

**UNPUBLISHED**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

CRYSTAL LYNN ALBRANT, RENEE M.  
JOHNSON BENDLIN, LaDONNA  
BIRCHARD, STARLA MARIE BOOTH,  
JANET L. HAMRICK, KELLY LYNN  
HOLLESEN, TAMMI A. JACOBSON,  
LORETTA L. JOSLIN, JACKIE SUE  
KILLMER, SANDY A. LaRUE, TANYA K.  
LAU, JODY LORING, TRACEY LYNN  
MALM, SHELLY LYNNE RAMBOUSEK,  
LAURIE SANDERSON, LYNN MARIE  
SHEPHERD, BRITTANY JO SPOONER,  
BETH JANELL STARKSON,

Plaintiffs,

vs.

HEARTLAND FOODS, INC.; ADVANCE  
FOOD COMPANY, INC; and TEAM  
AMERICA CORPORATION,

Defendants.

No. C03-4031-PAZ

**ORDER ON DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT**

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On June 23, 2004, the defendants Heartland Foods, Inc (“Heartland”) and Advance Food Company, Inc. (“Advance Food”) filed a motion for summary judgment, statement of material facts, supporting brief, and appendix.<sup>1</sup> (Doc. No. 22) On July 14, 2004, the

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<sup>1</sup>It does not appear from the docket that Team America Corporation was served or has appeared (continued...)

plaintiffs filed a brief in support of their resistance to the motion for summary judgment, a response to the defendants' statement of material facts, a statement of additional material facts, and an appendix. (Doc. No. 25)

In their respective filings, the parties requested oral argument. These requests were granted, and on July 20, 2004, the court heard telephonic arguments. Michael Zenor and Charles Borth appeared on behalf of the plaintiffs, and Jeffrey Silver appeared on behalf of the defendants. At the conclusion of the arguments, the court established deadlines for further briefing.

On July 30, 2004, the defendants filed a reply brief. (Doc. No. 27). On August 28, 2004, the plaintiffs filed a surreply brief, together with a supplemental appendix. (Doc. No. 28) On August 10, 2004, the defendants filed a motion to strike the supplemental appendix. (Doc. No. 29) On August 10, 2004, the plaintiffs filed a resistance to the motion to strike. (Doc. No. 30) The motion to strike (Doc. No. 29) is **denied**; the court will consider the supplemental appendix in ruling on the motion for summary judgment.

The court has considered the parties' submissions and arguments concerning the motion for summary judgment carefully, and turns now to the issues raised by the defendants in their motion.

## *I. INTRODUCTION*

The plaintiffs all are female, and all were employed by Team America and leased to Heartland during the period relevant to this action. On April 11, 2003, the plaintiffs

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<sup>1</sup>(...continued)  
in this action. All references in this order to "the defendants" are to Heartland and Advance Food, and not to Team America Corporation.

filed a petition in the District Court in and for Clay County, Iowa, alleging violations of the Equal Pay Act, 29 U.S.C. § 206(d) (“EPA”), and the Iowa Civil Rights Act of 1965, as amended, Iowa Code chapter 216. (*See* Petition, Doc. No. 1.) The case was removed to this court on April 25, 2003. On May 8, 2003, the defendants filed an Answer denying the plaintiffs’ claims. (Doc. No. 8)

Prior to filing this action, the plaintiffs exhausted the appropriate administrative remedies and obtained right-to-sue determinations from both the federal Equal Employment Opportunity Commission and the Iowa Civil Rights Commission. (*See* Doc. No. 1, Petition, Exs. A through R).

## ***II. FACTUAL BACKGROUND***

Heartland operated a meat processing facility in Spencer, Iowa until December 5, 2003, when the facility was closed. The plaintiffs all were hired by Heartland to work in the Packaging Department. With one exception, all of the employees hired to work in the Packaging Department were female. All of the employees hired to work in the Processing Department were male. Employees hired to work in the Processing Department were paid a higher wage than employees hired to work in the Packaging Department.

Heartland argues the employees in the Processing Department were paid a higher wage than employees in the Packaging Department because of significant differences in job duties and responsibilities. The plaintiffs argue the duties and responsibilities of the two positions were essentially the same. They also argue that they regularly performed duties in the Processing Department, but were paid for the work at the lower Packaging Department wage rate.

## ***III. STANDARDS FOR SUMMARY JUDGMENT***

Rule 56 of the Federal Rules of Civil Procedure governs motions for summary judgment and provides that either party to a lawsuit may move for summary judgment without the need for supporting affidavits. *See* Fed. R. Civ. P. 56(a), (b). Rule 56 further states that summary judgment:

shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(c). A court considering a motion for summary judgment “must view all of the facts in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences that can be drawn from the facts.” *Webster Indus., Inc. v. Northwood Doors, Inc.*, 320 F. Supp. 2d 821, 828 (N.D. Iowa 2004) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986); and *Quick v. Donaldson Co.*, 90 F.3d 1372, 1376-77 (8th Cir. 1996)).

The party seeking summary judgment must “‘inform[ ] the district court of the basis for [the] motion and identify[ ] those portions of the record which show lack of a genuine issue.’” *Webster Indus.*, 320 F. Supp. 2d at 829 (quoting *Hartnagel v. Norman*, 953 F.2d 394, 395 (8th Cir. 1992), in turn citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2552-53, 91 L. Ed. 2d 265 (1986)). A genuine issue of material fact is one with a real basis in the record. *Id.* (citing *Hartnagel*, 953 F.2d at 394, in turn citing *Matsushita*, 475 U.S. at 586-87, 106 S. Ct. at 1356). Once the moving party meets its initial burden under Rule 56 of showing there is no genuine issue of material fact, the nonmoving party, “by affidavits or as otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e); *see Webster Indus.*, 320 F. Supp. 2d at 829 (citing, *inter alia*, *Celotex*, 477 U.S. at 324, 106

S. Ct. at 2553; and *Rabushka ex rel. United States v. Crane Co.*, 122 F.3d 559, 562 (8th Cir. 1997)).

Addressing the quantum of proof necessary to successfully oppose a motion for summary judgment, the Supreme Court has explained that the nonmoving party must produce sufficient evidence to permit “a reasonable jury [to] 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). Furthermore, the Supreme Court has held the trial court must dispose of claims unsupported by fact and determine whether a genuine issue exists for trial, rather than weighing the evidence and determining the truth of the matter. *See Anderson*, 477 U.S. at 249, 106 S. Ct. at 2510; *Celotex*, 477 U.S. at 323-24, 106 S. Ct. at 2552-53; *Matsushita*, 475 U.S. at 586-87, 106 S. Ct. at 1356.

The Eighth Circuit recognizes that “summary judgment is a drastic remedy and must be exercised with extreme care to prevent taking genuine issues of fact away from juries.” *Wabun-Inini v. Sessions*, 900 F.2d 1234, 1238 (8th Cir. 1990) (citing Fed. R. Civ. P. 56(c)). The Eighth Circuit, however, also follows the principle that “summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’” *Id.* (quoting *Celotex*, 477 U.S. at 327, 106 S. Ct. at 2555); *see also Hartnagel*, 953 F.2d at 396.

Thus, the trial court must assess whether a nonmovant’s response would be sufficient to carry the burden of proof at trial. *Hartnagel*, 953 F.2d at 396 (citing *Celotex*, 477 U.S. at 322, 106 S. Ct. at 2552). If the nonmoving party fails to make a sufficient showing of an essential element of a claim with respect to which it has the burden of proof, then the moving party is “entitled to judgment as a matter of law.” *Celotex*, 477 U.S. at 323, 106 S. Ct. at 2552; *Woodsmith Pub. Co. v. Meredith Corp.*, 904 F.2d 1244, 1247

(8th Cir. 1990). However, if the court can conclude that a reasonable jury could return a verdict for the nonmovant, then summary judgment should not be granted. *Anderson*, 477 U.S. at 248, 106 S. Ct. at 2510; *Burk v. Beene*, 948 F.2d 489, 492 (8th Cir. 1991); *Woodsmith*, 904 F.2d at 1247.

Special care must be given to summary judgment motions in employment discrimination cases. As the Honorable Mark W. Bennett explained in *Bauer v. Metz Baking Co.*, 59 F. Supp. 2d 896, 900-901 (N.D. Iowa 1999):

The court has often stated that “summary judgment should seldom be used in employment-discrimination cases.” *Crawford v. Runyon*, 37 F.3d 1338, 1341 (8th Cir. 1994) (citing *Johnson v. Minnesota Historical Soc’y*, 931 F.2d 1239, 1244 (8th Cir. 1991); *Hillebrand v. M-Tron Indus., Inc.*, 827 F.2d 363, 364 (8th Cir. 1987), *cert. denied*, 488 U.S. 1004, 109 S. Ct. 782, 102 L. Ed. 2d 774 (1989)); *see also* *Snow v. Ridgeview Medical Ctr.*, 128 F.3d 1201, 1204 (8th Cir. 1997) (citing *Crawford*); *Helfter v. United Parcel Serv., Inc.*, 115 F.3d 613, 615 (8th Cir. 1997) (quoting *Crawford*); *Chock v. Northwest Airlines, Inc.*, 113 F.3d 861, 862 (8th Cir. 1997) (“We must also keep in mind, as our court has previously cautioned, that summary judgment should be used sparingly in employment discrimination cases,” citing *Crawford*); *Smith v. St. Louis Univ.*, 109 F.3d 1261, 1264 (8th Cir. 1997) (quoting *Crawford*); *Hardin v. Hussmann Corp.*, 45 F.3d 262 (8th Cir. 1995) (“summary judgments should only be used sparingly in employment discrimination cases,” citing *Haglof v. Northwest Rehabilitation, Inc.*, 910 F.2d 492, 495 (8th Cir. 1990); *Hillebrand*, 827 F.2d at 364).

Consequently, summary judgment is rarely appropriate in employment discrimination cases, and should be granted only in “those rare instances where there is no dispute of fact and where there exists only one conclusion.” *Id.* (citing *Johnson v. Minnesota Historical Soc’y*, 931 F.2d 1239, 1244 (8th Cir. 1991); *Webb v. St. Louis Post-Dispatch*,

51 F.3d 147, 148 (8th Cir. 1995) (quoting *Johnson*, 931 F.2d at 1244); *Crawford*, 37 F.3d at 1341 (quoting *Johnson*, 931 F.2d at 1244)). Judge Bennett further explained:

To put it another way, “[b]ecause discrimination cases often depend on inferences rather than on direct evidence, summary judgment should not be granted unless the evidence could not support any reasonable inference for the nonmovant.” *Crawford*, 37 F.3d at 1341 (holding that there was a genuine issue of material fact precluding summary judgment); *accord Snow*, 128 F.3d at 1205 (“Because discrimination cases often turn on inferences rather than on direct evidence, we are particularly deferential to the nonmovant,” citing *Crawford*, [37 F.3d at 1341]); *Webb v. Garelick Mfg. Co.*, 94 F.3d 484, 486 (8th Cir. 1996) (citing *Crawford*, 37 F.3d at 1341); *Wooten v. Farmland Foods*, 58 F.3d 382, 385 (8th Cir. 1995) (quoting *Crawford*, 37 F.3d at 1341); *Johnson*, 931 F.2d at 1244.

Keeping these standards in mind, the court now will address the defendants’ motion for summary judgment.

#### ***IV. LEGAL ANALYSIS***

##### ***A. The Plaintiffs’ Claims Against Advance Food***

Advance Food has presented the court with un rebutted evidence that the plaintiffs all worked for Heartland, and not for Advance Foods. In response to this evidence, the plaintiffs have cited to the court numerous instances where Heartland used documents that contained the Advance Foods’ letterhead to communicate with the plaintiffs.

The plaintiffs have cited no legal authorities to support an argument that such evidence would be sufficient to create a triable issue on the question of whether they were, in fact, employed by Advance Food. Accordingly, summary judgment is **granted** in favor of Advance Food.

### ***B. The Plaintiffs' Claims Against Heartland***

The plaintiffs claim Heartland violate the EPA by paying male employees higher wages than Heartland paid to the plaintiffs, all females, for jobs requiring equal skill, effort, and responsibility, and that were performed under similar working conditions. Heartland claims the plaintiffs cannot make out a *prima facie* case of gender-based pay discrimination. Heartland also argues that even if the plaintiffs can make out a *prima facie* case, Heartland has proved the pay-differential was based on a factor other than gender, which is an affirmative defense under the EPA.

The EPA provides, in part, as follows:

No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.

29 U.S.C. § 206(d)(1).

Heartland argues it is entitled to summary judgment because the plaintiffs have failed to satisfy the threshold requirement of an EPA claim that the jobs being compared required “equal skill, effort, and responsibility.” As pointed out by Heartland, it is not enough for the plaintiffs to establish that they performed “comparable work” or “like jobs” to the jobs held by the male employees; the plaintiffs must establish the jobs were the same or “equal” in skill, effort, and responsibility. Application of the Act depends not on job

titles or classifications, but on actual requirements and performance of the job. *Lawrence v. CNF Transportation, Inc.*, 340 F.3d 496, 492 (8th Cir. 2003).

In *Taylor v. White*, 321 F.3d 710 (8th Cir. 2003), the Eighth Circuit Court of Appeals discussed the analytical framework for consideration of summary judgment motions in cases brought under the EPA:

Taylor alleges gender-based discrimination under Title VII, 42 U.S.C. § 2000e-2(a)(1). Because her allegations of discrimination relate solely to unequal pay for equal work, her claim is governed by the standards of the Equal Pay Act, 29 U.S.C. § 206(d) (EPA). *Buettner v. Arch Coal Sales Co., Inc.*, 216 F.3d 707, 718-19 (8th Cir. 2000) (conducting analysis of a Title VII claim under the framework of the EPA where the alleged discrimination related solely to unequal pay for equal work); *see also Hutchins v. International Brotherhood of Teamsters*, 177 F.3d 1076, 1080-81 (8th Cir. 1999) and *McKee v. Bi-State Dev. Agency*, 801 F.2d 1014, 1019 (8th Cir. 1986). Under the EPA, a plaintiff must establish a prima facie case by “show[ing] that the defendant paid male workers more than she was paid for equal work in jobs that required equal skill, effort, and responsibility and work performed under similar conditions.” *Buettner*, 216 F.3d at 719. If a plaintiff makes this showing, the burden shifts to the defendant to prove one of the affirmative defenses set forth under the EPA. The last of the statutory affirmative defenses set forth in the EPA is a catch-all provision that excuses pay discrepancies “based on any other factor other than sex . . .” 29 U.S.C. § 206(d)(1)(iv). [Footnote omitted]

This analytical framework differs from the *McDonnell Douglas* burden shifting analysis. [Footnote omitted.] *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). Under the EPA, a defendant cannot escape liability merely by articulating a legitimate non-discriminatory reason for the employment action. Rather, the defendant must prove that the pay

differential was based on a factor other than sex. *County of Washington v. Gunther*, 452 U.S. 161, 170, 101 S. Ct. 2242, 68 L. Ed. 2d 751 (1981) (“Equal Pay Act litigation, therefore, has been structured to permit employers to defend against charges of discrimination where their pay differentials are based on a bona fide use of ‘other factors other than sex.’”).

*Id.*, 715-16.

Thus, to establish a *prima facie* case of pay discrimination, the plaintiffs must show Heartland paid male workers more than it paid to the plaintiffs for equal work in jobs performed under similar conditions that required equal skill, effort, and responsibility. There is no dispute that the plaintiffs were hired to work in jobs in the Packaging Department, and they were paid less than was paid to male employees working in the Processing Department. The fighting issue is whether the jobs held by the plaintiffs in the Packaging Department were performed under similar conditions and were equal in skill, effort, and responsibility to the jobs held by the male employees in the Processing Department. In conducting this analysis, the court must consider the actual requirements of the jobs as performed.

The plaintiffs all have submitted sworn statements that they routinely worked in the Processing Department, but they were paid the lower Packaging Department wage. They also submitted evidence that male employees employed in the Processing Department routinely worked in the Packaging Department, but continued to receive the higher Processing Department wage. Furthermore, the plaintiffs have submitted evidence that the jobs performed in the two departments were performed under similar conditions, and were roughly equal in skill, effort, and responsibility.

Although Heartland has submitted substantial evidence to rebut the plaintiffs’ evidence, for purposes of summary judgment, the court must deny summary judgment if

there is evidence in the record from which a reasonable jury could find for the plaintiffs. The court finds there is such evidence in the record, and finds the plaintiffs have made out a *prima facie* case of pay discrimination. Heartland's motion for summary judgment is, therefore, **denied** on this basis.

The court next turns to Heartland's argument that it has established its affirmative defense that the pay differential was based on factors "other than sex." Heartland argues the plaintiffs' jobs in the Packaging Department had significantly different duties and responsibilities than the jobs held by Heartland's male employees working in the Processing Department. In fact, according to Heartland, "these differences in skill, effort, responsibility and working conditions are not close to being substantially equal."

While the "other than sex" exception to the EPA is broad, *see Dey v. Colt Constructions & Development Co.*, 28 F.3d 1446, 1462 (7th Cir. 1999), the exception does not help Heartland here. The court already has found that the plaintiffs have established a triable issue of fact on the question of whether their jobs in the Packaging Department were performed under similar conditions and were equal in skill, effort, and responsibility to the jobs held by the male employees in the Processing Department. It follows that an affirmative defense asserting there is no triable issue of fact on the very same question cannot be the basis of a summary judgment.

Therefore, the defendants' motion also is **denied** on this basis.

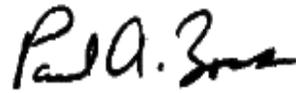
#### ***IV. CONCLUSION***

Based upon the foregoing analysis, the defendants' motion for summary judgment (Doc. No. 22) is **granted in part and denied in part**. Their motion is **granted** as to the plaintiffs' claims against Advance Foods, and judgment will enter in favor of Advance

Foods and against the plaintiffs. The motion is **denied** as to the plaintiffs' claims against Heartland.

**IT IS SO ORDERED.**

**DATED** this 19th day of August, 2004.



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PAUL A. ZOSS  
MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT