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APPENDIX V

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Questions for VMF Manager Suzanne P. Hearn
In Connection with a 14 Day Suspension of Gwendolyn A. Hearn

1. Did you receive a letter from Gwendolyn A. Hearn regarding the September 23, 2016 incident involving her and Merry Hendricks?

Response: YES ON MONDAY 9/26/16

2. Did you interview Gwendolyn A. Hearn regarding her September 26, 2016 letter regarding the misconduct of Merry Hendricks?

Response: NO - MR. BEGESICE, SUPERVISOR
INTERVIEWED HER.

3. What was your finding of that interview for Gwendolyn A. Hearn on September 23, 2016?

Response: SHE STATED IT WAS IN THE
LETTER

4. What was your finding of the interview for Merry Hendricks on September 23, 2016?

Response: DID NOT INTERVIEW. MR. BEGESICE
INTERVIEWED.

5. Why did you not put both employees off the clock on September 23, 2016 until you had thoroughly investigated the incident?

Response: MANAGEMENT DID NOT BELIEVE THE
EMPLOYEES FELT THREATENED.

6. Is Gwendolyn A. Hearn a Black American female?

Response: YES.

7. Did you interview William Miles, Black American male whose name was listed in discipline charge to Gwendolyn A. Hearn on September 23, 2016?

Response: NO

8. Are all the employees interviewed Caucasian?

Response: NO

9. Was there a surveillance video available to record the actions in the stockroom on September 23, 2016?

Response: NO. ONLY OUTSIDE

tions for VMF Manager Suzanne P.

10. Is the storekeeper the mother of Inplant Manager Robert Petrowski?

Response: YES

11. Is there a surveillance video for inside the stockroom?

Response: NO

12. Does the fact that Merry Hendricks is the mother of the second highest ranking manager at South Suburban have any fact on you not issuing Merry Hendricks an emergency suspension or discipline on September 23, 2016?

Response: NO

13. When did you receive a copy of the video surveillance for September 23, 2016 incident involving Merry Hendricks and Gwendolyn Hearn?

Response: FRIDAY, 9/23/16

14. Did Management tell employees that Merry Hendricks would be supervising them on September 23, 2016?

Response: NO. IT IS IN HER JOB DESCRIPTION.

15. Did Merry Hendricks get supervisor pay for September 23, 2016?

Response: NO.

16. Why did you take seven (7) days to hold a PreD?

Response: ORIGINAL PRE-D WAS HELD ON 9/28/16
HOWEVER, WILLIAM NILES IS NOT A UNION STEWARD,
THEFORE ANOTHER WAS HELD ON 9/30/16 WITH
A REALE STEWARD.

Suzanne Peters, Manager
Vehicle Maintenance Facility

Date

9/2/16

00106

33

APPENDIX W



EEO Investigative Affidavit (Witness)

| Page No. | No. Pages | Case No. |
|----------|-----------|----------------|
| 1 | 9 | 4V-813-0001-17 |

| | | | |
|---|----------------|---|--|
| 1. Affiant's Name (Last, First, M.) Peters, Suzanne R. | | 2. Employing Postal Facility Bedford Park VMF | |
| 3. Position Title Manager, Vehicle Maintenance Facility | 4. Grade Level | 5. Postal Address and Zip +4 6801 W. 73rd St. | 6. Unit Assigned Bedford Park, IL 60499-9721 |

Privacy Act Notice and Rehabilitation Act Notice

Privacy Act Statement: Your information will be used to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program. Collection is authorized by 30 U.S.C. 401, 409, 410, 1001, 1005, and 1206. Providing the information is voluntary, but if not provided, we may not be able to process your request. We may disclose your information as follows: in relevant legal proceedings; to law enforcement when the U.S. Postal Service (USPS) or requesting agency becomes aware of a violation of law; to a congressional office at your request; to entities or individuals under contract with USPS; to entities authorized to perform audits; to labor organizations as required by law; to federal, state, local or foreign government agencies regarding personnel matters; to the Equal Employment Opportunity Commission; and to the Merit Systems Protection Board or Office of Special Counsel. For more information regarding our privacy policies visit www.usps.com/privacypolicy.

Rehabilitation Act Notice: Under the Rehabilitation Act, medical information is confidential and may only be requested or disclosed in very limited circumstances. Medical documentation about the complainant's and possible comparison employees' medical conditions and work restrictions may be requested in connection with the investigation of an EEO complaint. Information about medical restrictions (but not medical conditions) obtained in the course of an EEO investigation may be disclosed to supervisors and managers who need to know about restrictions on the work or duties of the employee and about necessary accommodations. Supervisors and managers are not permitted to share such information with peers or subordinates or to discuss the information with those who have no need to know and whose requests for the information are not job-related and consistent with business necessity.

USPS Standards of Conduct

Postal Service regulations require all Postal Service employees to cooperate in any Postal Service investigation. Failure to supply the requested information could result in disciplinary action in accordance with ELM 665.3 and 665.6.

7. Statement (Continue on Form 2560 if additional space is required. Form will auto-create if using Microsoft Word)

1. State for the record your full name, position title, grade level, facility name and address, email, and phone number.

Name: **Suzanne R. Peters**

Position & grade: Manager, Vehicle Maintenance Facility Level 20

Facility name: **Bedford Park VMF**

Facility address: **6801 W. 73rd St., Bedford Park, IL 60499-9721**

Phone no.: **(708) 563-7399**

Email: **suzanne.r.peters@usps.gov**

2. Who are the Complainant's first line and second line supervisors from September 2016 to present? Provide full name and email.

David B Begeske, Supervisor Vehicle Maintenance david.b.begeske@usps.gov

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature

Date Signed

7/15/17

PS Form 2560-B, October 2016

00131



EEO Investigative Affidavit (Continuation Sheet)

| Page No. | No. Pages | Case No. |
|----------|-----------|----------------|
| 2 | 9 | 4V-813-0001-17 |

3. State your Race. White

a. What do you believe the Complainant's race to be? Black

b. How and when (approximate) did you become of the Complainant's race? When I was introduced to her when I started working at the VMF in May, 2002.

Claim 1: On September 23, 2016, she was subjected to a hostile work environment when a co-worker made physical contact with her, and management did not take appropriate action when she reported the incident.

2. Did the Complainant report an incident she believed to be harassment, to you, that occurred with co-worker, Merry Hendricks?

Yes. In a letter dated September 25, 2016 on Monday, September 26, 2017.

3. If so, when (day/month/year) and how (verbal, statement, email) did she report the incident? Provide a copy of any documented statement.

Gwendolyn Hearn presented me with a letter dated September 25, 2016 on Monday, September 26, 2017 at approximately 10:35 am.

4. Did the Complainant notify you that she felt she was being harassed and request that management prevent further acts of intimidation by Ms. Hendricks?

Yes. In a letter dated September 25, 2016 on Monday, September 26, 2017 at approximately 10:35 am.

5. What exactly did the Complainant report and/or request?

Gwendolyn Hearn wrote "I am writing this letter to inform you that Ms. Merry Hendricks continues to create a hostile environment. As instructed by you to work physical inventory, I went to the stockroom and waited for my partner, Mr. William Miles, on Friday, September 23,

I declare under penalty of perjury that the foregoing is true and correct.

Attiant's Signature

Date Signed

PS Form 2569, October 2015

00132

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**EEO Investigative Affidavit (Continuation Sheet)**

| Page No. | No. Pages | Case No. |
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| 3 | 9 | 4V-813-0001-17 |

2016. While I was waiting, Ms. Hendricks came over to me and told me to work with Mr. Michael Smerz. I told her I was going to work with Mr. William Miles. Ms. Hendricks yelled to me that I was not going to work with Mr. Miles. Ms. Hendricks got closer into my face, looked in my eyes, and told me that I was going to work with whom she told me. I told Ms. Hendricks that Mr. Miles and I were working a partners. Ms. Hendricks yelled at me telling me that we were not. I asked Ms. Hendricks that I am a grown woman and you will not talk me to like this. Ms. Hendricks said no. I told Ms. Hendricks to get out of my face, but Ms. Hendricks continued to get in my face. I backed up and put my hand up to shield my face from Ms. Hendricks' face. Ms. Hendricks bumped against me and touched me with her hand in an intimidating way. Then, Ms. Hendricks told me to not touch her. I believe Ms. Hendricks was trying to make me hit her. Ms. Hendricks told me to get out of the stockroom since I was not going to do as she told me. I told Ms. Hendricks I was getting out and to remember she told me to get out, because she knew I was suppose to be working in there. I left the stockroom and waited for Mr. Miles. I returned to the stockroom with Mr. Miles. I asked Ms. Hendricks about what we were supposed to do. Ms. Hendricks grumbled something. Ms. Hendricks pointed and told me to pick up a clipboard from the desk. I did. I, again, asked what we were supposed to do. Ms. Hendricks grumbled again. Ms. Hendricks was very uncooperative during the entire assignment in the stockroom. I am now asking for your intervention to prevent further acts of intimidation by Ms. Hendricks. This is a continual pattern of harassment by Ms. Hendricks.

6. What action(s) did management take on the Complainant's report and/or notification of alleged harassment? Be specific.

Management continued their investigation, which started on Friday, September 23, 2017 when management became aware of an incident between Gwendolyn Heam and Merry Hendricks before completing the stockroom inventory. When Ms. Heam presented her letter to me, management was just beginning to investigate the incident. It was not 2 separate incidents. It was 1 incident with 2 different sides to the story. Employees were not interviewed before Ms. Heam submitted her statement.

7. If an investigation was conducted, who (full name) conducted it and when (day/month/year)? Provide a copy of the full investigation.

The investigation was conducted by David Begeske. It started on Friday, September 23, 2017 and was ongoing through Thursday, October 6, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature

PS Form 2569, October 2015

Date Signed

9/3/17

**EEO Investigative Affidavit (Continuation Sheet)**

| Page No. | No. Pages | Case No. |
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| 4 | 9 | 4V-813-0001-17 |

8. Who was interviewed? Provide full name. Provide a copy of all witness interviews.

Timothy Duma – White Male
Kevin Smerz – White Male
Robert Kozicki – White Male
John Anderson – Black Male
William Doolan – White Male
Richard Burnell – Black Male
Melvin Barksdale – Black Male
Gwendolyn Hearn – Black Female
Merry Hendricks – White Female

9. What was the outcome and/or result of the investigation?

It was clear that there was a verbal altercation between Gwendolyn Hearn and Merry Hendricks on Friday, September 23, 2017 over who Ms. Hearn was going to count the inventory with. No one could corroborate any physical contact between the two employees.

10. Was corrective action issued to any parties involved? If so, to whom and what? Provide a copy.

Yes. Gwendolyn Hearn was issued a Fourteen (14) Day Suspension for Unacceptable Conduct. Merry Hendricks was issued a Letter of Warning for Unacceptable Conduct.

11. What are the policies, procedures, and/or regulations management is required to follow when an employee notifies them of harassment and/or a hostile work environment and/or unwanted physical touch?

The Postal Service has a Zero Tolerance Policy that means every act or threat of violence will elicit a prompt investigation of facts and an appropriate response to those findings.

12. Where the above cited policies, procedures, and/or regulations followed? If not, explain why.

Yes.

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature

Date Signed

PS Form 2569, October 2015

**EEO Investigative Affidavit (Continuation Sheet)**

| Page No. | No. Pages | Case No. |
|----------|-----------|----------------|
| 5 | 9 | 4V-813-0001-17 |

Complainant alleges William (Bill) Miles was witness to the incident; however was not interviewed by management. Provide the following information for the cited individual:

Full name: William R Miles
EIN no.:
Position title & grade Lead Automotive Technician – Level 09

13. Is the Complainant's above stated allegation accurate? If so, explain why Mr. Miles was not interviewed.

William Miles was not interviewed because he is a disgruntled employee since he was issued a removal earlier in the year and passed over for a promotion. He also promotes racial tension in the workplace by referring to himself as a "Black Man" compared to the "White Man" in the shop. In a conversation about the incident with myself and Vehicle Operations Manager, Verna Turner with Mr. Miles stated, "You know how to make her (Gwendolyn) stop acting all crazy. Give her some overtime. Marie should have just told her that you (Verna Turner) told her to assign Gwen to work with Barksdale. All this could have been avoided."

14. Were there any others witnesses to the alleged physical contact, and if so, who and what did they witness first hand? Provide witnesses full name, position title, and EIN no.

No. Ms. Hearn stated during the mediation that it was only her, Merry Hendricks, and Lead Technician Michael Smerz who were in the stockroom for the alleged physical contact, however Michael Smerz was in the back of the stockroom and probably didn't see anything.

I had a conversation with Michael Smerz on the day after the mediation and he said he didn't see any contact between the two. He was not interviewed during the investigation because he was on vacation.

15. Complainant alleges Merry Hendricks was treated more favorably when her incident report was investigated appropriately by management. Provide the following information for the cited individual:

Correctly spelled full name: Merry Hendricks
EIN no.:
Position title & grade: Storekeeper Level 08
Immediate supervisor's name: David Bejeske
Believed race: White

I declare under penalty of perjury that the foregoing is true and correct.

Attent's Signature

PS Form 2559, October 2015

Date Signed

4/15/17

**EEO Investigative Affidavit (Continuation Sheet)**

| Page No. | No. Pages | Case No. |
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16. Did Ms. Hendricks report an incident with the Complainant? If so, when (day/month/year), how (verbal, statement, email, etc.), and to whom (full name) did she make the report?

Merry Hendricks reported the stockroom incident at approximately 6:20 am on Friday, September 23, 2016 to Supervisor David Begeske.

17. What specifically did Ms. Hendricks report and/or notify management?

Ms. Hendricks notified Supervisor David Begeske that Ms. Hearn refused to work with Barksdale, whom Verma Turner, Manager Vehicle Operations, told Ms. Hendricks to assign Gwendolyn to work with. Ms. Hearn only wanted to work with Mr. Miles.

She did not report any verbal or physical encounter.

18. What were management's specific actions after Ms. Hendricks' report?

Supervisor David Begeske did not think it was an issue that Ms. Hearn worked with Mr. Miles, and at that time, everyone was working in the stockroom doing the inventory.

It was later at approximately 11:00 am, when I arrived at work, an employee approached me and asked if I heard about the "drama" in the stockroom this morning. They said, "Marie (Ms. Hendricks) and Gwen got into it and Gwen put her hands in Marie's face."

I immediately questioned David Begeske and he said he only knew that Gwen refused to work with who she was assigned with. He said Gwendolyn reported to him that Bill Doolan bumped her and pushed her into a drawer during the inventory and wanted to file an accident report and go to the care station for treatment.

I then asked Ms. Hendricks what happened and she told me she told Gwen to work with Mr. Barksdale and Gwen refused saying she was going to work with Bill Miles. She said they argued and got in each other's face. Then Gwen started flicking her hands in her face. Ms. Hendricks said she wasn't afraid of her and wasn't going to back down, but she wanted to get the inventory completed so she let it go and just let Gwen count with Miles.

I told Mr. Begeske to get statements from the employees who were present and find out what exactly happened in the stockroom that morning.

Ms. Hearn returned from the care station at approximately 12:30 pm. She entered the supervisor office where I, David Begeske, and Supervisor Daniel Almaraz were. She stated that she was OK and just wanted to make sure she wasn't really hurt. David asked her why she waited until

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature

Date Signed

4/3/17

PS Form 2569, October 2015

**EEO Investigative Affidavit (Continuation Sheet)**

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the inventory was over to report it and why she didn't report it when it happened. She stated she didn't realize she was hurt until she sat down. I informed her that there was pizza in the conference room for everyone. She asked if she could take a no lunch and leave at 2:00. At no time did she ever mention a hostile work environment or the incident between her and Ms. Hendricks.

Ms. Hendricks then submitted her statement to me. I contacted Labor and asked if I should put the employees out on Emergency Placement. Labor advised that since Ms. Hendricks said she wasn't afraid and Ms. Hearn didn't even report it, that it was apparent neither employee felt threatened and they could remain on the clock. I was advised to interview the employees and issue discipline if warranted.

I then contacted Maintenance and asked them to review the video of the stockroom door between 6:00 am and 6:15 am. I told them there was an incident in the stockroom that morning and I was wondering if anything had been captured on the video. At 3:38 pm, I received an email from the maintenance supervisor with a 1 minute video that showed employees entering and exiting the stockroom. It also showed Ms. Hearn get in Ms. Hendricks face waving her fingers frantically.

I instructed Mr. Bejeske to interview everyone who was there that day. It was late afternoon Friday and everyone had already left so he said he would take care of it next week.

19. Did you act on the Complainant's report in the same manner as you did on Ms. Hendricks' report? If so, explain how it was the same. If not, explain what was different and why you took a different action for each report. Be specific.

Yes. When Ms. Hearn presented her letter to me, management was just beginning to investigate the incident. It was not 2 separate incidents. It was 1 incident with 2 different sides to the story. Employees were not interviewed before Ms. Hearn submitted her statement. After interviewing the employees, management decided that no one could corroborate any physical contact between Ms. Hearn and Ms. Hendricks. They both engaged in a verbal assault against each other when Ms. Hearn refused to work with whom Ms. Hendricks was assigning her to work with. Ms. Hendricks job descriptions clearly states, "May supervisor clerks assigned to stockroom activities." Both employees were charged with Unacceptable Conduct. The video, however, supported more severe discipline for Ms. Hearn.

20. Was the Complainant's race a factor when on September 23, 2016, she was subjected to a hostile work environment when a co-worker made physical contact with her, and management allegedly did not take appropriate action when she reported the incident?

Race was not a factor.

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature

PS Form 2569, October 2015

Date Signed

4/3/17



EEO Investigative Affidavit (Continuation Sheet)

| Page No. | No. Pages | Case No. |
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21. Has the Complainant reported and/or notified you or, to your knowledge, any other management official that she believes she was subjected to harassment and/or a hostile work environment due to management's alleged inappropriate action to her report?

No

- a. If so, when and to whom?
- b. What was management's action?
- c. To your knowledge was an investigation conducted? If so, what was the result?
- d. If no investigation was conducted, explain why.

22. Have you received training in harassment and/or a hostile work environment, and if so, when and what training did you receive? Provide a copy of your training history.

Workplace Violence Awareness in 2012.

23. Has the Complainant received training in harassment and/or a hostile work environment, and if so, when and what training was received? Provide a copy of Complainant's training history.

No

24. Is the agency anti-harassment/hostile work environment policy posted in a shared location in your assigned facility?

Yes. It is posted on the Employees' Bulletin Board.

25. Did the Complainant file a grievance on this issue? If so, what step is it at?

Yes. Pending Arbitration.

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature

Date Signed

PS Form 2569, October 2013



EEO Investigative Affidavit (Continuation Sheet)

| Page No. | No. Pages | Case No. |
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| 9 | 9 | 4V-813-0001-17 |

a. What was the outcome? Provide the most current documentation

Step 2 unilaterally reduced the 14 Day Suspension to a 7 Day Suspension. The case was appealed to Arbitration.

***Note: If you are not able to provide any part of the requested documentation, so state the reason it was not provided with the investigation next to the request.**

Requested documentation:

Must be provided with affidavit or a written reason as to why it was not provided!

- Complete investigation conducted to include the below documentation:
- Management 2608 from Ms. Peters
- Statement from Complainant
- Statement from Merry Hendricks
- 14 Day suspension issued to Complainant
- LOW issued to Hendricks
- Interview with: Tim Duma, Kevin Smerz, Rob Kozicki, John Anderson, Bill Doolan, Rick Burrell, and Melvin Barksdale
- PDI with Complainant dated September 28 & 30, 2016
- District Zero Tolerance Policy dated March 31, 2016
- Joint Statement on Violence and Behavior dated February 14, 1992
- a copy of Complainant's training history
- a copy of your training history
- Most current Grievance documentation
- Any other relevant documentation that pertains to the accepted issues of investigation.

Please note that documentary evidence is very important in this investigation. It is imperative that all requested evidence is provided in order for a finder of fact to have all available evidence with which to render an accurate decision.

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature

PS Form 2569, October 2015

Date Signed

4/13/17

**U.S. Postal Service
Certification**

**Case No.
4V-813-0001-17**

I have read the proceeding attached statement, consisting of _____ pages, and it is true and complete to the best of my knowledge and belief. In making this statement, I understand Section 1001, Title 18 of the U.S. Code which states:

"Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both."

Privacy Act Notice

Privacy Act Notice: The collection of this information is authorized by the Equal Employment Opportunity Act of 1972, 42 U.S.C. 2000e-16; The Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C.823e; The Rehabilitation Act of 1973, as amended, 29 U.S.C. 794d; and executive Order 11471, as amended. This information will be used to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program. As a routine use, this information may be disclosed to an appropriate government agency, domestic or foreign, for law enforcement purposes; where pertinent, in a legal proceeding to which the USPS is a party or has an interest; to a government agency in order to obtain information relevant to a USPS decision concerning employment, security clearances, contracts, licenses, grants, permits or other benefits; to a government agency upon its request when relevant to its decision concerning employment, security clearances, security or suitability investigations, contracts, licenses, grants or other benefits; to a congressional office at your

request; to an expert, consultant, or other person under contract with the USPS to fulfil an agency function; to the Federal Records Center for storage; to the Office of Management and Budget for review of private relief legislation; to an independent certified public accountant during an official audit of USPS finances; to an investigator, administrative judge, or complaints examiner appointed by the Equal Employment Opportunity Commission for investigation of a former EEO complaint under 29 CFR 1614; to the Mail Systems Protection Board or Office of Special Counsel for proceedings or investigations involving personnel practices and other matters within their jurisdiction; and to a labor organization as required by the National Labor Relations Act. Under the Privacy Act provision, the information requested is voluntary for the complainant, and for the Postal Service employees and other witnesses.

USPS Standards of Conduct

Postal Service Regulations require all postal employees to cooperate in any postal investigation.

Failure to supply the requested information could result in disciplinary action. (ELM 666)

Oath / Affirmation

Subscribed and (sworn) (affirmed) before me on the _____ day of _____, 20____

(Affiant, sign in the presence of an EEO Complaints Investigator.)

| | |
|--|----------------------|
| Signature of EEO Complaints Investigator | Signature of Affiant |
|--|----------------------|

Declaration

I declare under penalty of perjury that the foregoing is true and correct.

(Affiant, sign and date if attached statement was not completed in the presence of an EEO Complaints Investigator.)

| | |
|----------------------|-------------|
| Signature of Affiant | Date Signed |
|----------------------|-------------|

PS Form 2574, March 2001

00140

10

APPENDIX X

Exhibit B

| | | |
|------------------------------|--|--|
| UNITED STATES POSTAL SERVICE | | user ID: <i>██████████</i> |
| Report: | TAAC500R3 V3.004 | Date: 10/26/16 |
| Yr/PPWic: | 2016-201 | Time: 10:29 AM |
| Fln. #: | 18-1549 | Employee Everything Report |
| Yr/PPWic | 2016-20-1 | Friday |
| Sub-Unit: | 0000 | |
| Pay Loc/Fin. Unit: | 080 (0000) | Variable EAS (7. N. Annual LV Bal) 583.00 FMLA (A) 344.42 |
| Employee ID: | | Borrowed (N. SICK LV Bal) 2487.28 FMLA (D) 0.00 |
| Employee Name: | LENNICKS, J. M. | Auto LV (V. LWOP LV) 0.00 FMLA (U) 0.00 |
| Job: | D/A UDC Open L RSV | Start: 10/26/2016 End: 10/26/2016 Four Four Amt. And Schedule COOS Day |
| Base: | 153.3100 763.00 PG 08 F N N 000000 05 14 2016-10-26 2016-10-26 06.00 14.50 70.50 N 500W1 | |

Processed Clock Rings

| Friday | | Base | 05200: 010.00 | | 05300: 002.00 | | 05400: 000.89 | | | |
|----------|----|-------|---------------|-----|---------------|---------|---------------|-------|-------|-----------------------------------|
| EBR # | | | | | | | | | | |
| 501-13 | BT | 09/23 | 05.01 | CDT | 16-1549 | 7610-00 | 000000 | — | — | 00.00 (W)Ring Deleted From PC |
| 000-0000 | BT | 09/23 | 05.01 | CDT | 16-1549 | 7630-00 | 000000 | — | 09/23 | 13.87 |
| 000-0000 | OT | 09/23 | 08.00 | CDT | 16-1549 | 7630-00 | 000000 | 02.00 | 09/23 | 13.87 (W)Non Scheduled Begin Tour |
| 000-0000 | OL | 09/23 | 10.00 | CDT | 16-1549 | 7630-00 | 000000 | — | 09/23 | 11.53 |
| 000-0000 | IL | 09/23 | 10.50 | CDT | 16-1549 | 7630-00 | 000000 | — | 09/23 | 00.00 |
| 000-0000 | ET | 09/23 | 15.51 | CDT | 16-1549 | 7630-00 | 000000 | — | 09/23 | 18.50 |
| | | | | | | | | | | 00.00 |
| | | | | | | | | | | 18.50 (W)Non Scheduled End Tour |

Weekly Total.

Paid Hours : Base 052:040.00 053:008.00 054:002.72 055:008.00
TACS Hours : Base 052:040.00 053:008.00 054:002.72 055:008.00

Un-Processed Rings

EBR#

00126

52

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

GWENDOLYN HEARN, PLAINTIFF — PETITIONER

vs.

LOUIS DEJOY, POSTMASTER GENERAL — RESPONDENT

ORDER

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

STATEMENT OF THE CASE (With Additions)

I gave White VMF Manager Suzanne Peters a complaint letter subjected "Hostile Environment" for September 23, 2016, dated September 25, 2016 on September 26, 2016, that was never addressed was reason for my EEO.

Appendix V – Questions for VMF Manager Suzanne Peters
Appendix W – EEO Investigative Affidavit (Witness)

VMF Manager Peters failed to follow United States Postal Services' policies as listed below.
See Constitutional and Statutory Provisions Involved for usage :

Appendix N - Joint Statement on Violence and Behavior in the Workplace
Appendix O - Workplace Harassment Fact-Finding Policy and Procedures
Appendix Q - Manager's Guide to Understanding, Investigating, and Preventing
Harassment
Appendix R - Appendix R – Postal Service Policy on Workplace Harassment
Appendix S - Workplace Harassment, Poster 150, February 2015
Appendix T – Zero Policy

My story begins with me, a Black General Clerk, working at the Vehicle Maintenance Facility (VMF), South Suburban Facility (SSF), Bulk Mail Center (BMC) located in Forest Park, IL in July of 1988.

Ms. Merry Hendricks, White Storekeeper, came to me about a month later and said "I know you think I don't like you, but I do." That is all she said to me. I looked at her trying to understand why she said that to me after she walked away. I did not know what to think.

I soon learned Ms. Hendricks was an obnoxious person. She was loud and cussed a lot. I had to interact with her when I worked in the stock room. Her work area was in the stock room, and mine was in the administrative office at the VMF/SSF/BMC. During that time, I worked in the stock room during mandatory physical inventory, which was an annual event.

Years later, Ms. Hendricks began talking crazy to me more. I never understood her actions. Whenever I expressed my concerns, people would say that's Merry. During my work experience, I never worked with anyone like her. I ignored her for many years. I don't like squealing on people. But eventually, I told VMF management when she became intolerable. Throughout the years, her cussing at and to me became disrespectful. I never cussed back to her. I was taught to respect my elders. But, it became too much as I got older. VMF management always responded saying they will talk with her when I reported how she talked to me. Of course, they would say that is Merry. Ms. Hendricks got worse throughout the years as she got older. And as I got older, it became more intolerable. I reported per advisement of the:

**Appendix P - Employee's Guide to Understanding, Preventing and Reporting
Harassment, Letter to all employees, December 2008**

Friday, September 23, 2016 was the worse day for me working at the VMF/SSF located in Bedford Park, IL. (The VMF/SSF moved to Bedford Park, IL.) As a matter of fact, that day was the worse day for me during the years of all my employment. Ms. Hendricks not only disrespected me, she physically abused me. She became very brave that day. She yelled at me. She got close into my face. She looked into my eyes and began yelling more at me. I backed up to keep her from spitting into my face. She bumped into me with her shoulder and pushed me with her hand. She then told me not to touch her. Yes, I wanted to defend myself and was ready to fight. However, the Lord unctioned my spirit reminding me to remember I was at work. She was trying to make me hit her. It almost worked. But thanks to God our Holy Father, it did not work. The United States Postal Service (USPS) had enforced the Zero Policy.

Note: the doctored video/doctored stills provided for Deposition Case 1:19-cv-03346 Document #: 55-6 Filed: 09/16/20; Pages 3 of 50 PageID#:308 (time 6:07:34 on 09/23/2016) through Page 49 of 50 PageID#:354 (time 6:08:06 on 09/23/2016) were doctored:

Appendix U - Stills

Proof that provided video/stills were doctored is employees began clocking in about 0600. Times shown on provided video/stills started with 6:07:22 on 9/23/2016. All employees

went to their assigned work areas to get prepared for the physical inventory. I went into the administrative office to my desk; got my smock, out of the administrative office, down the hallway, in and out of the women's locker room, back down the hallway, into the supervisor's office, through Ms. Hendricks' office and into the stockroom. I did not see my partner. So, I waited for him. I told Ms. Hendricks I was waiting for my partner to do the physical inventory. That is when she started mistreating me as explained in above paragraph. Stills numbered PageID#:308 through PageID#:354 show something happened because Ms. Hendricks followed when I left the stock room while yelling at me. I turned around because of what she had done to me. I told her to leave me alone waving my hands because I was angry. I expressed my anger by waving my hands. I tolerated Ms. Hendricks' abusive remarks throughout the years. Ms. Hendricks was brave enough to assault me because she knew VMF management would not do anything. I worked for 42 years and have never been treated like that. I have never been physically assaulted.

Ms. Hendricks worked as a Storekeeper, which is a bargaining unit craft position.

Appendix X – Processed Clock Rings (for bargaining unit craft position)

She provided employees with information and whatever was needed for counting the mandatory physical inventory. She could not work in management and bargaining unit craft positions at the same time. Bargaining craft employees did not work in craft and management levels at the same time. White VMF Supervisor Begeske came late, after the mandatory physical inventory had started. No management employees were present.

During the physical inventory, White mechanic, Mr. Bill Doolan jumped over in front of where I was working. He bumped me during counting of tools for the mandatory physical inventory. I did not feel good when he did that. I reported the incident after Mr. Begeske came to the VMF. I told Mr. David Begeske about the incident. I told him that I needed to go to Concentra, the medical facility for Postal Service. I did not feel well. He told another employee to drive me to Concentra. I received medical treatment, got picked up and returned to the VMF. Ms. Peters told me to go home because my 8 hours of work ended. I did not clock in and out for lunch that day. I was happy to go home, because I did not feel well.

I gave VMF Manager Suzanne Peters my complaint letter dated September 25, 2016, subjected Hostile Environment for the September 23, 2016 incident on Monday September 26, 2016. She never discussed my letter with me.

The VMF workplace became more hostile for me after September 23, 2016. Ms. Hendricks began bullying me more. The two other employees, Mr. Bill Doolan and Mr. Rob Kozicki, made it difficult when I walked the hallway. The hallway was narrow. Normally, employees walked side by side, respectfully, in the hallway. I was never treated like that before September 23, 2016. I went to VMF management for help and got no help. I did not know what to do.

I believed I would eventually have to defend myself. I was too old and fed up. Prior to September 23, 2016, Mr. Doolan and Mr. Kozicki were nice, polite and spoke to me. They stopped being nice, polite and speaking to me, and would not share the hallway. I had to move to the side and wait for them to pass because they bumped me. I feared for my safety. That hallway was used by all employees and visitors to enter and exit on that side of the building. It was used to enter other rooms, also.

I had to retire because; I knew eventually I would have to defend myself. I feared for my safety. I stood alone at the VMF. Ms. Peters knew the way Ms. Hendricks treated me for years because I told her. Ms. Peters said Ms. Hendricks was being herself. Many employees knew Ms. Peters and Ms. Hendricks were good friends. Ms. Peters said Mr. Doolan and Mr. Kozicki were just being boys. How were they boys? Both of them were over 30 years old.

I did not get the help I needed when I complained to VMF management, again. Conditions became so intolerable that a reasonable person would have retired like I did or fought on the job.

I had planned to retire on July 1, 2022, that would have been 41 years and 11 months. I wanted to get full retirement pay. I had heard about people working over 50 years. I might have worked that.

I believe investigation of my complaint letter, subjected "Hostile Environment", and would have made the workplace better for work. July 1, 2017 was not the date I wanted to retire, but I had to go for survival.

Gwendolyn Hearn
Pro Se

TABLE OF AUTHORITIES CITED

| CASES | PAGE NUMBER |
|---|-------------|
| Case: 1:19-cv-03346 Document #: 55-6 Filed: 09/16/20 Pages 3 PageID#:308 Through | |
| Case: 1:19-cv-03346 Document #: 55-1 Filed: 09/16/20 Pages 49 PageID#:354 (Stills) | |

APPENDIX B

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

• January 6, 2022

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 21-1790

GWENDOLYN HEARN,
Plaintiff-Appellant,
v.

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

LOIUS DEJOY, Postmaster General,
Defendant-Appellee.

No. 19-cv-3346

Sharon Johnson Coleman,
Judge.

ORDER

Plaintiff-Appellant filed a petition for rehearing and rehearing *en banc* on December 21, 2021. No judge in regular active service has requested a vote on the petition for rehearing *en banc*, and all members of the original panel have voted to deny panel rehearing. The petition for rehearing *en banc* is therefore DENIED.

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 18, 2021*
Decided November 23, 2021

Before

FRANK H. EASTEBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 21-1790

GWENDOLYN HEARN,
Plaintiff-Appellant,

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

v.

No. 19-cv-3346

LOUIS DEJOY, Postmaster General,
Defendant-Appellee.

Sharon Johnson Coleman,
Judge.

ORDER

Gwendolyn Hearn, who is Black, sued her former employer, the United States Postal Service, because she believed that an altercation she had with a coworker created a hostile work environment based on race. The district court entered summary

* We have agreed to decide this case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

judgment for the defendant, concluding that no evidence showed that the conflict related to Hearn's race and, in any event, USPS had avoided liability by promptly investigating the incident. We affirm.

We recite the facts in the light most favorable to Hearn. See *Cervantes v. Ardagh Grp.*, 914 F.3d 560, 564 (7th Cir. 2019). Hearn, a clerk at USPS, was taking inventory of the stockroom when she got into an argument with a white coworker (who oversaw the inventory process, but who did not supervise Hearn) over a work assignment. Hearn says that the coworker yelled at and poked her, though the coworker denies touching her. Eventually they left the stockroom, at which point a security camera captured Hearn wildly gesticulating with her hands in the coworker's face.

The coworker reported the incident the same day to the facility manager, who promptly started an investigation. The manager viewed the surveillance video and directed a supervisor to interview those involved. The next business day, Hearn also reported the incident to the manager, complaining that it created a hostile work environment. Hearn's report did not prompt a second investigation because, the manager explained, the initial investigation was still ongoing. Over the next few days, the supervisor interviewed Hearn, the coworker, and witnesses.

The manager and supervisor ultimately disciplined both Hearn and the coworker for engaging in "unacceptable conduct." Hearn received a 14-day suspension based on the video that showed her waving her hands in the coworker's face. (Hearn never served the suspension.) The coworker was given a formal warning for raising her voice at Hearn.

Hearn sued USPS, asserting that it should be liable for the coworker's misconduct, which subjected her to a hostile work environment based on race, in violation of Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e-2. The district court entered summary judgment for USPS, finding no evidence in the record that the coworker made comments or took actions based on Hearn's race. The coworker's conduct may have created a workplace that was unpleasant and uncomfortable for Hearn, but Hearn could not point to any evidence that the harassment related to her race. In any event, the court continued, USPS's prompt investigation of the incident precluded employer liability based on the coworker's actions.

Hearn then sought postjudgment relief, arguing that the court's conclusion about employer liability ignored USPS's failure to open a second investigation based on her

report. The court denied the motion. The court explained that USPS took sufficiently prompt corrective action by conducting one thorough investigation into the event. In any case, Hearn did not attack the court's other basis for summary judgment—the absence of any evidence showing that Hearn's race affected the conflict.

On appeal, Hearn challenges the district court's conclusion that there was no basis for employer liability. But as the district court correctly explained, this argument fails for at least two reasons. First, an employer is not liable for the harassing actions of its non-supervisory employees when it takes prompt action to correct that conduct.

Burlington Indus. v. Ellerth, 524 U.S. 742, 765 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775, 806 (1998). USPS swiftly and thoroughly investigated the incident—a response that is "the hallmark of a reasonable corrective action." *Hunt v. Wal-Mart Stores, Inc.*, 931 F.3d 624, 630 (7th Cir. 2019) (internal citations omitted). Second, Hearn's argument fails to address the court's independent reason for entering summary judgment—no evidence suggests that the coworker's allegedly hostile acts were based on race. Because Hearn introduced no evidence that her coworker yelled at or poked her because she was Black, the conflict that she describes cannot establish a hostile work environment under Title VII. See *Smith v. Illinois Dep't of Transp.*, 936 F.3d 554, 560–61 (7th Cir. 2019).

We considered Hearn's other arguments, including her argument that USPS tampered with the time stamps on the surveillance video, and none has merit.

AFFIRMED

APPENDIX F

Case: 1:19-cv-03346 Document #: 76 Filed: 04/06/21 Page 1 of 3 PageID #:609

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GWENDOLYN HEARN,)
Plaintiffs,) Case No. 19-cv-3346
v.)
LOUIS DEJOY, Postmaster General,)
UNITED STATES POSTAL SERVICE,)
Defendant.)
Judge Sharon Johnson Coleman

ORDER

Because plaintiff has failed to establish that the Court committed a manifest error of fact or law when granting defendant's summary judgment motion on March 22, 2021, the Court, in its discretion, denies plaintiff's motion for reconsideration brought pursuant to Federal Rule of Civil Procedure 59(e) [40].

LEGAL STANDARD

Plaintiff Gwendolyn Hearn brought the present motion within 28 days of the final judgment, therefore, the Court considers it under Rule 59(e), which serves the limited function of allowing the Court to correct manifest errors of law or fact. *Barrington Music Prods., Inc. v. Music & Arts Ctr.*, 924 F.3d 966, 968 (7th Cir. 2019). “A manifest error of fact or law is not demonstrated by the disappointment of the losing party”, but rather is “the wholesale disregard, misapplication, or failure to recognize controlling precedent.” *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000) (internal quotation marks omitted). District courts have broad discretion in determining Rule 59(e) motions. *Abellan v. Lavelo Property Mgmt. LLC*, 948 F.3d 820, 833 (7th Cir. 2020).

BACKGROUND

During the relevant time period, Hearn, who is African-American, worked as a full-time general clerk at USPS's South Suburban Vehicle Maintenance Facility in Bedford Park, Illinois. Her

allegations of a hostile work environment based on race focused on an incident that took place on September 23, 2016, at which time she and her co-worker, Merry Hendricks, had a confrontation about working inventory. Hearn exhausted the following claim: "On September 23, 2016, you were subjected to a hostile work environment when a co-worker made physical contact with you, and management did not take the appropriate action when you reported the incident."

In the March 22, 2021 order granting summary judgment, the Court discussed USPS management's investigation into the September 23, 2016 incident. The Court also scoured the record looking for evidence that Hearn's co-workers, including Hendricks, made comments or took actions based on Hearn's race in relation to the September 23 incident. The Court found none. In fact, at Hearn's deposition, she admitted that during the September 23 incident, no one made a comment about her race or color.

DISCUSSION

In her Rule 59(e) motion for reconsideration, Hearn takes issue with USPS management not investigating her hostile work environment claim after she alerted the facility manager on September 25, 2016 of her claim. Hearn's hostile work environment claim and management's investigation into the September 23 incident are inextricably linked. To explain, Hearn's hostile work environment claim was limited to the September 23 incident, and USPS management investigated that incident as discussed in the Court's earlier ruling. The fact that USPS management did not investigate Hearn's complaint separately or to Hearn's satisfaction does not save her claim.

Hearn also takes issue with claims the Court found were unexhausted, including a claim of constructive discharge based on her retirement in July 2017. She also brings a claim based on Hendricks harassing her in 2013. Hearn never brought these claims before the EEO, which is a requirement before bringing a lawsuit in federal court. *Chavez v. Ford Motor Co.*, 937 F.3d 998, 1004 (7th Cir. 2019). In addition, these claims – one based on conduct from three years prior to the

September 2016 incident and the other based on a different theory of liability – are not like or reasonably related in time or scope to the claim she brought before the EEO. *Tyburski v. City of Chicago*, 964 F.3d 590, 601 (7th Cir. 2020). Last, Hearn did not file a new charge asserting constructive discharge based on her retirement, which happened after she filed her initial EEO complaint. This further forecloses her ability to pursue her claim in federal court. *Pierr v. Medline Indus., Inc.*, 970 F.3d 803, 809 (7th Cir. 2020).

IT IS SO ORDERED.

Date: 4/6/2021

Entered:


SHARON JOHNSON COLEMAN
United States District Judge

APPENDIX G

Case: 1:19-cv-03346 Document #: 70 Filed: 03/22/21 Page 1 of 6 PageID #:596

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GWENDOLYN HEARN,) Case No. 19-cv-3346
Plaintiff,)
v.) Judge Sharon Johnson Coleman
LOUIS DeJOY, POSTMASTER GENERAL)
UNITED STATES POSTAL SERVICE,)
Defendant.)

MEMORANDUM OPINION AND ORDER

Pro se plaintiff Gwendolyn Hearn brings a hostile work environment claim based on race against her former employer the United States Postal Service ("USPS") under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C § 2000e, *et seq.* In response, USPS filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56(a).¹ For the reasons explained below, the Court grants USPS's motion.

Background

During the relevant time period, Hearn, who is African-American, worked as a full-time general clerk at USPS's South Suburban Vehicle Maintenance Facility ("facility") in Bedford Park, Illinois. On September 23, 2016, Hearn and other facility employees were doing an annual inventory of the stockroom, which Hearn's co-worker Merry Hendricks supervised. At that time, Hendricks supervised the taking of inventory, but was not Hearn's supervisor. At her July 14, 2020 deposition, Hearn testified that Hendricks told her to work with an individual named Michael Smerz, but that Hearn wanted to work with her regular partner. According to Hearn, Hendricks yelled at her, got

¹ Because Hearn is proceeding pro se, USPS served her with the Northern District of Illinois Local Rule 56.2 Notice to Pro Se Litigants Opposing Summary Judgment on September 16, 2020.

close to her face, looked her in the eyes, and told her that she was going to work with Smerz. Hearn says she then backed up and put her hands up to shield her face "because people spit when they talk," after which Hendricks bumped against her and touched her in an intimidating way.

Hearn and Hendricks then left the storeroom where a security camera captured their continuing exchange, including Hearn waving her hands. There was no audio accompanying the video footage. Hearn testified that she waved her hands and told Hendricks to leave her alone. She explains that she was angry because Hendricks had bumped into her and touched her. Hearn then returned to the stockroom where she worked on inventory with her regular partner. Later that day, another employee bumped into Hearn. She testified that after that she did not feel well, so she went to a nearby clinic. After she was released from the clinic, she returned back to work, but then left for home shortly thereafter.

When the facility manager, Suzanne Peters, became aware of the September 23 incident between Hearn and Hendricks, she immediately started an investigation because USPS has a zero-tolerance policy for threats of violence or violence in the workplace. Peters then contacted the labor relations department to see if she should put Hearn and Hendricks on emergency placement. Labor relations stated that because neither employee felt threatened, the employees should remain on the clock, but should be interviewed if warranted. Thereafter, Hearn's supervisor, David Begeske, interviewed Hearn, Hendricks, and seven other employees about the September 23 incident. Hearn and Hendricks were both disciplined for the incident—Hearn received a 14-day suspension that she never served, and Hendricks received a letter of warning.

To exhaust her race discrimination claim as a federal employee Hearn filed an EEO complaint in January 2017 alleging a hostile work environment claim based on race that occurred on September 23, 2016. *See* 29 C.F.R. § 1614.105. The EEO accepted the following claim for investigation:

On September 23, 2016, you were subjected to a hostile work environment when a co-worker made physical contact with you, and management did not take the appropriate action when you reported the incident.

The EEO also accepted an additional claim for investigation: "On October 17, 2016, you were issued a Notice of 14-Day Suspension." In her acceptance for investigation, Hearn stated that she did not want the October 17, 2016 Notice of 14-Day Suspension to be an issue of her investigation.

The postal service's EEO office found no discrimination in a final agency decision issued on June 23, 2017. On August 14, 2018, the EEOC affirmed the no discrimination finding in a written decision. In the interim, Hearn retired from the USPS on July 1, 2017, at the age of 63.

Legal Standard

Summary judgment is appropriate "if the movant shows 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(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). A genuine dispute as to any material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed. 2d 202 (1986). When determining whether a genuine issue of material fact exists, the Court must view the evidence and draw all reasonable inferences in favor of the nonmoving party. *Id.* at 255; *Hackett v. City of South Bend*, 956 F.3d 504, 507 (7th Cir. 2020). After "a properly supported motion for summary judgment is made, the adverse party 'must set forth specific facts showing that there is a genuine issue for trial.'" *Anderson*, 477 U.S. at 255 (quotation omitted).

Discussion

The only claim Hearn has properly exhausted is her racially hostile work environment claim based on the September 23, 2016 incident with her co-worker Hendricks. To survive a summary judgment motion on a racially hostile work environment claim, Hearn must present some evidence demonstrating a triable issue of fact that: (1) the work environment was both objectively and

subjectively offensive; (2) the harassment was based on membership in a protected class; (3) the conduct was severe or pervasive; and (4) a basis for employer liability, namely, that the employer failed to take corrective measures once on notice of the harassment. *Tyburski v. City of Chicago*, 964 F.3d 590, 601 (7th Cir. 2020); *Hunt v. Wal-Mart Stores, Inc.*, 931 F.3d 624, 627 (7th Cir. 2019). Courts consider hostile work environment claims under the totality of the circumstances. *See Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23, 114 S.Ct. 367, 126 L.Ed.2d 295 (1993). Key to the Court's determination is whether the evidence in the record would permit a reasonable factfinder to conclude that the harassment Hearn has identified was based on her race. *Ortiz v. Werner Enter., Inc.*, 834 F.3d 760, 765 (7th Cir. 2016).

Viewing the evidence and all reasonable inferences in Hearn's favor, her hostile work environment claim fails for several reasons. First, there is no evidence in the record that Hendricks or any of Hearn's co-workers made comments or took actions based Hearn's race on September 23. Although Hendricks called Hearn a "bitch" on occasion throughout the many years they worked together, Hearn has not identified any racial slurs or statements reflecting racial animus that Hendricks made in connection to the relevant incident Hearn highlighted in her EEO complaint. Indeed, Hearn admits at her deposition that during the September 23 incident, no one made a comment about her race or color. Instead, Hearn testified that the facility manager Peters made faces at her on occasion and that her direct supervisor Begeske sometimes called her a girl, but, again, these statements are not connected to the September 23 incident or investigation.² Therefore, the harassment Hearn identifies is not directly connected to the relevant time period or her race, and thus cannot establish a racially hostile work environment. *See Smith v. IDOT*, 936 F.3d 554, 560 (7th Cir. 2019).

² The Court is not concluding that comments such as "bitch" or "girl" do not have racial undertones, but instead, that these comments were unrelated to the September 23 incident.

Next, evidence in the record shows that once management found out about the September 23 incident, it immediately initiated an investigation, thus there is no basis for employer liability. *See Hunt*, 931 F.3d at 630 (“a prompt investigation is the hallmark of a reasonable corrective action.”) (citation omitted). Specifically, Hearn’s supervisor interviewed her, along with seven other employees. Hearn admits at her deposition that her supervisor interviewed her twice about the incident, one time with her union steward. That her supervisor only asked her about the video taken outside the storeroom, as Hearn contends, does not establish that management did not investigate the incident, especially because other evidence in the record shows that her supervisor asked numerous individuals about the incident in the storeroom, not just the interaction outside the storeroom caught by the security camera.

Hearn brings additional claims in her response brief, including that she was constructively discharged because she retired five years before she had planned, and that Hendrick’s created a hostile work environment in 2013. Hearn has failed to exhaust these claims because plaintiffs who file employment discrimination lawsuits in federal court may only bring claims that were included in their EEO filings or claims that are related to those allegations. *Chaidex v. Ford Motor Co.*, 937 F.3d 998, 1004 (7th Cir. 2019). Hearn’s EEO claim for investigation included the hostile work environment claim based on the September 23, 2016 incident, not her retirement in July 2017 or any alleged harassment in 2013. Moreover, Hearn explained at her deposition why she retired early, namely, she did not want to fight with Hendricks based on Hendrick’s bullying her.

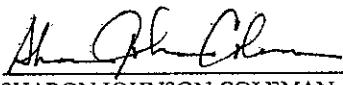
In the end, Hendricks and Hearn had a contentious co-worker relationship that may have had racial undertones, but Hearn’s deposition testimony reveals that any such racial undertones were not directly related to the September 23 incident. It appears that Hendricks’ conduct created an unpleasant and uncomfortable workplace for Hearn, but without evidence that the harassment that

took place on September 23 was based on her race, Hearn's Title VII hostile work environment claim lacks merit.

Conclusion

Based on the foregoing, the Court grants defendant's summary judgment motion [53]. Civil case terminated.

IT IS SO ORDERED.

Entered: 
SHARON JOHNSON COLEMAN
United States District Court Judge

DATED: 3/22/2021