

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

DR. SABINA BURTON,

Plaintiff,

-vs-

Case No: 14-CV-274

BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN SYSTEM,
DR. THOMAS CAYWOOD, DR. ELIZABETH
THROOP and DR. MICHAEL DALECKI,

Defendants.

SUPPLEMENTAL COMPLAINT

NOW COMES the Plaintiff, Dr. Sabina Burton, by her attorneys Hawks Quindel, S.C., and as and for a supplemental complaint against the Defendants denominated above states as follows:

117. Plaintiff alleges each of the paragraphs of her attached Amended Complaint as though fully set forth herein, as provided in paragraph 2, below.

118. Paragraph 17 of the Amended Complaint is amended to read: “Plaintiff was paid less even though her credentials and qualifications are superior to Dutelle’s.”

I. SUPPLEMENTAL ADMINISTRATIVE PREREQUISITES

119. Plaintiff has complied with all additional administrative prerequisites to suit under Title VII. She filed a timely additional charge of sex discrimination and retaliation against Defendants with the U.S. Equal Employment Opportunities Commission on December 5, 2015 (443-2015-0090), a supplemental statement with the EEOC on July 21, 2015, and she received a Notice of Right to Sue on July 31, 2015.

II. SUPPLEMENTAL PARTY

120. Defendant Dr. Michael Dalecki is an adult resident of the State of Wisconsin whose current business address is One University Plaza, Platteville, Wisconsin 53818.

121. Defendant Dr. Dalecki at all times relevant to this complaint has been employed as a professor in the Sociology Department prior to August of 2013 and as interim director of the Department of Criminal Justice between August of 2013 and June 30, 2015, at UW-Platteville.

122. All actions alleged in this complaint to have been taken by defendant Dr. Dalecki were taken under color of state law within the meaning of 42 U.S.C. § 1983 and while carrying out his duties as a public officer or employee and within the scope of his employment by the Board. Defendant Dr. Dalecki is being sued in this matter in his individual capacity.

III. SUPPLEMENTAL FACTUAL ALLEGATIONS

A. The relationship between Defendant Throop and Interim Chair Dalecki

123. Dean Throop appointed Dr. Dalecki as interim chair of the Criminal Justice Department effective August, 2013.

124. The appointment violated the College Constitution and Faculty Bylaws of the UW-Platteville College of Liberal Arts and Education (LA&E) and infringed Plaintiff's rights under Wis. Stat. § 36.09(4).

125. Dean Throop appointed Dr. Dalecki as interim chair to pressure Plaintiff to withdraw her EEOC charge (26G-2013-01269C), to dissuade her from filing a law suit against the Defendants, and to impose adverse employment actions against her if she filed a lawsuit.

126. Dean Throop changed the organizational structure such that the chair of the department was thereafter an administrative position, subordinate to the Dean and not accountable to the department.

127. Dr. Dalecki had applied for a tenure track position in the Criminal Justice department in 2010 and 2011, and on both occasions his application was rejected as he did not meet the minimum requirements for membership in the department.

128. Prior to August 2013, Dr. Dalecki never taught a course offered by the Criminal Justice Department.

129. As of August 2013, Dr. Dalecki was not and is not now qualified to

teach most courses offered by the Criminal Justice Department.

130. In September of 2013 the Criminal Justice Department elected Dr. Gibson as chair, but Dean Throop vetoed the choice of Dr. Gibson and continued Dr. Dalecki as interim chair over the objections of Plaintiff and nearly all faculty of the Criminal Justice Department.

131. Dean Throop failed to conduct another election as required by LA&E Constitution Article VI, Sec. 4, ¶ 4 which states: “Should the Dean not concur with the department's choice, he or she will (1) inform the members of the department of the reason(s) and (2) conduct a new election.”

132. Two grievance committees and an appeals committee recommended that the next search for chair of the Criminal Justice Department be conducted in accordance with the LA&E Constitution.

133. Nearly all faculty and staff of the Criminal Justice Department, including Plaintiff, objected to Dean Throop’s appointment of Dr. Dalecki as interim chair.

134. When Dr. Dalecki’s term as interim chair was ending, on August 29, 2014, Dean Throop argued to the Department faculty that they should continue Dr. Dalecki and delay the search for a permanent chair for another year.

135. Dean Throop refused to solicit nominations for chair from the department.

136. Instead Dean Throop appointed Dr. Timothy Zauche, from the

Chemistry Department, to chair the search committee for a new Criminal Justice Department chair.

137. Upon information and belief Dr. Zauche is a personal friend of Dr. Dalecki.

138. There were qualified, available and willing faculty members in the Criminal Justice Department to chair the search, including Plaintiff.

139. Dr. Zauche is, and was at that time tenured in the Chemistry Department and had no affiliation with the Criminal Justice Department.

140. On October 7, 2014, Dean Throop changed the wording of the advertisement for the Criminal Justice Department chair without obtaining consensus from the Department.

141. She changed the Department's criteria that would have excluded Dr. Dalecki from consideration to wording that would allow him to be considered.

142. At all times relevant to this supplemental complaint, Dr. Dalecki engaged in adverse employment actions with regard to the Plaintiff with the knowledge and approval, express or tacit, of Defendant Throop.

B. Defendants' Appeasement of the Plaintiff

143. During the period between August, 2013 and March 2014, while Plaintiff's charges were pending before the EEOC, in 26G-2013-01269C, Dr. Dalecki and Dean Throop were occasionally supportive of Plaintiff.

144. On October 3, 2013, Dean Throop corresponded with the Plaintiff to

praise her teaching ability, writing that she couldn't be more pleased to hear about Plaintiff's successes and thanking her for all she was doing for the students.

145. On November 21 and 22, 2013, Dr. Dalecki printed, signed, and gave Dr. Burton a certificate reading "Sabina won."

146. On March 13, 2014, Dean Throop requested an equity adjustment to Plaintiff's salary retroactive to August, 2013.

147. On April 3, 2014 Dean Throop was video recorded telling a faculty forum audience that Plaintiff "will be providing you with some real interesting pieces of her expertise, profiling and cyber security."

C. Adverse employment actions of Defendant Throop

148. In September, 2014, Dean Throop initiated a national search for a new chair in violation of policy and against the recommendations of grievance hearing findings while the department contained members who were eligible, willing and able to serve as department chair, including Plaintiff.

149. On December 10, 2014, Dean Throop removed Plaintiff from the search committee for the chair for the Criminal Justice Department.

150. On October 28, 2014, Dean Throop issued a letter of direction to Plaintiff, based on false claims against Plaintiff, and directing Plaintiff to engage in a number of actions based upon the false claims.

151. On November 12, 2014, Plaintiff filed a grievance in an attempt to obtain an internal administrative remedy for the letter of direction.

152. On December 1, 2014, Dean Throop wrote a letter to the chair of the grievance commission that derailed Plaintiff's grievance hearing.

153. On December 16, 2014, Dean Throop falsely accused Plaintiff of canceling classes and threatened disciplinary measures in an email cc'd to Dr. Dalecki.

154. Dean Throop made this false allegation with reckless disregard for its truth.

155. Dr. Dalecki saw Plaintiff on the premises in the morning of December 16 and knew she was attending her classes but he did not inform Dean Throop.

156. Dean Throop and her agents have refused to inform Plaintiff of the identity of the informant who provided this false information.

157. On January 5, 2015, Dean Throop filed a complaint against Dr. Burton with Chancellor Shields, exposing Plaintiff to a threat of severe employment discipline.

158. On January 15, 2015, Chancellor Shields directed Dr. Dominic Barraclough to conduct an investigation into Dean Throop's complaint against Plaintiff.

159. On January 20, 2015, Plaintiff's physician certified Plaintiff's request for medical leave due to potentially life threatening gastric ulcers, exacerbated by the work-related stress caused by the Defendants' conduct.

D. Retaliatory Motive of Dr. Dalecki

160. On October 17, 2013, upon learning that Plaintiff had filed a complaint with Chancellor Shields regarding Dean Throop's appointment of Dr. Dalecki as interim chair, Dr. Dalecki called Plaintiff into his office and berated her. At that time, Dr. Dalecki told Plaintiff that he knew "where the skeletons were buried."

161. Then, Dr. Dalecki pressured Plaintiff to withdraw her complaints. He told Plaintiff: "You can't expect to file a law suit without consequences," or words of similar significance and meaning.

162. He told Plaintiff that her complaints were "old news" and said to her that nobody wanted to hear about them anymore.

163. At that time, Plaintiff explained to Dr. Dalecki that her damages had not been adequately remedied and that she had been in the right

164. Dr. Dalecki responded: "nobody cares about that anymore," Plaintiff should "let it go," and "people will forget," or words of similar effect and meaning.

165. In late March 2014, after Plaintiff requested and received her right to sue letter from the EEOC, but prior to the end of the 90 day window in which she had to file suit, Dr. Dalecki asked her about her intentions regarding a lawsuit. He asked Plaintiff whether it was still "on."

166. Dr. Dalecki became upset when Plaintiff informed him that she had not dropped her intention to sue.

167. At that time, Plaintiff again explained to Dr. Dalecki that her damages

had not been fairly addressed and that she had not done anything wrong when she handled the student's sexual harassment complaint in October 2012.

168. Then, Dr. Dalecki became annoyed and told Plaintiff again that she should "get over it," she was getting a "pay raise," and nothing good would come from her bringing legal action.

169. After April 14, 2014, Dr. Dalecki's demeanor toward Plaintiff became hostile.

170. During late spring, 2014 Dr. Dalecki assigned lower level classes to Plaintiff, a senior faculty member.

171. Teaching higher level courses supports an application for promotion.

172. During the month of June, 2014, personal circumstances required Plaintiff to limit her participation in support of a visiting delegation of German students to UW-Platteville. Although Plaintiff was volunteering her time and committed to help as much as reasonably possible, Dr. Dalecki refused her offers in significant respects.

173. Upon information and belief, Dr. Dalecki informed Dean Throop and others in the Department that Plaintiff had abandoned a responsibility that Plaintiff did not possess.

174. Dr. Dalecki requested mediation and Plaintiff was willing to participate.

175. Ultimately, Dr. Dalecki refused to participate in the mediation.

176. On August 7, 2014, Dr. Dalecki withdrew his earlier decision that Plaintiff would mentor a new colleague, Dr. Valerie Stackman, and assigned himself to be Dr. Stackman's mentor.

177. Mentoring responsibilities support an application for academic promotion.

178. On July 1, 2014, Plaintiff's health had deteriorated to the point that her health care provider requested accommodation for her severe headaches due to job-related stress associated with the matters alleged in the original complaint and Dr. Dalecki's coercion as alleged and on August 15, 2014, Plaintiff was hospitalized.

179. On August 4, 2014, Dr. Dalecki denied Plaintiff's request to teach an on-line course as part of her normal load, although Plaintiff's letter of appointment specifies that she is to teach 25% of her load in on-line courses.

180. During the fall, 2014, Plaintiff learned from colleagues in the Criminal Justice Department that Dr. Dalecki had issued a "gag order," forbidding them to communicate with her.

181. On August 29, 2014, Dr. Dalecki assigned a junior faculty member as chair of a search and screen committee to hire three new faculty members and refused to allow Plaintiff to be a member of the search committee.

182. Dr. Dalecki subsequently refused Plaintiff's request to chair a search committee for even one of the three new faculty members.

183. Participation on such committees, particularly as the chair of the committee, supports an application for academic promotion and gives a good first impression on new hires.

184. A grievance committee recommended on April 19, 2013, in response to Plaintiff's allegation that Dr. Caywood retaliated against her due to her advice that a student report suspected sexual harassment to Student Affairs rather than the department chair, that "the Criminal Justice department take advantage of Dr. Burton's willingness to be more actively involved in the hiring of new faculty members."

185. Dr. Dalecki violated this recommendation.

186. In October, 2014, Dr. Dalecki refused to investigate Plaintiff's allegation that a colleague had excluded her from the process of formulating the job description for the search he was chairing.

187. On October 2, 2014, Dr. Dalecki refused Plaintiff's request to meet to discuss problems between the Plaintiff and him.

188. He based his refusal on the advice of Dean Throop and the University System's General Counsel's office.

189. From this date forward Dr. Dalecki refused to talk to Plaintiff with regard to department business.

190. In fall, 2014, Dr. Dalecki excluded Plaintiff from the Department Curriculum Committee.

191. In November, 2014, Ron Jacobus, a Criminal Justice graduate student, informed Plaintiff that on November 13, 2014, he attended a social event organized by the Department and attended by other students and Department faculty.

192. Mr. Jacobus told Plaintiff that at the Department social function one of Plaintiff's colleagues publicly informed others that Dr. Burton had a mental disorder, that she would not be at UW-Platteville much longer, and that she had negative sentiments toward people from East Germany.

193. Dr. Dalecki did not inform Plaintiff of these malicious statements.

194. He did not reprimand the colleague for making the statements until he was directed to do so by Mr. John Lohmann, UW-Platteville Human Resources Director, after Plaintiff complained to Mr. Lohmann.

195. Following the incident, Dr. Dalecki met privately with Mr. Jacobus to give him "a little bit of advice."

196. Dr. Dalecki told Mr. Jacobus that his truthful report to Plaintiff of her colleague's defamatory remarks had caused Dr. Dalecki a "huge time suck."

197. Dr. Dalecki warned Mr. Jacobus that he should be "very careful" about passing information on to others, because passing on the information was akin to having something explode in one's face and being hit by shrapnel.

198. Dr. Dalecki told Mr. Jacobus that he recalled a time, when he was a master's student, when someone gave him a chance rather than cut him off at the knees and let him "crawl away bleeding."

199. Dr. Dalecki told Mr. Jacobus that he should cast his lot with the side that was paying him and that he should learn from this mistake.

200. In early summer, 2015, UW-Platteville cancelled the graduate assistant position that Ron Jacobus had received the prior year, although there was money available for his position and the director of the graduate assistant program was confident that Jacobus would get the position.

201. The graduate program director had already begun the reapplication process with Jacobus.

202. In approximately January, 2015, the Criminal Justice Department Review Board (DRB) assigned Plaintiff lower peer evaluation grade than those which she had received contemporaneously with and prior to her advice to the student complaining of sexual harassment.

203. Dr. Dalecki had assigned Dr. Caywood to the DRB knowing Plaintiff had filed a federal lawsuit against Dr. Caywood, and allowed Dr. Caywood to sit on the DRB committee that would evaluate Plaintiff's performance.

204. Plaintiff objected to Dr. Caywood's role to evaluate her performance based upon his conflict of interest, but her objection was ignored.

205. The DRB reaffirmed the lower grade after Plaintiff appealed, giving no justification for its decision.

206. Dr. Dalecki violated policy by not allowing non-tenured faculty members to sit on the DRB as provided by the Criminal Justice Department DRB

procedures (see Gibson's appeal findings for reference).

207. No peer evaluator sat in any of Plaintiff's classes since 2009, yet the DRB assigned peer teaching evaluation scores that were lower than those given the previous years.

208. In late spring, 2015, Dr. Dalecki again assigned Plaintiff to lower level classes.

209. In late spring, 2015, Dr. Dalecki assigned Plaintiff to teach a solid three hour class, normally assigned to academic staff, in contravention of Plaintiff's physician's recommendations.

210. In late spring, 2015, Dr. Dalecki refused to grant Plaintiff's request to teach an on-line course as part of load.

211. During summer, 2015, Dr. Dalecki assigned fewer interns to Plaintiff than her proportionate share.

212. But for Plaintiff's EEOC complaint and lawsuit filed on April 14, 2014, Defendant Throop would not have taken the actions alleged above.

213. But for Plaintiff's EEOC complaint and lawsuit filed on April 14, 2014, Dr. Dalecki would not have acted for Dean Throop by taking the actions alleged above.

214. As a direct result of the retaliation by Defendants Throop and Dalecki as described above plaintiff has suffered and will continue to suffer substantial damages including loss of employment and career opportunities, loss of reputation,

loss of income and benefits, emotional distress, physical and psychological injuries and other pecuniary and non-pecuniary losses.

SEVENTH CAUSE OF ACTION

215. For her seventh cause of action against defendant, Dean Throop, under Title VII, plaintiff realleges each of the preceding paragraphs as set forth herein.

216. By engaging in the conduct described in the preceding paragraphs, but not limited to wrongly denying members of the department who were willing, able and eligible to serve as chair of the department, including plaintiff the opportunity to do so, falsely accusing plaintiff in a letter of direction, falsely accusing plaintiff of breach of her duties by skipping classes, filing a Chapter 6 complaint against her based upon false premises, removing her from service on the search committee for the permanent chair, and interfering with plaintiff's use of the internal grievance procedures to resolve the claims set forth here, Dean Throop retaliated against plaintiff for lawfully opposing sex discrimination in the workplace in violation of her rights under Title VII.

217. Dean Throop's conduct, as described above, caused plaintiff to suffer substantial damages including loss of employment and career opportunities, loss of reputation, loss of income and benefits, emotional distress, physical and psychological injuries and other substantial injuries that will continue into the future.

EIGHTH CAUSE OF ACTION

218. For her eighth cause of action against defendant, Dr. Dalecki, under

Title VII, plaintiff realleges each of the preceding paragraphs as set forth herein.

219. By engaging in the conduct described in the preceding paragraphs, but not limited to coercing plaintiff to drop her EEOC charge and this lawsuit, assigning lower level classes to plaintiff, limiting plaintiff's assistance with the visiting delegation of German students, refusing mediation, withdrawing plaintiff's mentorship of Dr. Stackman, refusing to assign her on-line teaching in violation of her appointment letter, "gagging" her colleagues, refusing to assign her chair responsibilities in search and screen committees, refusing to talk to her with regard to departmental business, excluding her from the curriculum committee, refusing to correct Dean Throop's false accusation of skipping her teaching responsibilities, threatening the graduate student who had truthfully reported a colleague's defamatory statements regarding plaintiff, and assigning Dr. Caywood to the DRB to evaluate plaintiff despite the fact that plaintiff had named him as defendant in this action, Dr. Dalecki retaliated against plaintiff for lawfully opposing sex discrimination in the workplace in violation of her rights under Title VII.

220. Dr. Dalecki's conduct, as described above, caused plaintiff to suffer substantial damages including loss of employment and career opportunities, loss of reputation, loss of income and benefits, emotional distress, physical and psychological injuries and other substantial injuries that will continue into the future.

NINTH CAUSE OF ACTION

221. For her ninth cause of action against defendant, Board, under Title

VII, plaintiff realleges each of the preceding paragraphs as though set forth herein.

222. By engaging in the conduct described in the preceding paragraphs, acting through its managerial agents and employees, the Board retaliated against plaintiff for filing a charge of discrimination with the EEOC and for filing this complaint of discrimination with this court.

223. The Board's conduct, as described above, caused plaintiff to suffer substantial damages including loss of employment and career opportunities, loss of reputation, loss of income and benefits, emotional distress, physical and psychological injuries and other substantial injuries that will continue into the future.

WHEREFORE, plaintiff demands judgment as indicated in the Amended Complaint.

Respectfully submitted,

September 3, 2015

s/Timothy E. Hawks
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