

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
Urbana Division

US EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

RENT-A-CENTER EAST INC.,

Defendant.

Case No. 16-2222

ORDER

This case is before the Court on the Motion to Quash Eight Subpoenas and for a Protective Order (#28) filed by Plaintiff, US Equal Employment Opportunity Commission ("EEOC"). Defendant, Rent-A-Center East, Inc. ("Defendant") filed its Response to Plaintiff's Motion to Quash and Motion for Protective Order (#29). For the reasons discussed below, the EEOC's Motion (#28) is DENIED.

I. Background

The EEOC filed its Complaint on July 18, 2017 alleging that Defendant violated Title VII when it discharged Megan Kerr. Kerr was employed by Defendant beginning in May 2005 and was an assistant manager at Defendant's Rantoul, Illinois location from July 2010 until July 2014. Defendant discharged Kerr on July 21, 2014. The EEOC alleges that Defendant terminated Kerr because she is transgender, while Defendant maintains that it terminated Kerr for using a company vehicle for personal reasons in violation of company policy.

At the request of the parties, the Court held a telephone status conference on March 14, 2017, where the EEOC informed the Court that it sought to quash eight subpoenas that Defendant intended to serve. After hearing from both parties, the Court instructed the EEOC to file the instant motion. The EEOC's Motion seeks to quash third-party subpoenas to four of Kerr's former employers, Kerr's current employer, two

schools she attended, and the Village of Rantoul Department of Public Works, which provided electric and water services for the tattoo business Kerr used to operate. The EEOC's Motion also seeks a protective order barring Defendant from seeking Kerr's military records from her service from 1997-2001.

II. Legal Standard

Pursuant to Rule 45, a party has a general right to subpoena any person to produce designated documents for inspection and copying. FED. R. CIV. P. 45. This right is not limitless, however. Generally, a party is only permitted to obtain discovery regarding a nonprivileged matter "that is relevant to any party's claim or defense and proportional to the needs of the case." FED. R. CIV. P. 26(b)(1). Specifically, Rule 45 provides several express protections for individuals subject to subpoena. *Davis v. City of Springfield*, 2009 WL 910204, * 4-5 (C.D. Ill. 2009). A court may quash or modify a subpoena if it "requires disclosure of privileged or other protected matter and no exception or waiver applies, or subjects a person to undue burden." FED. R. CIV. P. 45(c)(3)(A)(iii)-(iv).

The Court may also issue a protective order pursuant to Rule 26(c). "[T]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." FED. R. CIV. P. 26(c). "To determine whether a party has shown good cause, the district court must balance the parties' interests, taking into account the importance of disclosure to the nonmovant and the potential harm to the party seeking the protective order." *Calhoun v. City of Chicago*, 273 F.R.D. 421, 422 (N.D. Ill. 2011). Rule 26(c) gives the Court the power to forbid disclosure or discovery, to specify the terms for disclosure or discovery, and to forbid the inquiry into certain matters. FED. R. CIV. P. 26(c)(1)(A-D).

III. Analysis

a. Military Records

The EEOC asks the Court to enter a protective order barring Defendant's request that Kerr authorize the release of her Army service records from 1997-2001. Kerr was involved in a proceeding under the Don't Ask Don't Tell policy while she was in

service. The EEOC argues that the records include sensitive matters which Kerr wishes to keep private.

While Kerr may wish to keep these records private, Kerr has admittedly misrepresented her success in the Army. Kerr submitted resumes to employers stating that she was conferred both an army service ribbon and an army combat ribbon, but later admitted in her deposition that she never received an army combat ribbon. Further, Kerr's resume stated that she reached a military rank and pay grade of E-6. However, Kerr's discharge form reflects a pay grade of E-4. Kerr clarified this inconsistency at her deposition by stating that she was "field promoted" to an E-6 but then was demoted to an E-4.

The Court recognizes Kerr's interest in keeping her military records private and the Rules permit the Court to enter a protective order to shield Plaintiff from embarrassment. "A generalized fear of embarrassment, however, is not good cause for a protective order. Rather, 'an applicant for a protective order whose chief concern is embarrassment must demonstrate that the embarrassment will be particularly serious' before a protective order will issue." *U.S. v. Gaynor*, 2002 WL 411608 (N.D. Ill. 2002)(citing *Cippollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986)). Further, the Court "must balance the interests involved: the harm to the party seeking the protective order and the importance of disclosure to the public." *Wiggins v. Burge*, 173 F.R.D. 226, 229 (N.D. Ill. 1997).

Defendant has an interest in determining if Kerr misrepresented her military accomplishments on the resumes she submitted to employers after being terminated from Rent-A-Center. Kerr acknowledged that she misrepresented some of her military accomplishments, and Defendant therefore has good reason to suspect that she might still be misrepresenting her paygrade while in service. These misrepresentations could have directly impacted her ability to find work after being terminated from Rent-A-Center. Because of Kerr's past misrepresentations, the only way for Defendant to verify her accomplishments on these resumes is to review the official records. The EEOC's motion for a protective order is DENIED.

b. Former Employer - Demon Dawgs

Kerr was employed at Demon Dawgs during July 2016, a period for which the EEOC is seeking lost wages. The Subpoena seeks:

any and all employment file records, including but not limited to, personnel records, applications for employment, correspondence and/or memoranda, records relating to reviews and/or promotions, days absent and/or time lost, pre-employment physical(s), post-employment physical(s), post-offer physical(s), employment history, correspondence, medical records, letters of recommendation, reasons for termination or leaving, reprimands, time cards, time sheets, records relating to lost wages, workers' compensation records and/or claims, insurance records and/or claims, payroll records, W-2 forms, W-4 forms, and any other records contained in your office(s) pertaining to the employment of [Kerr].

Courts have quashed subpoenas to obtain employment records from a plaintiff's employer when finding that the subpoenas were "mere fishing expeditions." See *Powell v. Regency Hosp. of Northwest Indiana, LLC*, 2011 WL 1157528 (N.D. Ind. 2011); *Woods v. Fresenius Medical Care Group of North America*, 2008 WL 151836 (S. D. Ind. 2008). However, courts have allowed the subpoena when the information "is reasonably calculated to produce information relevant to the issue of mitigation of damages." *Langen v. Wells Fargo Bank, N.A.*, 2012 WL 4473305 (C.D. Ill. 2012).

Kerr's income during this time is directly related to the EEOC's claim for lost wages and Kerr's mitigation of damages. The EEOC notes that it submitted verified tax transcripts for 2013, 2014, and 2015 and W-2 Forms and 1099 information for 2016. Therefore, the EEOC argues that Defendant is able to determine any wages earned during the backpay period. The EEOC has been unable to provide 2016 tax transcripts from the IRS because those reports are not yet available. Kerr worked at Demon Dawgs in 2016, and therefore, Defendant has only received tax information provided and verified by Kerr. And in the past, Kerr lied about her position with Demon Dawgs and even redacted pay stubs submitted to state court. Defendant has good reason to

question the validity of the information provided by Kerr relating to her employment with Demon Dawgs. The EEOC's motion to quash the subpoena directed to Demon Dawgs is DENIED.

c. Current Employer - Guitar Center

Defendant seeks to serve a subpoena on Kerr's current employer, a musical instrument retailer. The proposed subpoena is substantially similar to the subpoena listed above. Kerr began working for this current employer on or around August 1, 2016. The EEOC originally sought lost wages for periods after August 1, 2016, but now seeks only lost wages from July 21, 2014, through July 31, 2016 ("Backpay Period"). The EEOC argues that the information sought in the subpoena is duplicative as it has already provided Kerr's relevant W-2 forms and 1099 information for the period for which it is seeking lost wages. Further, the EEOC argues that the issuance of this subpoena would cause an undue burden as it will inform Kerr's current employer that she is involved in litigation against her former employer.

Defendant argues that the information sought in the subpoena is relevant to Kerr's claim for emotional distress damages. Defendant speculates that Kerr's claim for emotional distress damages may stem from her loss of career opportunities, benefits, income and job satisfaction. Defendant argues that Kerr's current salary, benefits, job performance, and promotional opportunities affect the amount of emotional distress that Kerr suffered due to her job loss at Rent-A-Center.

Due to Kerr's claim for emotional distress, Defendant has a right to obtain information that could possibly mitigate the distress suffered. Therefore, the EEOC's motion to quash the subpoena directed at the Guitar Center is DENIED.

d. Other Former Employers

The EEOC also seeks to quash subpoenas directed at three of Kerr's former employers. The proposed subpoenas are substantially similar to the subpoena listed above. Defendant's response states that Kerr claims to have been a co-owner or franchisee of each of these three businesses, but has been unable to support these claims. Defendant notes Kerr's alleged history of misrepresenting her military and

educational accomplishments and suggests that any misrepresentation by Kerr of her positions with these employers on her resume could have affected her ability to find employment.

The Court agrees that the information sought from Kerr's former employers is relevant to the issue of Kerr's ability to find work after her termination from Rent-A-Center. The EEOC's motion to quash the subpoenas directed at Kerr's former employers including Enzo's Pizza, FX Game Exchange, and CGX Console Game X Change is DENIED.

e. Schools

The EEOC seeks to quash subpoenas directed at two of Kerr's former schools. The subpoenas request any and all academic records pertaining to Kerr. One subpoena is directed to Moraine Valley Community College. Kerr's resume, used to obtain jobs after being terminated from Rent-A-Center, claims that she has a Bachelor of Arts from Moraine Valley Community College. But in her deposition, Kerr acknowledged that she never completed her degree. Kerr represented on her resume that she obtained a degree from this college, and later acknowledged that representation was false. This misrepresentation is relevant to Kerr's ability to find work after being terminated from Rent-A-Center.

The other subpoena is directed to Grayson County College. Kerr claims that she received an EMT and/or paramedic certificate from Grayson, and Defendant seeks to issue the subpoena to establish if Kerr actually obtained this certificate. Although the EEOC states that there is no evidence that Kerr's claim of an EMT/paramedic certificate is false, Kerr's employment history shows no evidence that she ever worked as a paramedic. This coupled with the other misrepresentations identified above, is sufficient. Also, Kerr's possession of an EMT/paramedic certificate is relevant to Kerr's duty to mitigate damages after being terminated.

Additionally, the Court finds no risk of undue burden or prejudice from seeking information from Kerr's former schools. The EEOC's motion to quash the subpoenas

directed at Moraine Valley Community College and Grayson County College is DENIED.

f. Village of Rantoul Department of Public Works

The EEOC also seeks to quash the subpoena to the Village of Rantoul Department of Public Works. The subpoena seeks documents related to the electricity and water services Rantoul provided to Kerr's tattoo parlor. Defendant argues that this information is relevant to Kerr's use of Rent-A-Center's truck for personal use (which Defendant claims is the reason for Kerr's termination). Defendant argues that it has evidence that Kerr's tattoo business closed sometime in the summer of 2014 and that Rantoul shut the power off to the business in August 2014. Defendant also suspects that Kerr moved during this summer. Because of these facts, Defendant alleges that Kerr may have used Rent-A-Center's truck for personal purposes during the 2014 summer and the utility records are relevant to establishing this.

Defendant maintains that it terminated Kerr because she used a company truck for personal use on July 20, 2014, during this same summer. Kerr claims that she used the truck for charitable purposes and she had permission to do so. The utility records are relevant to whether Kerr had a need to move personal belongings in July 2014, which may provide evidence relating to the central issue of Kerr's use of the truck. Therefore, the EEOC's Motion to quash the subpoena to the Village of Rantoul Department of Public Works is DENIED.

IV. Conclusion

For the reasons discussed above, the EEOC's Motion to Quash Eight Subpoenas and for a Protective Order (#28) is DENIED.

ENTERED this 5th day of April, 2017.

s/ERIC I. LONG
UNITED STATES MAGISTRATE JUDGE