

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**
Southern Division

<p>SUSAN WILLIAMS,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p>v.</p> <p>SILVER SPRING VOLUNTEER FIRE DEPARTMENT,</p> <p style="padding-left: 40px;">Defendant.</p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p style="text-align: right;">Case No.: GJH-13-02514</p>
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MEMORANDUM OPINION

This is a sex discrimination and retaliation case brought by Susan Williams (“Williams”) against the Silver Spring Volunteer Fire Department (“the Fire Department”) for purported violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000-e *et seq.*, and the Maryland Fair Employment Practices Act (“FEPA”), Md. Code Ann., State Gov’t, §§20-601 *et seq.* and the Maryland Human Rights Act (“MHRA”), §§20-001 *et seq.* This Memorandum Opinion and accompanying Order address the Fire Department’s Motion for Summary Judgment, ECF No. 16, and its Motion to Strike Certain Exhibits Attached to Williams’ Opposition, ECF No. 25. A hearing is not necessary. *See* Loc. R. 105.6 (Md.). For the reasons stated below, the Fire Department’s Motion for Summary Judgment is GRANTED, in part, and DENIED, in part. The Fire Department’s Motion to Strike is DENIED.

I. BACKGROUND

The Fire Department is an organization of volunteer firefighters and emergency medical technicians who, having met the State of Maryland’s and Montgomery County’s training standards, provide emergency medical, fire, and rescue services to the Silver Spring area. *See*

ECF No. 16-7 at ¶ 2. In October 2007, Williams became a volunteer member of the Fire Department where she performed services as an Emergency Medical Technician (“EMT”). *See* ECF No. 1 at ¶ 18. Williams alleges that as a volunteer EMT, she “received some monetary compensation and received time-based status for each year she worked for [the Fire Department], including monthly monetary awards, Maryland Income Tax credits, Maryland property tax credits, and received a minimum [Length of Service Award Program] payment of \$300.00 per year.” *Id.* at ¶ 23. Although the parties dispute whether Williams actually received any monetary compensation for her service as a volunteer EMT, including the receipt of any Length of Service awards, it is not disputed that volunteers, like Williams, are eligible to receive certain fringe benefits, such as disability benefits, death benefits, and survivor benefits. *See* ECF No. 22-22.

From the time Williams started volunteering in 2007 through early 2008, Williams claims that she was supervised by Deputy Chief John Thompson (“Thompson”). *Id.* at ¶ 27. While the parties dispute the extent to which Thompson directly supervised Williams, there is at least some evidence that Thompson supervised her work to some degree. *See e.g.*, ECF No. 22-3 at 78:10-80:20; ECF No. 22 at 20-21; ECF No. 16-4 at 5-7. At the heart of Williams’ complaint are allegations that Thompson: (1) regularly made sexually suggestive comments to her; (2) touched her inappropriately; (3) engaged in stalker-like behavior; and (4) humiliated, degraded, and retaliated against her for exercising her Title VII rights. Specifically, Williams testified at her deposition about multiple examples of unwelcome sexual advances by Thompson. *See* ECF No. 22-2 at 219:4-12; 394:5-21; 398:6-399:6. For example, Williams described an incident in February 2008 when Thompson “grabbed [her] ass” and rubbed his legs against her. *See* ECF No. 22-1 at 113:8-115:8. Additionally, Williams testified about an incident that occurred on June 12, 2008 during a Fire Department Board meeting when Thompson, in uniform and in the

presence of numerous colleagues, walked over to where Williams was seated and began to straddle her waist and grind his pelvis on her. *See id.* at 130:17-22; 131:1-15; *see also* ECF No. 16-12 at 10-11. Williams also testified about other instances where Thompson engaged in stalker-like behavior by seeking her out at monthly Fire Department membership meetings so that he could sit next to her and rub his legs against her. *See* ECF No. 22-1 at 145:19-148:14. When Williams would move away from Thompson, or otherwise tell him to stop, she testified that Thompson would continue to engage in the unwanted touching. *See id.* at 187:22-19. Williams also testified about how Thompson would make comments about her physical appearance. *See id.* at 194:12-21. Finally, Williams testified about an incident that occurred at a January 4, 2010 monthly membership meeting where Thompson publicly berated her for filing an EEOC complaint. *See* ECF No. 22-1 at 161:6-163:10. This shaming occurred in the presence of Williams' colleagues and persisted despite efforts by Thompson's superiors to stop his verbal attack. *See* ECF No. 22-9; *see also* ECF No. 22-10.

On July 27, 2008, Williams complained to one of her superiors, Captain Howard, about Thompson's conduct. *See* ECF No. 22-2 at 309:16-21. The matter was quickly referred to Battalion Chief Mark Davis, who initiated an internal investigation. *See id.* at 137:15-22; 138:1-17; *see also* ECF No. 16-2 at ¶ 10. As a result of the investigation, Thompson was verbally reprimanded by Fire Chief McGary, who also instructed him not to interact with Williams. *See* ECF No. 16-4 at 15-16; *see also* ECF No. 16-7 at ¶ 11. Despite the Fire Department's efforts, however, Thompson continued to make unwelcome remarks to Williams and took hostile actions against her such as purposefully parking his car to block her car in a parking spot. *See* ECF No. 16-13 at 219:18-225:20. When the alleged harassment continued, Williams reported her concerns to members of the Fire Department's Board. *See* ECF No. 22-2 at 243:7-252:20. Despite the

renewed complaints, Williams contends that the harassment continued and the Fire Department did not do anything to stop it. Indeed, the Fire Department continued to assign shifts to Williams that might overlap with Thompson's shifts, despite Fire Chief McGary's instruction to Thompson to not interact with Williams. ECF No. 23-5. Ultimately, Williams filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") on April 7, 2009. *See* ECF No. 16-14. When the harassment allegedly continued, Williams petitioned the District Court of Maryland for Montgomery County for a Peace Order on January 7, 2010, which was granted. *See* ECF No. 16-15; *see also* ECF No. 23-7. Williams also contends that as a result of her decision to complain about Thompson's harassment, she was retaliated against by being reassigned to a lower membership tier at the Fire Department, by being restricted to certain work locations, by being denied training opportunities, and by being verbally attacked by Thompson. *See* ECF No. 1 at ¶¶ 72-78, 81-83; *see also* ECF No. 22 at 28-29.

On May 29, 2013, Williams received the EEOC's Notice of Right to Sue. *See* ECF No. 1 at ¶ 13. On August 28, 2013, Williams filed suit in this Court against the Fire Department claiming that she was the victim of unlawful sex-based discrimination (hostile work environment, *quid pro quo*, and disparate treatment) as well as retaliation for engaging in protected activity. *See id.* The Fire Department has filed a motion for summary judgment and a motion to strike that is currently before the Court. For the reasons discussed more fully below, the motion for summary judgment is granted, in part, and denied, in part, and the motion to strike is denied.

II. STANDARD OF REVIEW

Summary judgment is proper if there are no issues of material fact and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322

(1986); *Francis v. Booz, Allen & Hamilton, Inc.*, 452 F.3d 299, 302 (4th Cir. 2006). A material fact is one that “might affect the outcome of the suit under the governing law.” *Spriggs v. Diamond Auto Glass*, 242 F.3d 179, 183 (4th Cir. 2001) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A dispute of material fact is only “genuine” if sufficient evidence favoring the non-moving party exists for the trier of fact to return a verdict for that party. *Anderson*, 477 U.S. at 248-49. However, the nonmoving party “cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another.” *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1986). The Court may only rely on facts supported in the record, not simply assertions in the pleadings, in order to fulfill its “affirmative obligation . . . to prevent ‘factually unsupported claims or defenses’ from proceeding to trial.” *Felty v. Grave–Humphreys Co.*, 818 F.2d 1126, 1128 (4th Cir. 1987). When ruling on a motion for summary judgment, “[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in [her] favor.” *Anderson*, 477 U.S. at 255.

III. DISCUSSION

A. Preliminary Issues

The Fire Department has raised several preliminary issues that the Court must address before turning to the substance of its motion for summary judgment. The first issue concerns a motion to strike filed by the Fire Department that seeks to exclude certain exhibits from the Court’s consideration. *See* ECF No. 25. The second issue concerns whether Williams, a volunteer firefighter who receives no direct remuneration but who is otherwise entitled to certain fringe benefits, is a covered “employee” under Title VII. *See* ECF No. 16-4 at 25-27; *see also* ECF No. 22 at 1-2, 11-13. The third issue concerns the scope of discriminatory conduct that the

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