sup>5</sup> summary judgment will be granted for the defendant on the disparate treatment claim.

## II. HOSTILE WORK ENVIRONMENT

To establish a prima facie case of a racially hostile work environment, a plaintiff must show that (1) she is a member of a

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<sup>5</sup>SecTek also argues that Houston has failed to make out a prima facie case because she cannot demonstrate that SecTek treated similarly situated persons differently. In light of Brady, the prima facie case need not be assessed where the plaintiff has suffered an adverse employment action and the defendant has proffered a legitimate non-discriminatory reason. 520 F.3d at 494. Therefore, any failure to show that SecTek treated similarly situated persons differently is not dispositive.

protected class; (2) she was subject to unwelcome harassment; (3) the harassment occurred because of her race; (4) the harassment had the effect of unreasonably interfering with her work performance and creating an intimidating, hostile, or offensive working environment; and (5) the employer knew or should have known of the harassment, but failed to take any action to prevent it. Roberson v. Snow, 404 F. Supp. 2d 79, 96-97 (D.D.C. 2005). "A hostile work environment exists when 'the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment[.]'" Id. at 97 n.8 (quoting Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993) (internal quotation marks omitted)); see also Faragher v. Boca Raton, 524 U.S. 775, 788 (1998) (stating that the conduct "must be extreme to amount to a change in the terms and conditions of employment"). Courts should consider all the circumstances, including the "'frequency of the discriminatory conduct; its severity; [and] whether it is physically threatening or humiliating, or a mere offensive utterance.'" Faragher, 524 U.S. at 787-88 (quoting Harris, 510 U.S. at 23). Not all abusive behavior creates a hostile work environment; the hostile work environment must be the result of discrimination based on a protected status. Roberson, 404 F. Supp. 2d at 97.



The D.C. Circuit has found that even constant yelling and hostile behavior, and isolated references to a protected status may be insufficient to support a hostile work environment claim. George v. Leavitt, 407 F.3d 405, 408, 416-17 (D.C. Cir. 2005), concluded that statements by three employees over a six-month period that the plaintiff should "go back where she came from," separate acts of yelling and hostility, and allegations that the plaintiff was not given the type of work she deserved were isolated instances that did not rise to the level of severity necessary to find a hostile work environment. In Singh v. U.S. House of Representatives, 300 F. Supp. 2d 48, 54-57 (D.D.C. 2004), the plaintiff's allegations that her employer humiliated her at meetings, screamed at her in one instance, told her to "shut up and sit down" in another instance, and treated her in a manner that was "constantly hostile and hypercritical" did not amount to a hostile work environment, even though these actions may have been disrespectful and unfair. Similarly, the fact that an employee and his immediate supervisor repeatedly "buted heads" and that the supervisor frequently yelled at the employee during discussions about his work and "threatened" job-related consequences for the employee's refusals to meet workplace expectations did not demonstrate a hostile work environment pervaded by discrimination. Franklin v. Potter, Civil Action No. 07-1205 (ESH), 2009 WL 533071, at \*30 (D.D.C. Mar. 4, 2009).

Moreover, Hussain v. Gutierrez, Civil Action No. 07-1364 (HHK), 2008 WL 5129424, at \*5 (D.D.C. Dec. 1, 2008), concluded that "complaints over undesirable job responsibilities and office arrangements do not support a hostile work environment cause of action."

SecTek argues that Houston has failed to establish the prima facie case for her racially hostile work environment claim. (Def.'s Mem. at 18-20.) Houston asserts that she was "forced to endure attacks on her personal integrity on a daily basis," had her responsibilities reduced, and was accused of lying. (Pl.'s Mem. at 38.) Czeck allegedly spoke to Houston in "a belittling tone, if she was not ignoring Ms. Houston's inquiries altogether[,] " made "sarcastic remarks," and had a "dismissive attitude." (Pl.'s Stmt. ¶¶ 54-55.) Houston neither alleges that Czeck made any racially based comments nor factually demonstrates how race motivated Czeck's behavior. Allegations of undesirable job assignments or modified job functions and of Czeck's unprofessional and offensive treatment are not sufficient to establish that Houston's work environment was permeated "with discriminatory intimidation, ridicule, and insult." Roberson, 404 577 F. Supp. 2d at 97 n.8. Czeck's alleged behavior, while inappropriate, was not severe enough to alter the conditions of Houston's employment and create an abusive working environment. See Franklin, 2009 WL 533071, at \*29 (describing the hostile work

claim as a demanding standard that does not create a cause of action for the "ordinary tribulations of the workplace").

Therefore, Houston has failed to satisfy the required elements of her racially hostile work environment claims.

### III. CONSTRUCTIVE DISCHARGE

To establish constructive discharge, a plaintiff must prove that "(1) intentional discrimination existed, (2) the employer deliberately made working conditions intolerable, and (3) aggravating factors justified the plaintiff's conclusion that she had no option but to end her employment." Lewis v. District of Columbia, 653 F. Supp. 2d 64, 81 (D.D.C. 2009). A plaintiff must demonstrate that the workplace was so intolerable that it would have caused a reasonable employee to resign. Harris v. Wackenhut Servs., Inc., 590 F. Supp. 2d 54, 80 (D.D.C. 2008). Aggravating factors "are those aspects of a discriminatory work environment that, by making the workplace so disagreeable, prevent the reasonable employee from seeking remediation on the job." Veitch v. England, 471 F.3d 124, 130 (D.C. Cir. 2006). "Generally, a failure to promote will not constitute constructive discharge, nor will a change in job duties, a transfer, . . . criticism, pressure from a supervisor, or being ignored by co-workers." Veitch, 471 F.3d at 131 (internal quotation marks omitted).

Houston has not shown that intentional discrimination existed, and her constructive discharge claim must fail. See

Sewell v. Chao, 532 F. Supp. 2d 126, 144 (D.D.C. 2008) (noting that because the court "has already concluded that plaintiff cannot make out a case of age discrimination or hostile work environment[,] [t]herefore by definition, summary judgment must also be granted on the constructive discharge claim").

Even if Houston could show discrimination, she has not demonstrated that the workplace was so intolerable that it would have caused a reasonable employee to resign. Czeck's accusations that Houston had something to hide and inquiries about the length of Houston's trips to EPA may have been annoying or unpleasant for Houston. However, this friction was not marked by "physical threats, abusive or offensive language or any other characteristics of extreme conduct." Lewis, 653 F. Supp 2d at 82 (internal quotation marks omitted). Moreover, Czeck's extension of Houston's probationary period was effectively a decision not to promote Houston to a non-probationary position, and Veitch refused to recognize a failure to promote as a basis for constructive discharge. And even if hearing a rumor from co-workers that SecTek intended to terminate her (Pl.'s Mem., Ex. A at 99-100) contributed to her applying for a job she accepted from another company (Pl.'s Mem., Ex. A at 166-69) that paid more than her position paid at SecTek (Def.'s Stmt. ¶ 30), Houston has not demonstrated that SecTek deliberately circulated that rumor or did so to make her working conditions intolerable. Houston has not

established that she left SecTek because the work environment was objectively intolerable, leaving her no choice to resign. See Harris, 590 F. Supp. 2d at 80 ("[A] constructive discharge 'does not occur when an employee leaves an unpleasant but objectively tolerable job because alternatives have become more attractive, even if the employer's misbehavior causes the unpleasantness.'" (quoting Taylor v. FDIC, 132 F.3d 753, 766 (D.C. Cir. 1997))).

#### CONCLUSION

Because Houston has presented evidence that Czeck reduced her job responsibilities, she has shown an adverse employment action. However, Houston has not presented sufficient evidence to show that the proffered explanation of realigning her responsibilities to conform with the terms of the EPA contract were pretextual, nor has she presented sufficient evidence of a hostile work environment or constructive discharge. SecTek's motion for summary judgment therefore will be granted. An appropriate Order accompanies this Memorandum Opinion.

SIGNED this 28<sup>th</sup> day of January , 2010.

/s/  
RICHARD W. ROBERTS  
United States District Judge