

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

ARTHUR W. RAND,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 01-3564
	:	
MANNESMANN REXROTH	:	
CORPORATION,	:	
Defendant.	:	
	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J.

APRIL 15, 2002

Presently before this Court is the Motion for Summary Judgment filed by the Defendant MannesMann Rexroth Corporation (“Rexroth”). This action arises from the Plaintiff Arthur W. Rand’s (“Rand”) allegations of age, race, and national origin discrimination, and retaliation on the part of his employer Rexroth. For the reasons that follow, the Motion will be granted in part and denied in part.

I. FACTS

Rand began his employment at Rexroth’s Bethlehem, Pennsylvania facility in or around September, 1995 as a Project Engineer in the Machine Tool Group. Rand is a Canadian citizen, born in Colombia. In order for Rexroth to hire Rand, Rexroth petitioned for, and received, an Alien Employment Certification and subsequently a Permanent Resident Card for Rand. While Gunther Nunweiler (“Nunweiler”), a manager in the Machine Tool Group, generally rated Rand’s performance as satisfactory on his performance evaluations, Nunweiler rated Rand as “below expectations” on his March, 1996 to March, 1997 evaluation. However,

the next year, Rand's evaluation improved. Rexroth alleges that Rand's performance again dropped below its expectations the following year, and allegedly customers complained to Rand's supervisor in the Machine Tool Group, Gary Shankweiler ("Shankweiler"), about Rand's performance. Rand counters that there is no documented proof of the customer complaints.

In 1998, Rexroth decided to transfer the sales, marketing and technical support functions for its hydraulic cylinders from its Lexington, Kentucky facility to its Bethlehem, Pennsylvania facility. In order to handle the increased work load of the Hydraulic Cylinder Group, Rexroth determined that the Hydraulic Cylinder Group needed another Product Specialist. Eventually, Rexroth decided that Rand should fill that position as it allegedly required less knowledge than was required in the Machine Tool Group. On January 7, 1999, Rand was told that he would no longer have a position in the Machine Tool Group, but that he could transfer to the Hydraulic Cylinder Group. Rand accepted the position as a Hydraulic Cylinder Product Specialist.

On January 25, 1999, Rand, his immediate manager in the Hydraulic Cylinder Group, Martin Hegyi ("Hegyi"), and Bruno Gramlich ("Gramlich"), the Vice President of Product Support and Component Sales, discussed the fact that Rand's salary would have to be reduced from \$57,000 to \$50,000 in order to make it commensurate with other salaries in the Hydraulic Cylinder Group. Rexroth issued the final notice of the salary reduction to Rand on May 19, 1999. On January 26, 1999, Rand submitted a written complaint to Rexroth's Human Resources Department which contained numerous allegedly discriminatory comments made to Rand between 1995 and 1998 by various employees of Rexroth. In the complaint, Rand alleged that he had been discriminated against on the basis of his Colombian national origin. Rand listed

the following people as those who had stated discriminatory comments: (1) Al Shimkus (“Shimkus”), a member of the Inside Sales department; (2) Berend Bracht (“Bracht”), Vice President and General Manager of Industrial Hydraulics; (3) Nunweiler; (4) Jaap Van den Heuvel (“Van den Heuvel”), Vice President of Sales; and (5) Kathy Shulberger, a manager of Inside Sales. The Human Resource Department conducted an investigation which Rand alleges was insufficient. The Human Resource Department concluded that there had been no discrimination.

While in the Hydraulic Cylinder Group, Rand’s manager, Hegyi, consistently gave Rand poor performance reviews and filed various memoranda detailing Rand’s insufficiencies. Rexroth claims that the reviews and memoranda were a result of Rand’s poor performance. Rand alleges that the reviews and memoranda were a result of discrimination. The only other Product Specialist in the Hydraulic Cylinder Group was Patrick Cuchran (“Cuchran”), who was twenty-six, but who had been in the Hydraulic Cylinder Group since 1995.

In late 1999, Rexroth determined that the Bethlehem facility’s performance of the sales, marketing and technical support functions for hydraulic cylinders manufactured in Lexington no longer made business sense. Therefore, Rexroth decided to re-transfer the sales, marketing and technical support functions for the hydraulic cylinders back to the Lexington facility. As a result, Rexroth needed to eliminate the extra Product Specialist position in the Hydraulic Cylinder Group. According to Rexroth, Hegyi and Bracht decided to terminate Rand instead of Cuchran because Cuchran had more experience and seniority in the Hydraulic Cylinder Group, and because, based on evaluations, he was a better performer than Rand. Rand alleges that he was fired based on his age, race, national origin, and in retaliation for filing his complaint with Human Resources. Contrary to Rand’s initial belief, no one replaced Rand at the Bethlehem

facility, because the work that he had been performing returned to the Lexington plant.

On March 15, 2000, Rand filed a charge with the Equal Employment Opportunity Commission (“EEOC”), which was cross filed with the Pennsylvania Human Relations Commission (“PHRC”), alleging that his salary was reduced and he was subsequently terminated on the basis of his age, national origin and in retaliation for the complaint he filed with Human Resources. Rand was issued a right to sue letter on December 21, 2000. On March 20, 2001, Rand filed a Complaint in the Court of Common Pleas (which was eventually transferred to this Court), alleging: (1) national origin discrimination and retaliation under Title VII of the Civil Rights Act of 1991, 42 U.S.C. § 2000e, *et seq.* (“Title VII”), and the Pennsylvania Human Relations Act, 43 Pa. Con. Stat. §§ 955 and 962 (“PHRA”); (2) age discrimination under the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.* (“ADEA”), and the PHRA; and (3) race discrimination under the Federal Civil Rights Statute, 42 U.S.C. § 1981, *et seq.* (“Section 1981”).

II. STANDARD

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper “if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c). Essentially, the inquiry is “whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252 (1986). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323

(1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. Anderson, 477 U.S. at 249. A factual dispute is material only if it might affect the outcome of the suit under governing law. Id. at 248.

To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present “specific facts showing that there is a genuine issue for trial.” FED. R. CIV. P. 56(e). Similarly, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989)(citing Celotex, 477 U.S. at 325 (1986)). Further, the non-moving party has the burden of producing evidence to establish prima facie each element of its claim. Celotex, 477 U.S. at 322-23. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Id. at 322;Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

III. DISCUSSION

A. AGE DISCRIMINATION

Rand alleges that Rexroth discriminated against him on the basis of his age (53) by terminating him.¹ In a discrimination case, the plaintiff may present either direct or indirect evidence to prove that he or she was subjected to unlawful discrimination. Pivrotto v.

¹ In his Complaint, Rand only raises his termination as the adverse employment action underlying his age discrimination claim. However, to the extent that Rand alleges that his reduction in salary was also an adverse employment activity, we note that the salary reduction was outside of the 300 day filing limit with the EEOC, and therefore, any allegations based upon that activity are time barred. See 29 U.S.C. § 626(d)(2); Watson v. Eastman Kodak Co., 235 F.3d 851, 854 (3d Cir. 2000).

Innovative Sys., Inc., 191 F.3d 344, 352 n.4 (3d Cir. 1999). In an indirect evidence case such as this, the plaintiff must first set forth a *prima facie* case of discrimination. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 142 (2000).² Thereafter, courts apply a system of shifting evidentiary burdens; however, “the ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff.” Texas Dep’t of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981); see also McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

McDonnell Douglas, 411 U.S. 793 (1973), established an allocation of the burden of production and an order for the presentation of proof in discriminatory treatment cases, which was clarified by subsequent cases. Reeves, 530 U.S. at 142. Once a *prima facie* case has been established, the defendant must produce some evidence of a legitimate nondiscriminatory business reason for its action. Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994). If this evidence is produced, the plaintiff may survive a motion for summary judgment only if he or she “produce[s] sufficient evidence to raise a genuine issue of fact as to whether the employer’s proffered reasons were not its true reasons for the challenged employment action.” Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1067 (3d Cir. 1996)(*en banc*).

For the purposes of this Motion, Rexroth assumes that Rand could establish a

² Although Rand attempts to argue that he has sufficient direct evidence to support his claims of age discrimination and national origin discrimination to justify a “mixed motives” analysis under Price Waterhouse v. Hopkins, 490 U.S. 228 (1989), the facts and evidence simply do not bear this argument out. See Geraci v. Moody-Tottrup, Int’l Inc., 82 F.3d 578, 581 (3d Cir. 1996)(stating that “only rarely will a plaintiff have direct evidence of discrimination. Gone are the days (if, indeed, they every existed) when an employer would admit to firing an employee because she is a woman, over forty years of age, disabled or a member of a certain race or religion”). Therefore, we will proceed only under an indirect evidence analysis.

prima facie case of age discrimination. Furthermore, Rexroth has proffered a legitimate reason for the adverse employment action. Rexroth's burden in articulating its reason is relatively light and is satisfied if Rexroth articulates any legitimate reason for the adverse employment action. Woodson v. Scott Paper, Co., 109 F.3d 913, 920 n.2 (3d Cir. 1997). Specifically, Rexroth argues that Rand was terminated because of a reduction in workforce in the Hydraulic Cylinder Group which resulted when the majority of the hydraulic cylinder work was re-transferred back to Rexroth's Lexington facility. Furthermore, Rexroth alleges that it chose to terminate Rand instead of Cuchran because Cuchran had more experience and seniority within the Hydraulic Cylinder Group and because Cuchran was a better performer than Rand.³

Next, Rand has the burden of proving that the Rexroth's articulated reason for the adverse employment action was merely a pretext for discrimination. Reeves, 530 U.S. at 143. Under Fuentes, the plaintiff may establish pretext by presenting evidence from which a fact finder could "(1) disbelieve the employer's articulated legitimate reason; or (2) believe that an invidious discriminatory reason was more likely than not the motivating or determinative cause of the employer's action." Fuentes, 32 F.3d at 764.

In order to avoid summary judgment, "the plaintiff's evidence rebutting the employer's proffered legitimate reasons must allow a factfinder reasonably to infer that each of the employer's proffered nondiscriminatory reasons . . . was either a *post hoc* fabrication or otherwise did not actually motivate the employment action." Iadimarco v. Runyon, 190 F.3d 151, 166 (3d Cir. 1999)(quoting Fuentes, 32 F.3d at 764). Further, the plaintiff cannot simply

³ Although Rand argues that Rexroth's proffered reason for the termination has altered with time, the facts show that Rexroth's reason for terminating Rand has been consistent.

show that the employer's decision was unwise or wrong since the actual issue is whether the employer had a discriminatory motive. Keller v. Orix Credit Alliance, Inc., 130 F.3d 1101, 1109 (3rd Cir. 1997)(*en banc*). The plaintiff ““must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in the employer's proffered legitimate reasons”” that the fact finder could rationally find them unbelievable and could infer that the employer did not act for the non-discriminatory reasons proffered. Id. (quoting Fuentes, 32 F.3d at 765). In order to survive summary judgment, the plaintiff must show through admissible evidence that the employer's articulated reason was not merely wrong, but that it was ““so plainly wrong that it cannot have been the employer's real reason.”” Jones, 198 F.3d at 413 (quoting Keller, 130 F.3d at 1109).

Here, Rand produces three statements and three events which he argues shows that Rexroth's proffered reason for the termination was not legitimate, but was merely a pretext for age discrimination: (1) in the beginning of 1997, Mike Hams (“Hams”), a manager from Rexroth's Chicago facility called Rand a “f–ing old man” in a telephone message to Rand's supervisor, Nunweiler; (2) in January, 1999, Gramlich said to Rand “leave it to those younger guys”; (3) Hegyi, once inquired about Rand's age; (4) in late 1998, projects were taken away from Rand and given to a younger engineer who had recently joined his department; (5) on January 11, 1999, Rand was transferred to the Hydraulic Cylinder Department; and (6) in May, 1999, Rand's salary was reduced. These comments and events are insufficient to “demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies or contradictions” in Rexroth's proffered legitimate reason to allow a finding that the reason was actually a pretext for discrimination. Keller, 130 F.3d at 1109.

First, Rand alleges that in 1997, Hams called Nunweiler and left a telephone message in which Hams called Rand a “f–ing old man.” Nunweiler later played this telephone message for Rand. Hams was an employee at Rexroth’s Chicago facility and not an employee at the Bethlehem facility. Furthermore, Hams had no supervisory responsibility over Rand and he was not involved in the decision to terminate Rand. Moreover, Ham’s comment was allegedly uttered three years prior to Rand’s termination. Based on these facts, Ham’s comment is simply a “stray remark” and has no probative value with respect to Rand’s age discrimination claim. “Stray remarks by non-decisionmakers or by decisionmakers unrelated to the decision process are rarely given great weight, particularly if they were made temporally remote from the date of decision.” Ezold v. Wolf, Block, Schorr & Solis-Cohen, 983 F.2d 509, 545 (3d Cir. 1992); Pivrotto, 191 F.3d at 359.

Second, Rand argues that in late December, 1998 or early January, 1999, Gramlich, then Vice President of Product Management, stated to Rand, while attempting to convince Rand to accept a transfer to the Hydraulic Cylinder Group, “leave it to those younger guys.” Gramlich also was not involved in Rexroth’s decision to terminate Rand. Furthermore, this comment was made over a year before Rexroth terminated Rand. This comment is also a “stray remark” which is insufficient to show that Rexroth’s legitimate, non-discriminatory reasons for discharging Rand were a pretext for age discrimination. Id. at 545.⁴

Third, Rand alleges that at some point, Hegyi inquired into Rand’s age during a

⁴ Furthermore, Gramlich was 63 years old when he made this statement. Therefore, Gramlich was both older than Rand and also within the protected class. This fact further lessens any possible inference of discrimination. Ziegler v. De. County Daily Times, 128 F. Supp.2d 790, 812 n.47 (E.D. Pa. 2001) (stating that any inference of discrimination is lessened when the actor is also within the protected class).

conversation. Rand replied that he did not think that it was important. Simply asking an employee his or her age, with nothing more, does not raise an inference of discrimination. Moore v. Eli Lilly & Co., 990 F.2d 812, 818 (5th Cir. 1993); see also Shorette v. Rite Aid of Me., Inc., 155 F.3d 8, 13 (1st Cir. 1998)(stating that the employer's inquiry into the age of the plaintiff and when he planned to retire was not direct evidence of discrimination). Furthermore, there is no evidence that there was any temporal or causal nexus between this inquiry and Rand's termination. Ezold, 983 F.2d at 545. Therefore, Hegyi's inquiry provides no support for Rand's age discrimination claim.

Fourth, Rand alleges in late 1998, while he was still working in the Machine Tool Group, four of his projects were taken away and given to a younger engineer who recently joined the department. Rand admitted that he did not know whether other younger members of the Machine Tool Group also gave projects to the new engineer. Furthermore, Rand acknowledged that he continued to maintain a full workload and was provided with additional work assignments any time that he requested them from his supervisor. Rand has produced no evidence that the transfer of work was due to his age other than his subjective belief that this was the case. Rand's subjective belief is insufficient to show discriminatory intent. See Luz Maria Roberts v. GHS-Osteopathic, Inc., No. 96-5197, 1997 WL 338868, at *7 (E.D. Pa. June 19, 1997)(stating that the plaintiff's "general feeling" that the defendant discriminated against her is insufficient to discredit the defendant's non-discriminatory reasons). In order for Rand to avert summary judgment, he must come forth with actual factual evidence of discrimination and not mere suspicion. Williams, 891 F.2d at 460.

Fifth, Rand alleges that his transfer from the Machine Tool Group to the

Hydraulic Cylinder Group raises an inference of discrimination which shows that Rexroth's proffered nondiscriminatory reason for terminating Rand was either a *post hoc* fabrication or otherwise did not actually motivate the employment action. Iadimarco, 190 F.3d at 166. We disagree. There is absolutely no evidence that Rand's transfer was based upon age discrimination. Rand was transferred to the Hydraulic Cylinder Group at a time when the Hydraulic Cylinder Group required another Product Specialist and after Shankweiler and Van den Heuvel had expressed dissatisfaction with his job performance in the Machine Tool Group. Rand has not alleged that either of these two men discriminated against him on the basis of his age. Furthermore, had it not been for the transfer, Rand would not have had any position with Rexroth. Finally, Rand's claim is completely undercut by the fact that his responsibilities in the Machine Tool Group were transferred to an employee who was older than Rand. Rand's subjective belief, without any actual evidence that his transfer was due to age discrimination, is insufficient to establish his burden of proof. Luz Maria Roberts, 1997 WL 338868, at *7.

Last, Rand alleges that the reduction of his salary is sufficient to show that Rexroth's reason was pretextual. However, the evidence consistently reflects that Rand's salary was reduced so that it would be commensurate with the salary of other Product Specialists. Moreover, even after Rand's salary was reduced, it was still higher than that of any other Product Specialist. There is simply no evidence, other than Rand's subjective belief, that the reduction in salary was motivated by ageist animus. As stated above, such subjective beliefs are insufficient to establish Rand's burden of proof. Id.

In his Response to the Motion for Summary Judgment, Rand also raises other incidents which he believes establish pretext. Rand argues that the fact that two other younger

engineers were hired after Rand was fired, raises an inference of age discrimination. However, since the two younger engineers were hired in a different group than the Hydraulic Cylinder Group, which was the only group that required a reduction in force, this fact is immaterial. The undisputed facts show that Rand was not replaced by any other employee at the Bethlehem facility, as his work was re-transferred to the Lexington facility.

Rand also alleges that the negative evaluations placed in his file are evidence of pretext. However, Rand, who bears the burden of proof, has not provided any evidence, other than his own unsupported assertions, that the evaluations were false or defective. Such unsupported assertions are insufficient to overcome summary judgment, Williams, 891 F.2d at 460, and without evidence of falsity or defectiveness, the negative evaluations are not sufficient to establish pretext. See Lawrence v. Nat'l Westminster Bank, 98 F.3d 61, 66 (3d Cir. 1996); Rose-Matson v. NME Hosps., Inc., 133 F.3d 1104, 1109 (8th Cir. 1998).

Lastly, Rand argues that it was wrong for Rexroth to terminate him instead of Cuchran because Rand had an engineering degree and had more work experience than Cuchran. This Court may not pass judgment on the wisdom or correctness of Rexroth's decision and we may not second guess Rexroth's business judgment without sufficient evidence of discriminatory motive. Billet v. Cigna Corp., 940 F.2d 812, 817 (3d Cir. 1991), *overruled in part on other grounds by* St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993). This Court may not sit as a "super-personnel department that reexamines an entity's business decisions." Brewer v. Quaker State Oil Ref. Corp., 72 F.3d 326, 332 (3d Cir. 1995). Rand's subjective assertions about what qualifications should have been considered are not sufficient to prove pretext.

The alleged events described above are insufficient for Rand to establish that

Rexroth's proffered reasons for his termination were either a *post hoc* fabrication or otherwise did not actually motivate the termination. Iadimarco, 190 F.3d at 166. Rand has failed to “demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in the employer's proffered legitimate reasons” that the fact finder could rationally find them unbelievable and could infer that Rexroth did not act for the non-discriminatory reasons proffered. Keller, 130 F.3d at 1109 (quoting Fuentes, 32 F.3d at 765). Therefore, summary judgment on this count is warranted.

B. NATIONAL ORIGIN/RACE DISCRIMINATION

Rand also alleges that Rexroth discriminated against him on the basis of his race and his national origin, Colombian. Again, Rexroth is prepared to assume a *prima facie* case on this count for the purposes of this Motion. Therefore, Rand has the burden of proof to establish that Rexroth's purported reasons for the termination were pretextual. Reeves 530 U.S. at 143. Rand bases his allegations of national origin discrimination upon a list of comments made by various members of Rexroth over a five year period. Almost all of the comments were made by non-decisionmakers, and most of the comments were fairly remote in time from the termination and none were made in connection with the termination. See Ezold, 983 F.2d at 545 (stating that “[s]tray remarks by non-decisionmakers or by decisionmakers unrelated to the decision process are rarely given great weight, particularly if they were made temporally remote from the date of decision”). However, viewing all of the facts and reasonable inferences in the light most favorable to Rand, it appears that there are possible issues of fact regarding whether Rexroth's legitimate reasons for terminating Rand were actually pretext for race or national origin

discrimination. Therefore, summary judgment on this claim is not appropriate at this time.⁵

C. RETALIATION

Rand alleges that Rexroth reduced his salary and terminated his employment in retaliation for his January 26, 1999 complaint to the Human Resources Department detailing allegedly discriminatory statements.⁶ In order to establish a *prima facie* case of retaliation under Title VII, Rand must show that: (1) he engaged in a protected activity; (2) Rexroth subjected him to an adverse employment action after or contemporaneous with the protected activity; and (3) there is a causal connection between the protected activity and the adverse employment action. Robinson v. City of Pittsburgh, 120 F.3d 1286, 1300 (3d Cir. 1997). If Rand establishes a *prima facie* case, Rexroth must then produce a legitimate, non-discriminatory reason for the adverse employment action. Krouse v. Am. Sterilizer Corp., 126 F.3d 494, 500 (3d Cir. 1997). After Rexroth produces such a reason, Rand must then show that Rexroth's proffered reason for the

⁵ However, to the extent that Rand is now, for the first time in his Response to the Motion for Summary Judgment, attempting to assert a claim for hostile work environment based upon his national origin, it will not be considered. Rand may not assert new counts in his Response which were not raised in his Complaint. Irizarry v. Com. Dept. of Transp., No. 98-6180, 2000 WL 968220, at *5 n. 4 (E.D. Pa. July 13, 2000); Satterfield v. Borough of Schuylkill Haven, 12 F. Supp.2d 423, 433 (E.D. Pa. 1998).

⁶ For the first time in his Response to the Motion for Summary Judgment, Rand alleges a host of other wrongs, including his transfer to the Hydraulic Cylinder Department, negative performance reviews, and negative memoranda placed in his file, which he now claims, under various cases from other jurisdictions, are adverse employment actions. Rand's allegations either do not amount to adverse employment actions or occurred before Rand's complaint and thus cannot be retaliatory. Weston v. Pennsylvania, 251 F.3d 420, 430-31 (3d Cir. 2001)(finding that written reprimands were not adverse employment actions); Robinson v. City of Pittsburgh, 120 F.3d 1286, 1300 (3d Cir. 1997)(stating that the alleged retaliatory conduct must be serious and tangible enough to actually alter an employee's compensations, terms, conditions, or privileges of employment). Furthermore, as discussed in footnote 4, Rand may not, at this late date, interject new theories in an attempt to save his ailing claims. Therefore, these arguments will not be considered.

adverse employment action was false and that the reason was a pretext for retaliation. Id. at 501.

1. Rand's Salary Reduction

Rand may not utilize his reduction in salary as support for his retaliation claim because he cannot establish a *prima facie* claim. Specifically, Rand cannot establish the necessary causal connection between the filing of the complaint and the pay reduction. It is undisputed that on January 25, 1999, Rand, Hegyi, and Gramlich discussed the fact that Rand's salary would have to be reduced in order to make it commensurate with other salaries in the Hydraulic Cylinder Group. It is also undisputed that Rand did not file his complaint with the Human Resource Department until January 26, 1999. In Clark County School District v. Breedon, 532 U.S. 268 (2001), the United States Supreme Court held that where an employer contemplated an adverse employment action prior to the plaintiff engaging in a protected activity, the employment action cannot provide evidence of a causal connection. Id. at 272 (stating that, “[e]mployers need not suspend previously planned [adverse employment actions] upon discovering that a Title VII suit has been filed, and their proceeding along lines previously contemplated, though not yet definitively determined, is no evidence whatever of causality”). Furthermore, contrary to Rand's arguments, the reduction in Rand's salary occurred over 300 days before Rand filed his EEOC complaint, and thus it is time barred.

2. Rand's Termination

Rand also may not establish retaliation based upon his termination because he cannot establish a *prima facie* case of retaliation. Again, Rand cannot establish the requisite causation between the protected activity and the adverse employment activity. Rand complained to Human Resources on January 26, 1999 and was terminated more than a year later on February

4, 2000. The mere fact that an adverse employment action occurs after an employee engages in a protected activity will ordinarily not be sufficient to satisfy the plaintiff's burden of demonstrating a causal link between the two events. Robinson, 120 F.3d at 1302. In order for the timing of the alleged retaliatory action to establish a causal connection, the timing of the adverse employment action must be "unusually suggestive" of retaliatory motive. Shaner v. Synthes, 204 F.3d 494, 505 (3d Cir. 2000)(citing Krouse, 126 F.3d at 503). Here, over twelve months passed between the complaint and the termination. The two events are temporally remote and the timing certainly is not unusually suggestive. Therefore, this situation lacks any temporal proximity which could possibly establish causation.

Furthermore, there is no discernable pattern of antagonism based on factual events or proper inferences which would save Rand's claim. Robinson, 982 F.2d 895 (stating that without temporal proximity, causation may still be established by providing an intervening pattern of antagonism); Woodson, 109 F.3d at 920-21 (stating same). Rand has not alleged that any discriminatory comments based on national origin were made after he complained to Human Resources. The only acts which conceivably connect the complaint to the termination are Rand's reduction in salary, a negative performance review, and negative memoranda placed in Rand's file. Without evidence that the negative performance review and memoranda were not warranted, these cannot establish a pattern of antagonism and thus avoid summary judgment. Williams, 891 F.2d at 460 (stating that the plaintiff must provide more than "unsupported assertions, conclusory allegations, or mere suspicions" to survive summary judgment). This is especially true since Rand had also received negative performance reviews before his complaint. See Shaner, 204 F.3d at 505.

Furthermore, this case is similar to Weston v. Pennsylvania, where the Third Circuit determined that the acts which the plaintiff alleged created a “pattern of antagonism . . . did not portend any future retaliation. Instead, the adverse employment actions were discrete responses to particular occurrences.” Weston v. Pennsylvania, 251 F.3d 420, 432 (3d Cir. 2001). In Weston, the plaintiff alleged that two suspensions without pay and two written reprimands created a pattern of antagonism. Weston, 251 F.3d at 430. The court disagreed. Id. The Weston Court contrasted this type of situation with the situation in Kachmar v. SunGard Data Systems, Inc., 109 F.3d 173 (3d Cir. 1997) where the intervening pattern of discrimination included “numerous circumstances that suggested termination might occur, including statements that the plaintiff was off the management track and that she should start looking for another job.” Weston, 251 F.3d at 432 (citing Kachmar 109 F.3d at 178). The Kachmar Court “concluded that the cumulative effect revealed a pattern of antagonism, which overcame any doubts raised by the temporal separation of events.” Id. Here, none of the events which Rand alleges are a part of the pattern of antagonism suggested that termination might occur. As in Weston, the alleged acts were simply discrete responses to particular occurrences. Although Rand attempts to create a pattern of antagonism by stringing together subjective beliefs, unsupported conclusions and inflammatory language, these items alone, are insufficient to create an actionable pattern. Therefore, because Rand has failed to establish the necessary causation between his complaint and his termination, summary judgment on his retaliation claim is appropriate.

VI. CONCLUSION

Summary judgment on Rand’s claim of age discrimination will be granted because he has failed to establish that Rexroth’s proffered reasons for his termination were either

post hoc fabrications or otherwise did not actually motivate the termination. Iadimarco, 190 F.3d at 166. However, summary judgment on Rand's claim of race and national origin discrimination will be denied because there are possible issues of fact regarding whether Rexroth's legitimate reasons for terminating Rand were actually pretext for race or national origin discrimination. Lastly, summary judgment on Rand's claim of retaliation will be granted because Rand has failed to establish the necessary causation between a protected activity and an adverse employment action.

An appropriate Order follows.

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

ARTHUR W. RAND,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 01-3564
	:	
MANNESMANN REXROTH	:	
CORPORATION,	:	
Defendant.	:	
	:	

ORDER

AND NOW, this 15th day of April, 2002, upon consideration of Defendant's Motion for Summary Judgment (Dkt. No. 7), and any Responses and Replies thereto, it is hereby ORDERED that the Motion is GRANTED in part and DENIED in part. It is hereby further ORDERED that:

1. Summary Judgment is GRANTED in favor of the Defendant on Plaintiff's claims of age discrimination. Therefore, those claims are DISMISSED with prejudice;
2. Summary Judgment is GRANTED in favor of the Defendant on Plaintiff's claims of Retaliation. Therefore, those Claims are DISMISSED with prejudice; and
3. Summary Judgment is DENIED on Plaintiff's claims of national origin discrimination.

BY THE COURT:

ROBERT F. KELLY,	Sr. J.
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