

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

ANDREW MEDCALF : CIVIL ACTION
 :
 v. :
 :
 THE TRUSTEES OF THE UNIVERSITY :
 OF PENNSYLVANIA : NO. 00-0701

MEMORANDUM AND ORDER

HUTTON, J.

June 19, 2001

Presently before this Court are Defendant's Motion for Summary Judgment (Docket No. 18), Answer of Plaintiff Andrew Medcalf to Motion for Summary Judgment of Defendant the Trustees of the University of Pennsylvania (Docket No. 23), Reply Memorandum of Law in Support of Defendant's Motion for Summary Judgment (Docket No. 25), Plaintiff's Reply Memorandum in Opposition to Defendant's Motion for Summary Judgment (Docket No. 27), Supplemental Reply Memorandum of Plaintiff Andrew Medcalf in Response to Defendant's February 20, 2001 Letter to the Court in Support of Defendant's Motion for Summary Judgment (Docket No. 28) and Plaintiff's Second Supplemental Reply Memorandum in Opposition to Defendant's Motion for Summary Judgment (Docket No. 29). For the reasons stated below, the Motion is **DENIED**.

I. BACKGROUND

In Spring of 1997, Plaintiff Andrew Medcalf ("Plaintiff") applied for the position of full-time Woman's Rowing Coach at the University of Pennsylvania ("Penn"). See Compl. ¶ 12. In July of 1997, Penn hired a woman for the position. See id. ¶ 28. Plaintiff alleges that Defendant's failure to hire Plaintiff violated Title VII of the Civil Rights Act of 1964 ("Title VII") and the Pennsylvania Human Relations Act ("PHRA"). See id. ¶¶ 34, 38.

II. LEGAL 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 party moving for summary judgment has the initial burden of showing the basis for its motion. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Ultimately, the moving party bears the burden of showing that there is an absence of evidence to support the nonmoving party's case. See id. at 325. Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on

file to show that there is a genuine issue for trial. See *id.* at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" only if it might affect the outcome of the suit under the applicable rule of law. See *id.*

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. See *Big Apple BMW, Inc. v. BMW of N. Am., Inc.*, 974 F.2d 1358, 1363 (3d Cir. 1992). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. See *id.* Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. See *Trap Rock Indus., Inc. v. Local 825*, 982 F.2d 884, 890 (3d Cir. 1992). The court's inquiry at the summary judgment stage is the threshold inquiry of determining whether there is need for a trial, that is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. See *Anderson*, 477 U.S. at 250-52. If there is sufficient evidence to reasonably expect that a jury could return a verdict in favor of plaintiff, that is enough to thwart imposition of summary judgment. See *id.* at 248-51.

III. DISCUSSION

In a case of failure to hire or promote under Title VII, the plaintiff first must carry the initial burden under the statute to establish a prima facie case of [unlawful] discrimination. *Fuentes v. Perskie*, 32 F.3d 759, 763 (3d Cir. 1994). This may be done by showing (i) that he belongs to a [protected category]; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications. *McDonnell Douglas*, 411 U.S. at 802.

In a reverse discrimination case, as here, all that is required to establish a prima facie case is for the plaintiff to present sufficient evidence to allow a fact finder to conclude that the employer is treating some people less favorably than others based upon a trait that is protected under Title VII. See *Iadimarco v. Runyon*, 190 F.3d 151, 161-62 (3d Cir. 1999).

For purposes of the instant motion for summary judgment, the Court finds it unnecessary to consider step one of the *McDonnell Douglas* scheme because Defendant does not dispute that Plaintiff has met his prima facie case. See Def.['s] Memo. of Law in Support of Mot. for Summ. J., 9, n.1.

After making out a prima facia case, the burden of production shifts to the defendant to "articulate some legitimate,

nondiscriminatory reason for the employee's rejection." *McDonnell Douglas*, 411 U.S. at 802. The employer satisfies its burden of production by introducing evidence which, taken as true, would permit the conclusion that there was a nondiscriminatory reason for the unfavorable employment decision. See *Hicks*, 509 U.S. at 508. The employer need not prove that the tendered reason actually motivated its behavior, as throughout this burden-shifting paradigm the ultimate burden of proving intentional discrimination always rests with the plaintiff. See *Burdine*, 450 U.S. at 253-54, 256.

Here, the Court finds that Defendant has proffered a legitimate, non-discriminatory explanation for its failure to hire Plaintiff's. See Defs.[']s Memo. of Law in Support of Mot. for Summ. J., 10-15; *Bilsky Depo.*, at 103-04, 158-59, 299, 300, 366; *Femovich Depo.*, 103, 319, 330, 335-36.

Once the employer answers its relatively light burden by articulating a legitimate reason for the unfavorable employment decision, the burden of production rebounds to the plaintiff, who must now show by a preponderance of the evidence that the employer's explanation is pretextual (thus meeting the plaintiff's burden of persuasion).

At this point, the presumption of discrimination drops from the case. *Id.* To prevail at trial, the plaintiff must convince the factfinder "both that the reason was false, and that discrimination was the real reason." *Hicks*, 509 U.S. at 512.

Under prong two of the Fuentes test, Plaintiff must identify evidence in the summary judgment record that "allows the fact finder to infer that discrimination was more likely than not a motivating or determinative cause of the adverse employment action." See Keller, 130 F.3d at 1111; Fuentes, 32 F.3d at 762. In other words, under this prong, Plaintiff must point to evidence that proves sex discrimination in the same way that critical facts are generally proved--based solely on the natural probative force of the evidence. See Keller, 130 F.3d at 1111.

Here, Plaintiff points to evidence in the record that would allow a fact finder to infer that discrimination was more likely than not a motivating or determinative cause of the adverse employment action. First, Plaintiff has testified that Penn Senior Associate Director of Athletics Carolyn Femovich ("Femovich") told Plaintiff, with respect to his application, that "I don't suppose you're very pleased with us. But we're going to get a woman at least as good as you, if not better. See Medcalf Depo., p. 254. Other evidence shows that Casper Bentinek, Captain of the Penn's Men's Heavyweight Rowing Team personally met Femovich to recommend Plaintiff for the position but was told by Femovich that "she felt she had the need to hire a female coach because all the other coaches were male." See Aff. of Casper Bentinek. Another witness, Heather Whalen ("Whalen"), testified that she scheduled a meeting with Femovich to recommend Plaintiff for the position. See

Whalen Depo. at 55. Femovich informed Whalen that while they would consider Plaintiff, “[t]hey were looking, though, to put a woman in the position.” See id. Additionally, Heather Roehrs (“Roehrs”), a woman rower, testified that she also met with Femovich to recommend Plaintiff for the position. See Depo. of Heather Roehrs, at 17-18. Roehrs testified that Femovich told her that she was going to try to hire a woman for the head coaching position. See id. Roehrs further testified that Femovich indicated to her that a strong female role model was very important to have as head coach of this particular program. See id.

Taking the facts as a whole, there is sufficient evidence in the record for a reasonable jury to believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employers action. As a result, Defendant’s motion for summary judgment on Count I is denied.

While Pennsylvania courts are not bound in their interpretations of Pennsylvania law by federal interpretations of parallel provisions in Title VII, its courts nevertheless generally interpret the PHRA in accord with its federal counterparts. See *Kelly v. Drexel Univ.* 94 F.3d 102, 105 (3d Cir. 1996). As a result, the Court’s holding with respect to Count I applies to Plaintiff’s PHRA claim in Count II of his Complaint. Thus, Defendant’s motion for summary judgment on Count II is denied.

An appropriate Order follows.

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O R D E R

AND NOW, this 19th day of June, 2001, upon consideration of Defendant's Motion for Summary Judgment (Docket No. 18), Answer of Plaintiff Andrew Medcalf to Motion for Summary Judgment of Defendant the Trustees of the University of Pennsylvania (Docket No. 23), Reply Memorandum of Law in Support of Defendant's Motion for Summary Judgment (Docket No. 25), Plaintiff's Reply Memorandum in Opposition to Defendant's Motion for Summary Judgment (Docket No. 27), Supplemental Reply Memorandum of Plaintiff Andrew Medcalf in Response to Defendant's February 20, 2001 Letter to the Court in Support of Defendant's Motion for Summary Judgment (Docket No. 28) and Plaintiff's Second Supplemental Reply Memorandum in Opposition to Defendant's Motion for Summary Judgment (Docket No. 29) Plaintiffs' Motion, IT IS HEREBY ORDERED that:

1. Defendant's Motion for Summary Judgment on Count I of Plaintiff's Complaint is **DENIED**; and

2. Defendant's Motion for Summary Judgment on Count II of Plaintiff's Complaint is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.