IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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| DESIREE JORDAN-PHILADELPHIA,<br><br>Plaintiff,<br><br>v.<br><br>WELLSTAR ATLANTA MEDICAL CENTER, INC.,<br><br>Defendant. | CIVIL ACTION FILE NO.<br>1:19-cv-00116-LMM-LTW |

**MAGISTRATE JUDGE'S FINAL REPORT AND RECOMMENDATION**

Plaintiff Desiree Jordan-Philadelphia filed the above-styled action on January 7, 2019. [Doc. 1]. Plaintiff's Amended Complaint, which was filed on May 16, 2019, is the operative pleading in this case. [Doc. 9]. Plaintiff's remaining claims against Defendant Wellstar Atlanta Medical Center, Inc. ("Wellstar") are for national origin discrimination and retaliation brought pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. § 2000e, *et seq.*[1] [Docs. 9, 18, 21]. This case is presently before the Court on a Motion for Summary Judgment [Doc. 49] filed

[1] Plaintiff originally asserted claims based on the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. § 629, *et seq.*; however, those claims were dismissed. [Docs. 2, 9, 18, 21].

by Plaintiff and a Motion for Summary Judgment [Doc. 51] filed by Defendant. The parties' motions are brought pursuant to Federal Rule of Civil Procedure 56.

## I. FACTS

The Court's local rules require the movant for summary judgment to provide a "separate, concise, numbered statement of the material facts to which the movant contends there is no genuine issue to be tried." LR 56.1(B)(1), N.D. Ga. "The Court will not consider any fact . . . set out only in the brief and not in the movant's statement of undisputed facts." Id. In addition, Local Rule 56.1 states:

> This Court will deem each of the movant's facts as admitted unless the respondent: (i) directly refutes the movant's fact with concise responses supported by specific citations to evidence (including page or paragraph number); (ii) states a valid objection to the admissibility of the movant's fact; or (iii) points out that the movant's citation does not support the movant's fact or that the movant's fact is not material or otherwise has failed to comply with the provisions set out in LR 56.1(B)(1).

LR 56.1(B)(2)(a)(2), N.D. Ga. Compliance with Local Rule 56.1 is the "only permissible way . . . to establish a genuine issue of material fact" in response to the moving party's assertion of undisputed facts. Reese v. Herbert, 527 F.3d 1253, 1268 (11th Cir. 2008). Even *pro se* litigants are required to comply with Local Rule 56.1. See Williams v. Slack, 438 F. App'x 848, 850 (11th Cir. 2011).

In the present case, Defendant Wellstar filed a statement of undisputed material facts in support of its summary judgment motion, and Plaintiff filed a response to

Defendant's facts. [Doc. 51-2; Doc. 57-2]. Plaintiff, however, did not file a statement of material facts in support of her own summary judgment motion as required by Local Rule 56.1. [Doc. 49]. As a result, the Court will not consider facts offered by Plaintiff only in her brief.

In addition, the undersigned has attempted to decipher Plaintiff's assertions and to identify the evidence to which she refers. However, the Court "will not cull through the materials submitted by the Plaintiff searching for evidence which creates a disputed issue." Bozeman v. Per-Se Technologies, Inc., 456 F. Supp. 2d 1282, 1292 n.13 (N.D. Ga. 2006); accord Dickson v. Amoco Performance Products, Inc., 845 F. Supp. 1565, 1570 (N.D. Ga. 1994) ("It should be a party's responsibility to direct the Court's attention separately to each portion of the record which supports each of the party's distinct arguments."). With the foregoing caveats, the following facts are deemed to be true for the limited purpose of evaluating the parties' summary judgment motions. [Docs. 49, 51].

Wellstar Atlanta Medical Center is a medical facility located at 303 Parkway Drive, Atlanta, Georgia 30312. [Defendant's Statement of Material Facts ("DSMF") ¶ 1; Bickerstaff Declaration ("Dec.") ¶ 2]. Defendant Wellstar began operating the Atlanta Medical Center in 2016. [DSMF ¶ 6; Plaintiff's Deposition ("Pl. Dep.") at 7]. Wellstar is an equal opportunity employer which maintains an Anti-Harassment, Anti-

Sexual Harassment, and Professionalism Policy (Policy 2500). [DSMF ¶ 2; Bickerstaff Dec. ¶ 2, Ex. 1]. This policy prohibits any type of unlawful harassment, provides multiple avenues through which an employee can make a complaint about harassment, and prohibits retaliation against anyone who makes a complaint under the policy. [DSMF ¶ 3; Morrison Dec. ¶ 2, Ex. 1].

Plaintiff Desiree Jordan-Philadelphia, whose national origin is Guyana, South America, began working at Wellstar Atlanta Medical Center in June 2015. [DSMF ¶¶ 5, 7; Pl. Dep. at 7-9]. Plaintiff was aware of Wellstar's policy prohibiting discrimination or harassment. [DSMF ¶ 4; Pl. Dep. at 17]. Plaintiff worked for Wellstar as a Patient Care Assistant ("PCA"). [DSMF ¶ 8; Pl. Dep. at 8, 13]. In this position, Plaintiff would perform such tasks as taking the patient's vitals and otherwise assisting the patient. [DSMF ¶ 9; Pl. Dep. at 12-13]. Three to five other PCAs worked the same shift as Plaintiff, depending on patient volume. [DSMF ¶ 10; Pl. Dep. at 13].

The first time Plaintiff felt harassed was in June 2016, after the Orlando night club shooting and after Plaintiff returned from vacation. [DSMF ¶ 11; Pl. Dep. at 26-27]. Plaintiff testified that a co-worker, Pat Lowe, told Plaintiff, "You should go back to your country." [DSMF ¶ 11; Pl. Dep. at 26-27]. Ms. Lowe did not make any other comments about Plaintiff's national origin. [DSMF ¶ 12; Pl. Dep. at 59, 60].

On or about November 15, 2017, Plaintiff filed a complaint with Wellstar's compliance hotline alleging "everyone" had assigned additional work to her and spoken "inappropriately" to her. [DSMF ¶ 22; Bickerstaff Dec. ¶ 3, Ex. 2]. Plaintiff contended this treatment was in retaliation for a previous complaint she filed. [DSMF ¶ 22; Bickerstaff Dec. ¶ 3, Ex. 2]. Senior Human Resources Consultant Laquana Ross investigated Plaintiff's complaint, including interviewing 13 employees. [DSMF ¶ 23; Bickerstaff Dec. ¶ 3, Ex. 2]. During these interviews, a number of other employees (including other PCAs) expressed similar concerns about staffing and teamwork. [DSMF ¶ 24; Bickerstaff Dec., Ex. 2]. As a result, Ross concluded that Plaintiff's complaints about those matters were valid, but not specific to her. [DSMF ¶ 24; Bickerstaff Dec., Ex. 2]. Ross's report shows that Plaintiff complained about the following: her co-workers would not assist her even when they were free; her co-workers would not respond when she greeted them; and certain technicians would leave feces and not clean the patients' rooms properly. [Bickerstaff Dec., Ex. 2]. Ross was unable to substantiate Plaintiff's complaint about co-workers speaking to her inappropriately, treating her differently, or assigning her additional job duties. [DSMF ¶ 25; Bickerstaff Dec., Ex. 2].

In January or February 2018, an unknown woman who was training in the Department for a day or two made an offensive comment to Plaintiff. [DSMF ¶ 13; Pl.

Dep. at 50-51, 54, 56]. Plaintiff testified, "She tell me, uh, you come from some country and you come in here for make mischief with these people."[2] [DSMF ¶ 13; Pl. Dep. at 50-51]. Plaintiff also testified, "She said, you always complaining, you come from some country, what you come here for cause problem with these people here. That's what she said." [DSMF ¶ 13; Pl. Dep. at 51]. The unknown individual was not an employee of Wellstar. [DSMF ¶ 15; Pl. Dep. at 52].

Plaintiff resigned her employment in September 2018. [DSMF ¶ 19; Pl. Dep. at 41]. Plaintiff testified, "I couldn't take the harassment anymore, so I just resigned from the position." [Pl. Dep. at 41]. Plaintiff submitted a letter of resignation and worked a two-week notice period. [DSMF ¶ 20; Pl. Dep. at 41-43]. Plaintiff found another job before she resigned. [DSMF ¶ 21; Pl. Dep. at 43]. After Plaintiff submitted her resignation, an employee named Ashley allegedly made an offensive comment to Plaintiff the day before her last day of employment. [DSMF ¶¶ 16, 17; Pl. Dep. at 57-59]. Plaintiff testified, "[Ashley] tell me she didn't know why I come here so I causing come – I causing problem, was go back – why I come – what country I come from and I come here for cause problem." [Pl. Dep. at 57]. Plaintiff did not report this comment to anyone. [DSMF ¶ 18; Pl. Dep. at 58-59].

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[2] The Court has not edited or corrected any quotations from Plaintiff's deposition.

Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") on October 4, 2018. [DSMF ¶ 30; Doc. 51, Ex. A]. Plaintiff alleged in the Charge that she had been subjected to retaliation and national origin discrimination. [Doc. 51, Ex. A]. Plaintiff wrote, "I believe that I have been discriminated against because of my national origin (Guyanese), in violation of Title VII of the Civil Rights Act of 1964, as amended." [Id.]. Plaintiff asserted that she filed an EEOC Charge in July 2016 and that she had made several complaints to Human Resources and her supervisor. [Id.]. Plaintiff alleged that co-workers and nurses called her names and bullied her, that she was assigned more patients than her co-workers, and that she was constructively discharged on September 17, 2018. [Id.]. When asked to identify the dates discrimination took place, Plaintiff stated that the earliest date was February 1, 2018, and the latest date was September 17, 2018. [Id.].

While Plaintiff was employed with Wellstar, she received a pay raise every year and her pay was never reduced. [DSMF ¶¶ 26, 27; Pl. Dep. at 71, 96]. The number of hours Plaintiff worked each week also was never reduced. [DSMF ¶ 28; Pl. Dep. at 96]. Plaintiff's job duties remained the same throughout her employment. [DSMF ¶ 29; Pl. Dep. at 96].

Additional facts will be set forth as necessary during discussion of Plaintiff's claims.

## II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when "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). The movant bears the initial responsibility of asserting the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Apcoa, Inc. v. Fidelity Nat'l Bank, 906 F.2d 610, 611 (11th Cir. 1990). The movant is not required, however, to negate its opponent's claim; the movant may discharge its burden by merely "'showing' – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party's case." Celotex, 477 U.S. at 325. After the movant has carried its burden, the non-moving party is then required to "go beyond the pleadings" and present competent evidence designating specific facts showing that there is a genuine disputed issue for trial; the non-moving party may meet its burden through affidavit and deposition testimony, answers to interrogatories, and the like. Id. at 324 (quoting Fed. R. Civ. P. 56(e)).

While the court is to view all evidence and factual inferences in a light most favorable to the non-moving party, Nat'l Parks Conservation Ass'n v. Norton, 324 F.3d 1229, 1236 (11th Cir. 2003), "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact,"

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis in original). A fact is material when it is identified as such by the controlling substantive law. Id. at 248. Moreover, the non-movant "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, 586-87 (1986) (citations omitted). Instead, "the nonmoving party must present evidence beyond the pleadings showing that a reasonable jury could find in its favor." Fickling v. United States, 507 F.3d 1302, 1304 (11th Cir. 2007) (citing Walker v. Darby, 911 F.2d 1573, 1577 (11th Cir. 1990)). An issue is not genuine if it is unsupported by evidence, or if it is created by evidence that is "merely colorable" or is "not significantly probative." Anderson, 477 U.S. at 249-50. Thus, the Federal Rules mandate the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of *every* element essential to that party's case on which that party will bear the burden of proof at trial. Celotex, 477 U.S. at 322.

## III. DISCUSSION

Plaintiff asserts that Defendant Wellstar violated Title VII by subjecting her to national origin discrimination and retaliation. [Docs. 9, 18, 21]. Specifically, Plaintiff alleges that she was subjected to a hostile work environment when Wellstar employees humiliated her by making offensive comments and gave her harsh work assignments.

[Doc. 9]. Plaintiff also alleges that the work environment was so hostile that she was forced to resign, that is, she was constructively discharged. [Id.]. According to Plaintiff, Defendant took these actions against her based on her complaints of discrimination and the fact that she is from Guyana. [Id.]. Defendant Wellstar argues in its summary judgment motion that Plaintiff's Title VII claims should be dismissed, while Plaintiff argues that summary judgment should be granted in her favor on her Title VII claims. [Docs. 49, 51].

**A. Hostile Work Environment**

Title VII makes it unlawful for an employer "to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . national origin." 42 U.S.C. § 2000e-2(a)(1). Title VII also makes it unlawful "for an employer to discriminate against any of his employees or applicants for employment . . . because he has opposed any practice made an unlawful practice" by the statute. 42 U.S.C. § 2000e-3(a). To establish a *prima facie* case of discriminatory hostile work environment, Plaintiff must show that (1) she belongs to a protected group; (2) she was subjected to unwelcome harassment; (3) the harassment was based upon a protected characteristic of the employee, in this case, national origin; (4) the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and to create a discriminatorily abusive

working environment; and (5) the defendant is responsible for such environment under either a theory of vicarious or of direct liability. See Walton v. Johnson & Johnson Servs., Inc., 347 F.3d 1272, 1279-80 (11th Cir. 2003). "To prevail on her retaliatory hostile work environment claim, Plaintiff must show that: (1) she engaged in protected activity, (2) after doing so, she was subjected to unwelcome harassment, (3) her protected activity was a 'but for' cause of the harassment, and (4) the harassment was sufficiently severe or pervasive to alter the terms of her employment." Baroudi v. Secretary, United States Dep't of Veterans Affairs, 616 F. App'x 899, 904 (11th Cir. 2015) (citing Gowski v. Peake, 682 F.3d 1299, 1311-12 (11th Cir. 2012) (per curiam)).

Plaintiff is able to establish the first three elements in support of her discriminatory hostile work environment claim because she is from Guyana and she was subjected to unwelcome comments about her national origin. Plaintiff is also able to establish the first two elements of her retaliatory hostile work environment claim because she engaged in protected activity and was subsequently subjected to unwelcome harassment. However, the Court finds that Plaintiff is unable to establish a *prima facie* case of hostile work environment based on either national origin or retaliation because she cannot show that she was subjected to harassment that was sufficiently severe or pervasive to alter the terms or conditions of her employment.

An employer violates Title VII by "creating or condoning an environment at the workplace which significantly and adversely affects an employee . . . , regardless of any other tangible job detriment to the protected employee." Henson v. City of Dundee, 682 F.2d 897, 901 (11th Cir. 1982). "Either severity *or* pervasiveness is sufficient to establish a violation of Title VII." Reeves v. C.H. Robinson Worldwide, Inc., 594 F.3d 798, 808 (11th Cir. 2010) (emphasis in original). "Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment–an environment that a reasonable person would find hostile or abusive–is beyond Title VII's purview." Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993).

The Eleventh Circuit has held: "To evaluate whether a work environment is objectively hostile, we consider four factors: (1) the frequency of the conduct; (2) the severity of the conduct; (3) whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interferes with the employee's job performance." Adams v. Austal, U.S.A., L.L.C., 754 F.3d 1240, 1250-51 (11th Cir. 2014) (citation and internal quotation marks omitted); accord Fortson v. Carlson, 618 F. App'x 601, 606 (11th Cir. 2015). In light of these four factors, courts "ask whether, under the totality of the circumstances, a reasonable person would find the harassing conduct severe or pervasive to alter the terms or conditions of the plaintiff's employment." Adams, 754 F.3d at 1251 (citation

omitted). The Supreme Court has "made it clear that conduct must be extreme to amount to a change in the terms and conditions of employment[.]" Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998).

Plaintiff has made vague allegations in her summary judgment motion that her co-workers called her names, told her to go back to her country, and took actions such as placing feces on the floor. [Doc. 49 at 4-5]. However, Plaintiff has not offered any specifics about when these things happened, how often the incidents occurred, or who made the alleged comments or took the alleged actions. [Id.]. Plaintiff also has provided few citations to evidence in the record. [Id.].

Another problem with both Plaintiff's summary judgment motion and her response brief is that she has failed to address her hostile work environment claims in a coherent manner. [Doc. 49; Doc. 57-1]. In her response brief addressing the severity and pervasive of the alleged harassment, Plaintiff writes that her "case in chief does not hinge on 'hostile work environment' but specifically and particularly charges Federal violations of 'national origin' and 'discrimination.'" [Doc. 57-1 at 4]. Later in her brief, Plaintiff writes, "Any attack on national origin, and misconduct of discrimination, are both Severe and or Pervasive and are not protected by any statute of limitation." [Id.]. Confusing statements such as these have made it extremely difficult for the undersigned to decipher Plaintiff's arguments.

With regard to the vast majority of incidents about which Plaintiff complains, she has not cited to evidence showing that she was harassed because of her national origin or protected activity. "Title VII does not prohibit all verbal or physical harassment in the workplace; it is directed only at" retaliation and discrimination based on a protected characteristic. Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 80 (1998). Although Plaintiff complains that her co-workers would not assist her and were rude to her, and that certain technicians would not clean patients' rooms properly, she has failed to offer evidence which would permit a reasonable factfinder to conclude that her protected activity was a "but for" cause of the harassment or that these actions were based upon her national origin.

The incidents alleged by Plaintiff which support her harassment claims and are properly before the Court pursuant to Local Rule 56.1 show the following. Plaintiff first felt harassed in June 2016, after she returned from vacation, when co-worker Pat Lowe told Plaintiff, "You should go back to your country." [DSMF ¶ 11; Pl. Dep. at 26-27]. Approximately 17 months later, on November 15, 2017, Plaintiff filed a complaint with Wellstar's compliance hotline alleging "everyone" had assigned additional work to her and spoken "inappropriately" to her in retaliation for a previous complaint she filed. [DSMF ¶ 22; Bickerstaff Dec. ¶ 3, Ex. 2]. The report from Human Resources Consultant Laquana Ross noted that Plaintiff complained her co-workers

would not assist her and would not respond when she greeted them, and certain technicians would leave feces and not clean patients' rooms properly. [Bickerstaff Dec., Ex. 2]. A few months later, in January or February 2018, an unknown woman who was not an employee of Wellstar but was training in the Department for a day or two told Plaintiff, "You come from some country and you come in here for make mischief with these people." [DSMF ¶ 13, 15; Pl. Dep. at 50-52, 54, 56]. Plaintiff also testified, "[The woman] said, you always complaining, you come from some country, what you come here for cause problem with these people here." [DSMF ¶ 13; Pl. Dep. at 51]. After Plaintiff submitted her resignation in September 2018, an employee named Ashley told Plaintiff, "[S]he didn't know why I come here so I causing come – I causing problem, was go back – why I come – what country I come from and I come here for cause problem." [DSMF ¶¶ 16, 17; Pl. Dep. at 57-59]. The Court finds that these incidents are insufficient to create a genuine issue of material fact in support of Plaintiff's hostile work environment claim.[3]

[3] Plaintiff filed her EEOC Charge on October 4, 2018, and Defendant argues the only incident occurring within the 180-day period prior to the filing of the Charge was the comment made in September 2018. [DSMF ¶ 30; Doc. 51, Ex. A; Doc. 51-1 at 5-6]. The Court finds, however, that all of the complained-of acts listed *supra* may be considered in evaluating Plaintiff's hostile work environment claim. The Supreme Court has explained that hostile work environment claims "are based on the cumulative effect of individual acts" which may occur "over a series of days or perhaps years" rather than on any particular day. Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 115 (2002). While "a single act of harassment may not be actionable on its own," the

As the Supreme Court has made clear, Title VII is violated 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[.]'" Harris, 510 U.S. at 21 (quoting Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 65 (1986)). "But Title VII is not a general civility code; ordinary tribulations of the workplace, such as sporadic use of abusive language . . . cannot form the basis of a claim for actionable harassment or hostile work environment." Corbett v. Beseler, 635 F. App'x 809, 816 (11th Cir. 2015) (citation and internal quotation marks omitted). Plaintiff has pointed to nothing in the record which would support a finding that she endured harassment that rises to the level of severity necessary to create an objectively abusive work environment under Title VII.

The complained-of conduct also was not pervasive or frequent. The evidence shows that there were only three incidents when individuals (two co-workers and a

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effect of numerous acts may lead to a workplace that 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 115, 116 (citations and internal quotation marks omitted). The Supreme Court in Morgan held that as long as any act contributing to the Title VII hostile work environment claim occurs within the 180-day period prior to the filing of the EEOC charge, "the entire time period of the hostile environment may be considered by a court for the purposes of determining liability." Id. at 117. Because the alleged comment made in September 2018 was within the 180-day period prior to the filing of Plaintiff's EEOC charge, the entire time period of the alleged hostile work environment will be considered by the Court for purposes of evaluating Plaintiff's claim.

non-employee) allegedly told Plaintiff that she should "go back to her country" or something similar. These incidents occurred in June 2016, early 2018, and September 2018, and they were not pervasive as defined by Eleventh Circuit caselaw. In Guthrie v. Waffle House, Inc., 460 F. App'x 803, 807 (11th Cir. 2012), the court found that "a few dozen comments or actions . . . spread out over a period of eleven months" were not sufficiently frequent to support the plaintiff's harassment claim. The Guthrie court contrasted this insufficient level of frequency with cases where the Eleventh Circuit found a hostile work environment. Id. Specifically, the court noted that in Reeves, 594 F.3d at 804, obscene and derogatory comments about the plaintiff and women in general were made "on a daily basis[,]" and in Dees v. Johnson Controls World Services, Inc., 168 F.3d 417, 418 (11th Cir. 1999), there was "almost-daily abuse." Guthrie, 460 F. App'x at 807 (internal quotation marks omitted). The Guthrie court also pointed to the Eleventh Circuit's decision in Miller v. Kenworth of Dothan, Inc., 277 F.3d 1269, 1276 (11th Cir. 2002), which found the harassing conduct to be sufficiently frequent where it occurred "three to four times a day" during a one month period. Guthrie, 460 F. App'x at 807 (internal quotation marks omitted). In the present case, the conduct about which Plaintiff complains was nowhere near this level of pervasiveness. Plaintiff worked at Wellstar Atlanta Medical Center for more than three years—from June 2015 until September 2018—and her allegations of being told to "go

back to her country" a few times would not support a finding that the alleged harassment was frequent or pervasive.

Plaintiff has made a brief assertion in her response that after she complained of harassment, her supervisor gave her heavier work assignments and compelled her to work more than one weekend per month. [Doc. 49 at 6]. Plaintiff apparently has made this assertion in support of her retaliatory hostile work environment claim. However, Plaintiff's allegation is not properly before the Court because she did not assert this fact in her response to Defendant's statement of material facts and, as previously noted, she did not file her own statement of facts in support of either her response brief or her own summary judgment motion. As a result, Defendant has had no opportunity to address Plaintiff's assertion on this issue and it need not be considered by the Court. See LR 56.1, N.D. Ga.

Even assuming *arguendo* that Plaintiff's allegations about assignments and schedules were properly before the Court, they would fail to create a genuine issue of material fact with regard to her Title VII claims. Plaintiff has cited to no record evidence in support of her claim about job duties and she has failed to offer anything but a vague and conclusory allegation that she was given "heavier work assignments." [Doc. 49 at 6]. Plaintiff also has offered no details regarding when this occurred or what kind of assignments she was given, and she has failed to present any evidence

which would permit a reasonable factfinder to conclude that such actions were taken against her because of her national origin or because she complained about discrimination. [Id.]. Plaintiff also has made a vague assertion that she was sometimes required to "work two weekends a month" when "everybody else works one weekend a month." [Doc. 49 at 6; Pl. Dep. at 83]. However, Plaintiff has not specified a time period when these incidents occurred, and she has not identified any similarly situated employees who were allegedly given preferential treatment in terms of scheduling. Furthermore, the record reveals that while Plaintiff was employed with Wellstar, the number of hours she worked each week was never reduced and her job duties remained the same. [DSMF ¶¶ 26-29; Pl. Dep. at 71, 96].

For these reasons, the Court finds that Plaintiff has failed to offer evidence which would permit a reasonable factfinder to conclude that Plaintiff was subjected to harassment that was sufficiently severe or pervasive to alter the terms or conditions of her employment. Therefore, Plaintiff is unable to establish a prima *facie case* of hostile work environment. It is **RECOMMENDED** that Plaintiff's summary judgment motion [Doc. 49] be **DENIED** and that Defendant's summary judgment motion [Doc. 51] be **GRANTED** on Plaintiff's Title VII claims for hostile work environment based on national origin and retaliation.

**B. Constructive Discharge**

Although Plaintiff resigned her employment with Wellstar in September 2018 after she found another job, she alleges that she was constructively discharged from her position. [DSMF ¶ 19; Pl. Dep. at 41]. Plaintiff testified, "I couldn't take the harassment anymore, so I just resigned from the position." [Pl. Dep. at 41]. Plaintiff submitted a letter of resignation and worked a two-week notice period. [DSMF ¶ 20; Pl. Dep. at 41-43].

"To establish a constructive discharge, a plaintiff must show that working conditions were so intolerable that a reasonable person in her position would have been compelled to resign." Menzie v. Ann Taylor Retail Inc., 549 F. App'x 891, 894-95 (11th Cir. 2013) (citation and internal quotation marks omitted). This is an objective inquiry. See Hipp v. Liberty Nat. Life Ins. Co., 252 F.3d 1208, 1231 (11th Cir. 2001) ("In evaluating constructive discharge claims, we do not consider the plaintiff's subjective feelings."). The Eleventh Circuit has explained that "[t]his objective standard sets a high threshold; it requires a plaintiff to show harassment that is more severe or pervasive than the minimum level required to establish a hostile working environment." Menzie, 549 F. App'x at 894-95 (citation omitted).

As previously discussed, Plaintiff "failed to meet even the standard for a hostile work environment. She cannot, therefore, meet the higher standard for constructive

discharge." Barrow v. Georgia Pacific Corp., 144 F. App'x 54, 59 (11th Cir. 2005). The Court, therefore, **RECOMMENDS** that Plaintiff's summary judgment motion [Doc. 49] be **DENIED** and that Defendant's summary judgment motion [Doc. 51] be **GRANTED** on Plaintiff's Title VII constructive discharge claim.

## IV. CONCLUSION

Based on the foregoing reasons and cited authority, the Court **RECOMMENDS** that Defendant Wellstar's Motion for Summary Judgment [Doc. 51] be **GRANTED** on all of Plaintiff's claims and that this action be **DISMISSED WITH PREJUDICE**. The Court further **RECOMMENDS** that Plaintiff Jordan-Philadelphia's Motion for Summary Judgment [Doc. 49] be **DENIED**.

As this is a Final Report and Recommendation and there are no other matters pending before this Court, the Clerk is directed to terminate the reference to the undersigned.

**SO ORDERED AND REPORTED AND RECOMMENDED**, this 25 day of March, 2021.

Linda T. Walker

LINDA T. WALKER
UNITED STATES MAGISTRATE JUDGE