

specifically contends that Mss. Ranolls and Barbosa were subjected to a sexually hostile work environment and were terminated in violation of Title VII. The E.E.O.C. seeks damages (on their behalf) for, *inter alia*, emotional distress resulting from this alleged conduct.

According to Defendants' motion, Ms. Ranolls testified at her deposition that she suffers from bi-polar personality disorder. In its response to Defendants' motion, the E.E.O.C. does not contest that Ms. Ranolls testified as such.

Defendants contend they are entitled to have Ms. Ranolls subjected to a mental exam for the following reasons:

"Bi-polar disorder frequently makes persons prone to confabulations or delusions, and thus Defendants should be entitled to obtain an examination to determine to the extent Ms. Ranolls is confabulating or creating in her own mind the alleged harassment at issue; or whether Ms. Ranolls is deluded regarding the extent of the alleged harassment."

* * *

"Ms. Ranolls may have been suffering from a psychotic/bi-polar episode at the time this alleged harassment occurred, or her perception of the alleged harassment may have been greatly affected by her psychiatric condition."

DISCUSSION

Federal Rule of Civil Procedure 35 provides in relevant part:

[w]hen the mental ... condition ... of a person ... under the legal control of a party ... in is controversy, the court in which the action is pending may order the party to submit to a ... mental examination by a suitably licensed or certified examiner.... The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

This Court's discretion to order a Rule 35 examination is limited by the Supreme Court's strict interpretation of the rule in *Schlagenhauf v. Holder*, 379 U.S. 104, 118 (1964):

[t]he "in controversy" and "good cause" requirements of Rule 35 ... are not met by mere conclusory allegations of the pleadings – nor by mere relevance to the case – but requires an affirmative showing by the movant that each condition as to which the examination is sought is really and genuinely in controversy and that good cause exists.

In other words, motions to compel examinations pursuant to Rule 35 receive greater judicial scrutiny than other discovery motions. *See Acosta v. Tenneco Oil Co.*, 913 F.2d 205, 210 (5th Cir. 1990). A Rule 35 movant must show that (1) the condition to be examined is "in controversy" and (2) that there is "good cause" for the examination.

The Court finds that Defendants failed to make either Rule 35 showing necessary to support a mental examination of Ms. Ranolls. Defendants essentially argue they are entitled to a Rule 35 exam for the purpose of assessing Ms. Ranolls' credibility. The essence of Defendants' argument is that due to Ms. Ranolls' mental condition, her allegations are not credible and must be evaluated by licensed mental healthcare provider.

A Court should never grant a Rule 35 motion for the purpose of assessing the claimant's credibility. Assessing the credibility of a claimant is the task of the fact-finder. As such, courts have consistently denied motions to compel witnesses to submit to mental examination for the purpose of ascertaining credibility. *See, e.g., United States v. Fountain*, 840 F.2d 509, 517 (7th Cir. 1988), *cert. denied*, 488 U.S. 982 (1988); *United States v. Barnard*, 490 F.2d 907, 912 (9th Cir. 1973), *cert. denied*, 416 U.S. 959 (1974) ("credibility ... is for the jury – the jury is the lie detector in the

courtroom”); *Landau v. Laughren*, 357 S.W.2d 74 (Mo. 1962); *Tyler v. District Court*, 561 P.2d 1260, 1263 (Colo. 1977). That a claimant’s mental condition may bear upon on her credibility does not place her mental condition in controversy. *Id.*

As Defendants seek a mental exam for the purpose of assessing the credibility of Ms. Ranolls’ allegations – an inquiry within the province of the jury – the motion must be denied. Defendants have failed to make an affirmative showing that Ms. Ranolls’ mental condition is in controversy or that there is good cause under Rule 35.

ORDER

IT IS THEREFORE ORDERED that *Defendants’ Motion to Compel Mental Examination of April Ranolls* [Clerk’s Docket No.10] filed April 4, 2000 is in all things DENIED.

SO ORDERED.

SIGNED this the 25 day of April, 2000.



Thad Heartfield
United States District Judge