IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JACQUELINE WIGGINS,	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 99-1822
COMMUNITY COLLEGE OF PHILADELPHIA,	:	
Defendant.	:	

M E M O R A N D U M

BUCKWALTER, J. January 28, 2000

Presently before the Court in this three-count lawsuit alleging discrimination, is Defendant Community College of Philadelphia's Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56, and Plaintiff Jacqueline Wiggins' response thereto. For the following reasons, Defendant's Motion will be granted.

I. BACKGROUND

Plaintiff holds an M.Ed. in Education. On October 9, 1989, she was hired as a part-time English instructor at the Community College of Philadelphia. She held this position until September 18, 1995 when she became a visiting Lecturer in the Defendant's English Department, a position that she held until May, 1997.

In January, 1997, Plaintiff applied for a full-time tenure-track teaching position in the Defendant's English Department. Her application was in response to a December MLA Job List posting which stated in pertinent part: "[t]wo anticipated tenure-track, full-time openings for Fall 1997. Minimum qualifications M.A. in English or closely related field and demonstrated

commitment to teaching composition to urban, non-traditional students." In July, 1997, Plaintiff was informed by Douglas Buchholz, English Department Hiring Committee Chair that she was not selected. Plaintiff then brought this three-count action wherein Count One purports to state a claim for race discrimination in violation of Title VII of the Civil Rights At of 1964 ("Title VII"), as amended, 42 U.S.C.A. § 2000(e), et seq.. Count Two purports to state a claim under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C.A. § 621 et seq.. Count Three purports to state a claim for race discrimination under 42 U.S.C.A. § 1981 ("Section 1981").

II. STANDARD

Summary judgment is appropriate "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 a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party has the burden of demonstrating the absence of any genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A factual dispute is "material" if it might affect the outcome of the case under the governing substantive law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Additionally, an issue is "genuine" "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.

On summary judgment, it is not the court's role to weigh the disputed evidence and decide which is more probative; rather, the court must consider the evidence of the non-moving party as true, drawing all justifiable inferences arising from the evidence in favor of the

non-moving party. See id. at 255. If a conflict arises between the evidence presented by both sides, the court must accept as true the allegations of the non-moving party. See id.

If the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party to "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). In doing so, the non-moving party 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 (1986). If the evidence of the non-moving party is "merely colorable," or is "not significantly probative," summary judgment may be granted. Anderson, 477 U.S. at 249-50.

III. DISCUSSION

Plaintiff claims that she was not offered the full-time tenure-track position in Defendant's English Department because of her race, sex and/or age. Plaintiff contends that she did meet the minimal qualifications for the position, in that she has a degree in a closely related field as an M.A. in English.

To establish a prima facie case of sex discrimination under Title VII, age discrimination under the ADEA[1], and racial discrimination under Section 1981[2], a plaintiff must

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1. In an age discrimination action under the ADEA, the plaintiff has the initial burden of establishing a prima facie case by demonstrating that he or she: (1) is a member of the protected group; (2) was qualified to perform the job at issue; (3) was discharged despite being qualified for the position; and (4) was replaced by another employee sufficiently younger to permit an inference of age discrimination. See Simpson v. Kay Jewelers, Division of Sterling, Inc., 142 F.3d 639 (3d Cir. 1998); Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994).

2. The complainant in a Section 1981 claim must carry the initial burden of establishing a prima facie case of racial discrimination by showing the following: 1) that she belongs to a racial minority; 2) that she applied and was qualified for a job for which the employer was seeking applicants; 3) that, despite his qualifications, she was rejected; and 4) that, after her rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089 (1981); McDonnell Douglas Corp. v. Green, 411 U.S. 801, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

show that: (1) she is a member of a protected class or minority group; (2) she was qualified for the position at issue; (3) she suffered an adverse employment decision; and (4) the position was ultimately filled by a person not of the protected class, see McDonnell Douglas Corp. V. Green, 411 U.S. 792, 802-05 (1973), or that similarly situated non-protected persons were treated more favorably, see Josey v. John R. Hollingworth Corp., 996 F.2d 632, 638 (3d Cir. 1993). The burden of production then shifts to the defendant to articulate a legitimate, non-discriminatory reason for the discharge. See Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981). Even if the defendant meets that burden, the plaintiff may still prevail by demonstrating that the reason for the discharge was merely pretextual. See id. at 256. Such a showing is sufficient to defeat the granting of a summary judgment in favor of the defendant. See Sheridan, 100 F.3d at 1066-69. The ultimate burden of persuasion, however, remains at all times with the plaintiff. See United States Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 716 (1983). While Plaintiff has established that she is a member of a protected class, that she was not offered the teaching position at issue and that Defendants did hire individuals outside of that protected class, defendant asserts that Plaintiff cannot establish a prima facie case of discrimination because she was not qualified for the position for which she applied because she does not hold a Masters Degree in English. Defendant concluded that Plaintiff's Masters Degree in Education was not "closely related" to a Masters in English. Herein lies the only issue raised by Plaintiff in response to Defendant's Motion for Summary Judgment--whether Plaintiff's M.Ed. in English was "closely related" to a M.A. in English.

As supporting evidence, Plaintiff provides this Court with nothing more than the MLA Job List posting, a copy of a Faculty Federation Newsletter article[3], and a "Letter to the Editor" responding to the Newsletter Article. It is doubtful that Plaintiff has proved even a prima facie showing of intentional discrimination--based on her race, age, or sex--in employment positions for which she may or may not have been qualified. See General Building Contractors Assn., Inc. v. Pennsylvania, 458 U.S. 375, 382-91, 102 S.Ct. 3141, 3145-50, 73 L.Ed.2d. 835 (1982).

Plaintiff has a burden of setting forth specific facts showing that there is a genuine issue for trial. However, as stated above, if the evidence of the non-moving party is "merely colorable," or is "not significantly probative," summary judgment may be granted. This Court is unable to conclude that Plaintiff has provided anything beyond mere articles and/or letters of recommendation calling the Defendant's criteria for hiring into question. A Plaintiff's belief in her performance abilities, without more, does not establish pretext or discriminatory intent. Billet v. CIGNA Corp., 940 F.2d 812, 825 (3d Cir.1991); see Simpson v. Kay Jewelers, 142 F.3d 639, 647 (3d Cir.1998)(employee's judgment as to the importance of employer's stated criterion for its decision is irrelevant).[4] Therefore, Defendant's Motion for Summary Judgment must be granted on all counts.

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3. This particular Affidavit explicitly states that the "beneficiaries" of the Defendant's hiring practices have, with one exception, been white Faculty. However, the author of the affidavit--which is more of a letter of recommendation, than "sworn testimony"--asserts that Defendant's tendency to hire more white Faculty is not attributed to "intent but rather our having developed institutional arrangements without thinking very much about their implications for affirmative action."

4. Furthermore, hearsay statements that are not capable of being admissible at trial must not be considered on a summary judgment motion. Philbin v. Trans Union Corp., 101 F.3d 957, 961 n. 1 (3d Cir.1996).

IV. CONCLUSION

Plaintiff has failed to do more than "simply show that there is some metaphysical doubt as to the material facts." Zenith Radio Corp., 475 U.S., at 586. As a result, I must grant Defendant's Motion for Summary Judgment. Notwithstanding Plaintiff's inability to establish a prima facie case of discrimination of age, sex, and/or race, Plaintiff has also failed to provide any evidence of pretextual discriminatory intent on the part of Defendant.

An appropriate Order follows.

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	:	NO. 99-1822
COMMUNITY COLLEGE OF PHILADELPHIA,	:	
Defendant.	:	

O R D E R

AND NOW, this 28th day of January, 2000, upon consideration of Defendant Community College of Philadelphia's Motion for Summary Judgment and Plaintiff Jacqueline Wiggins' Response thereto, it is hereby **ORDERED** and **DECREED** that said Motion is **GRANTED.**

Judgment is entered in favor of the defendant Community College of Philadelphia, and against the plaintiff Jacqueline Wiggins.

This case shall be marked **CLOSED.**

BY THE COURT:

RONALD L. BUCKWALTER, J.