

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 04 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

VICKI L. BENTZIEN,

Plaintiff - Appellant,

v.

CITY AND COUNTY OF HONOLULU,
EMERGENCY SERVICES
DEPARTMENT,

Defendant - Appellee.

No. 08-15910

D.C. No. 1:07-CV-00233-DAE-
BMK

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
David A. Ezra, District Judge, Presiding

Argued and Submitted May 13, 2009
Honolulu, Hawaii

Before: KOZINSKI, Chief Judge, BYBEE and CALLAHAN, Circuit Judges.

Title VII's "opposition" clause makes it "unlawful . . . for an employer to discriminate against any . . . employee[] . . . because he has opposed any practice made . . . unlawful . . . by this subchapter.'" *Crawford v. Metro. Gov't of Nashville*

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

& *Davidson County*, 129 S. Ct. 846, 850 (2009) (quoting 42 U.S.C. § 2000e-3(a)) (modification in original). Bentzien has not established a *prima facie* case of retaliation. Bentzien's claim based on Elizabeth Char's mocking of the physically challenged fails because it was unreasonable for Bentzien to believe that Char's individual act of discrimination constituted an unlawful employment practice. See *Clark County Sch. Dist. v. Breeden*, 532 U.S. 268, 271 (2001) (per curiam); *Silver v. KCA, Inc.*, 586 F.2d 138, 142 (9th Cir. 1978). Indeed, the record indicates that Bentzien perceived Char's actions as nothing more than an attempt to get attention.

Bentzien's claim related to Patricia Dukes's ambiguous, isolated statement in a staff meeting also fails. An employee may seek opposition clause protection where her employer retaliates against her for opposing the employer's policy that requires her to discriminate against third-party non-employees "as a condition of [her] employment." *Moyo v. Gomez*, 40 F.3d 982, 985 (9th Cir. 1994). Here, however, Bentzien has not produced evidence suggesting that Dukes's stray comment reflected a Department policy, that Bentzien was required to discriminate as a condition of her employment, or that the Department ever withheld services.

AFFIRMED.