

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

RICHARD DUFFY, On behalf of)
himself and all others) CLASS ACTION
similarly situated)
) CIVIL ACTION
)
v.)
)
JOANN B. BARNHART,)
Commissioner, Social Security)
Administration, and)
)
KAY COLES JAMES, Director,)
Office of Personnel Management) No. 99-3154

MEMORANDUM

Padova, J.

August 21, 2002

This class action suit is brought by named Plaintiff Richard Duffy, an employee of the Social Security Administration ("SSA") who is over the age of 40. Plaintiff and the Class proceed on a single disparate treatment claim under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 et seq. The case is brought against the Commissioner of the Social Security Administration and the Director of the Office of Personnel Management ("OPM"), although the allegations of age discrimination proceed only against the SSA.¹ N.T. 8/5/02 at 9-11. Plaintiff

¹The OPM's principal involvement in the facts of this case were as the office responsible for approving and adopting the revised pay classification standard, and for conducting the appeal of the final classification decision. Plaintiff and the Class have not alleged that the OPM engaged in discriminatory conduct. The OPM is a Defendant in this action, however, because in the event that Plaintiff and the Class were to be granted relief, the OPM

alleges that he, along with approximately 129 other class members employed as Reconsideration Non-Disability Examiners ("RNDEs") and Reconsideration Reviewers ("RRs"),² were discriminated against on the basis of age, when, in the process of reclassifying its work force, the SSA failed to upgrade the RR and RNDE positions from a GS-11 to a GS-12 pay grade. Plaintiff and the Class further allege that the SSA simultaneously upgraded the pay grade of initial claims assessors and reviewers ("CAs" and "CRs"), who were on average more than six years younger than those holding the RR and RNDE positions, from a GS-10 to a GS-11. Plaintiff and the Class allege that the SSA's classification decisions were motivated by the class members' ages.

For the reasons that follow, the Court finds that the evidence presented at trial is insufficient to establish liability for age discrimination under the ADEA. Accordingly, the Court finds for Defendants. Judgment is entered in favor of Defendants and against Plaintiff and the Plaintiff class.

would be a necessary party in the provision of that relief.

²The Class is defined as follows:

All Reconsideration Non-Disability Examiners and Reconsideration Reviewers over the age of 40 who were employed with the Social Security Administration's Office of Disability Operations ("ODO") in Baltimore, Maryland and in six other Program Centers nationwide on or after March 20, 1995, and who did not have their positions upgraded to GS-12 by SSA after SSA's implementation of the GS-105 Series standard.

I. LEGAL STANDARD

Under the ADEA, it is "unlawful for an employer . . . to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C.A. § 623(a)(1)(West 1999). When a plaintiff alleges disparate treatment, the plaintiff's age must have "actually played a role in [the employer's decisionmaking] process and had a determinative influence on the outcome." Reeves v. Sanderson Plumbing Prod. Inc., 530 U.S. 133, 141 (2000); Hazen Paper Co. v. Biggins, 507 U.S. 604, 610 (1993). The employer may have relied upon a formal, facially discriminatory policy requiring adverse treatment of employees with that trait. Hazen Paper Co., 507 U.S. at 610. Or the employer may have been motivated by the protected trait on an ad hoc, informal basis. Id. Whatever the employer's decisionmaking process, the disparate treatment claim cannot succeed unless the employee's age actually played a role in that process and had a determinative influence on the outcome. Id.

A plaintiff may sustain an ADEA discrimination claim by presenting either direct or circumstantial evidence of discrimination. In a direct evidence case, the plaintiff must produce "direct evidence that the decisionmakers placed substantial negative reliance on an illegitimate criterion in reaching their

decision." Price Waterhouse v. Hopkins, 490 U.S. 228, 277 (1989). Often, a plaintiff cannot produce direct evidence, and must rely instead on circumstantial evidence of discrimination. In such cases, courts employ the burden-shifting framework outlined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Reeves, 530 U.S. at 142-43. Under this framework, the plaintiff must first produce sufficient evidence to convince a reasonable factfinder of all elements of a prima facie case of discrimination. Reeves, 530 U.S. at 142; Stanziale v. Jargowsky, 200 F.3d 101, 105 (3d Cir. 2000). Once the plaintiff satisfies this requirement, the burden shifts to the defendant to produce adequate evidence of a legitimate, nondiscriminatory reason for the adverse employment decision. Reeves, 530 U.S. at 142; Stanziale, 200 F.3d at 105. The defendant bears only a burden of production, not persuasion. Stanziale, 200 F.3d at 105. The defendant, therefore, need not persuade the factfinder that the proffered reason actually motivated the adverse employment decision. Id. If the defendant satisfies this burden, the presumption of discrimination created by the presentation of a prima facie case "drops out of the picture." Reeves, 530 U.S. at 143 (citing St. Mary's Honor Center v. Hicks, 509 U.S. 502, 510 (1993)). Plaintiff must then submit evidence from which a factfinder could find that the defendant's allegedly legitimate reason was a pretext for discrimination. Reeves, 530 U.S. at 143. In order to demonstrate pretext, the Plaintiff must

convince the factfinder that the defendant's articulated legitimate reasons were false and an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action. Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994). This case proceeds under the McDonnell Douglas burden-shifting framework. N.T. 8/12/02 at 8-9.

II. FINDINGS OF FACT

1. On November 15, 1988, the Social Security Administration entered into a Memorandum of Understanding ("MOU") with the Office of Personnel Management which provided for a consolidated classification standards project encompassing the GS-993 and GS-105 classification series.
2. As part of the classification standards project, SSA engaged in factfinding, which included the collection of data relating to the functions carried out by the positions covered by the GS-105 and GS-993 standards.
3. At the time of the MOU, the CA/CR positions were graded at GS-10 and the RR/RNDE positions were graded at GS-11.
4. Historically, there had been a one-grade differential separating the initial claims positions (CA/CR) and the reviewer (RR/RNDE) positions.
5. In 1993, the OPM issued the final GS-105 standard, which included some language that differed from the draft proposed by SSA.

6. There is insufficient evidence that age played a role in the SSA's actions in factfinding and drafting of the new GS-105 standard.
7. On September 30, 1993, the SSA upgraded the CR and CA positions to GS-11 under the new GS-105 standard.
8. Under the new GS-105 standard, the RR and RNDE positions remained at the GS-11 level.
9. There is insufficient evidence that age played a role in SSA's action in not classifying the RR and RNDE positions at GS-12.
10. On May 3, 1995, Rhoda Fassett approved the new position description for the RNDE position.
11. On May 8, 1995, Janice Warden approved a new position description for the RR position.
12. The RR and RNDE positions were not upgraded to GS-12, and remained at the GS-11 level.
13. There is insufficient evidence that age played a role in SSA's adoption of the new position descriptions for the RNDE and RR positions.

III. DISCUSSION

A. Prima Facie Case of Discrimination

In order to establish a prima facie case of discrimination, Plaintiff must establish: (1) Plaintiff and the class members are in a protected class, i.e. were 40 years of age or older; (2)

Plaintiff and the Class suffered an adverse action; (3) the positions of Plaintiff and the Class were qualified for an upgrade; and (4) Plaintiff and the Class were treated differently than similarly situated personnel who were sufficiently younger to create the inference of age discrimination. See Showalter v. University of Pittsburgh Med. Ctr., 190 F.3d 231, 234 (3d Cir. 1999); Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994). The Court will consider each element in turn.

1. Protected Class

There is no dispute that Plaintiff and the Class members were all members of a protected class in that they were age 40 and above.

2. Adverse action

Plaintiff and the Class allege that they suffered an adverse employment action when the SSA refused to upgrade the RR and RNDE positions to GS-12 under the new GS-105 standard.³ While the parties dispute the justifications for the ultimate classification level, it is undisputed that the RR and RNDE positions were ultimately classified at the GS-11 level and not at the GS-12 level.

³Plaintiff and the Class also assert that they were harmed by SSA's "subjective application of the GS-105 standard that, in practice and effect, represented a subsisting bar to any upgrade for the RRs and RNDEs." This is simply another way of articulating that the SSA refused to upgrade the pay classification to a GS-12.

Plaintiff and the Class allege two additional adverse actions: SSA's refusal to incorporate justified changes to the Position descriptions for the RR and RNDE positions, and the elimination, through the application of the new GS-105 standard, of the historic one-grade differential between initial adjudication work and appellate-like reconsideration work. In both cases, the underlying harm allegedly caused by these actions was the classification of the RR and RNDE positions at a GS-11. As noted above, it is not disputed that the positions were ultimately classified at GS-11. For purposes of the McDonnell Douglas analysis, and especially with respect to the establishment of a prima facie case of discrimination, the Court has broadly construed Plaintiff's allegations with respect to the adverse employment action.⁴

⁴Nevertheless, the Court notes that it is not clear that the evidence establishes that either of these additional adverse actions support the prima facie case. For example, the evidence may not be sufficient to demonstrate that SSA's refusal to incorporate the proposed changes into the position descriptions actually resulted in the GS-11 classification. The testimony at trial did establish that the SSA did not incorporate certain proposed changes to the position descriptions. See, e.g., N.T. 8/12/02 at 114-17 (Testimony of Richard Duffy); N.T. 8/12/02 at 157-58 (Testimony of Sylvia Merz); N.T. 8/12/02 at 190 (Testimony of Laurence Carton). This same testimony did not, however, demonstrate that had the changes been included, the positions would have been graded at GS-12. It is therefore unclear that this alleged adverse action was more than a de minimis employment action which caused the classification that affected the terms, conditions, and privileges of employment. See Dicks v. Informational Techn., Civil Action No.95-103, 1996 U.S. Dist. LEXIS 13469, at *23 (E.D. Pa. Aug. 29, 1996); Bowman v. Shawnee State Univ., 220 F.3d 456, 462 (6th Cir. 2000)(holding that de minimis employment actions are not materially adverse, and thus not actionable).

3. Qualification for upgrade

Plaintiff and the Class contend that the RR and RNDE positions were qualified for an upgrade to GS-12 under the new GS-105 standard. Specifically, Plaintiff and the Class contend that they were entitled to the upgrade on the same basis as the CA and CR upgrade - that is, that the change over the years and increase in complexity of the positions warranted a one-class upgrade in payscale.

The evidence at trial established that the SSA officials responsible for rewriting the GS-105 standard and for making the classification decision believed that the old standard did not accurately reflect the complexities of the positions - including the CA and CR positions - because of changes in the law and functions. See, e.g., N.T. 8/13/02 at 36-38 (Testimony of Albert Fowler); N.T. 8/12/02 at 123-24 (Testimony of Carol Cronin); N.T. 3/22/02 at 28 (Dep. of Janice Warden). Class member employees testified that over time the RR and RNDE positions had also changed in complexity. See, e.g., N.T. 8/12/02 at 111. Mr. Fowler, an SSA official primarily responsible for the classification standard

With respect to the historic one-grade differential, there is insufficient evidence that this constituted an adverse action. While there is sufficient evidence in the record to establish that there was an historic one-grade differential between the RR/RNDE and CA/CR positions, there is insufficient evidence for this Court to conclude, by a preponderance of the evidence, that the SSA violated any established departmental policy in grading the RR and RNDE positions at GS-11. See, e.g., N.T. 8/13/02 at 53; 8/14/02 at 46; 8/14/02 at 93; N.T. 1/17/02 at 64 (Dep. of Ruth Pierce).

drafting process, also testified that at least some of the changes in complexity might also have affected the complexity of the RR and RNDE positions. See N.T. 8/13/02 at 66-69.

The evidence is not so clear, however, that under the new OPM-approved GS-105 standard, the RR and RNDE positions were entitled to a GS-12 classification. For example, while Plaintiff's expert witness testified that the process for drafting the classification standard was unusual and abnormal, N.T. 8/12/02 at 47 (Testimony of Paul Katz), he did not examine the RR and RNDE positions to determine if they should have been classified at the GS-12 level.⁵ N.T. 8/12/02 at 74. Plaintiff did attempt to present evidence suggesting that there was an erroneous interpretation of the new GS-105 standard.⁶ Additionally, Plaintiff attempted to show that a similar reconsideration reviewer position in the Railroad Retirement Board received the GS-12 upgrade, although the testimony in the record lacks sufficient proof to establish that the

⁵Nor did Mr. Katz examine whether the SSA process was consistent with the MOU entered into with the OPM. N.T. 8/12/02 at 74.

⁶Specifically, Plaintiff argues that SSA officials erroneously interpreted the new standard as allowing for a factor level 4-5 complexity rating only if the work involved was disability work, or that SSA used this as an erroneous justification for its classification decision. See, e.g., Pl.'s Ex. 32 (Letter to Sen. Barbara Mikulski). Several other SSA officials testified to the contrary that they understood the standard as allowing a level 4-5 complexity rating if the work was disability or was of complexity comparable to the most complex of disability cases. See, e.g., N.T. 8/12/02 at 136 (Testimony of Carol Cronin); N.T. 8/14/02 at 29-37 (Testimony of Eugene Caruso); N.T. 8/14/02 at 127-29.

positions were the same and thus should have been classified under the same position. See N.T. 8/12/02 at 140-44.

Although the Court has some question as to whether Plaintiff and the Class have met their burden of proof on this third factor, the Court will assume without deciding, for purposes of the burden-shifting analysis, that Plaintiff has established that the RR and RNDE positions were qualified for the upgrade to GS-12. Accordingly, the Court will assume that this factor has been met for purposes of the prima facie case.

4. Inference of discrimination

Finally, Plaintiff and the Class allege that the RR and RNDE positions were treated differently from the CA and CR positions, and that the CA and CR positions were similarly situated. At trial, it was undisputed that all of the positions involved were covered by the new GS-105 standard. It is similarly undisputed that the CA and CR positions received a one-grade upgrade from GS-10 to GS-11. It is also undisputed that there were some differences in the process of reevaluation of the CA/CR positions and the RR/RNDE positions - specifically, the CA/CR positions received a "pen and ink" change⁷ while the RR/RNDE position descriptions were ultimately rewritten.

⁷A "pen and ink" change involved taking the existing position description and making changes to the title, series, and grade, without making substantial changes to the description itself. N.T. 8/13/02 at 16-17.

One of the problems with the Plaintiff Class's position and with establishing that the classes were "similarly situated" is that the CA and CR positions were upgraded to GS-11 and not to GS-12. For example, there is no dispute that the re-classification process did result in the assignment of a higher point value to the RR/RNDE positions than to the CA/CR positions. N.T. 8/13/02 at 24 (Testimony of Eugene Caruso). There was no contention, and thus no evidence, that, for example, the CA and CR positions were assigned a factor level 4-5 complexity rating, or even that the positions were classified at a difficulty rating that was higher than was justified. Therefore, it is difficult to compare the situations of the two classes, other than to make the observation that one class received an upgrade and the other did not.

Again, however, the Court assumes without deciding that Plaintiff and the Class have established that the RR and RNDE positions were treated differently from the CA and CR positions, that the positions were all similarly situated. It is also uncontested that the individuals holding the CA and CR positions were on average about six years younger than the individuals holding the RR and RNDE positions. Accordingly, the Court assumes that the fourth factor is met and Plaintiff and the Class have established a prima facie case of discrimination.

B. Legitimate, nondiscriminatory reason for classification

Defendants assert that the SSA decision to classify the RR and RNDE positions at the GS-11 level was based solely on a proper application of the new GS-105 standard. Specifically, Defendants contend that in applying the standard, the classifiers concluded that the RR and RNDE positions were not sufficiently complex to meet a 4-5 factor level of complexity because the work was not comparable to the most difficult of disability cases. See N.T. 8/12/02 at 136 (Testimony of Carol Cronin); N.T. 8/14/02 at 29-37 (Testimony of Eugene Caruso). Defendants' articulation and substantiation of these goals is sufficient to shift the burden to Plaintiff and the Class to prove pretext.

C. Pretext

Finally, Plaintiff and the Class assert that SSA's justifications for its classification decision are simply a pretext for discrimination. In order to establish pretext, Plaintiff and the Class must establish by a preponderance of the evidence that: (1) the reasons proffered by the defendants were false, and (2) the desire to discriminate on the basis of age was the real reason for the actions taken. Fuentes, 32 F.3d at 763.

Plaintiff and the Class ask the Court to infer pretext in several ways. They first point to SSA's effort, pursuant to the MOU with OPM, to revise the GS-105 standard. Plaintiff essentially argues that the irregular and abnormal process is circumstantial

evidence of an intent to discriminate on the basis of age; specifically, that the SSA sought to draft the standard in such a way so as not to allow for the RR and RNDE positions to be upgraded.⁸

This first aspect of Plaintiff's proof fails in several ways. First, the evidence does not establish that the SSA drafted a standard intended to maintain the RR and RNDE positions at the GS-11. Carol Cronin, the SSA official most closely responsible for the work associated with the drafting of the new standard, testified credibly that the draft the SSA had originally written and submitted to OPM would have retained the historic one-grade differential between the initial claims reviewers and the reconsideration reviewers.⁹ N.T. 8/13/02 at 132-36, 167. There is no evidence that Ms. Cronin intended either to create a standard that would prevent the RR and RNDE positions from receiving a GS-12 designation, or that she had any intent to discriminate based on

⁸As discussed at the Final Pretrial Conference, Plaintiff and the Class have not directly challenged the development of the classification standard and its adoption by the OPM. N.T. 8/5/02 at 11. However, Plaintiff and the Class assert that the process is relevant circumstantial evidence to prove its claim against the SSA for its application of the new GS-105 standard to the RR and RNDE positions.

⁹Ms. Cronin testified that the final SSA/HHS draft, Def.'s Ex. 28, was sent to OPM on or about July 24, 1992. N.T. 8/13/02 at 129.

age.¹⁰ Ms. Cronin also testified that she felt the changes made by OPM to the language in the standard would no longer support the classification of the reconsideration reviewers at the higher (GS-12) grade level. N.T. 8/13/02 at 136.

Even if it is true that the final standard was drafted in such a way that the RR/RNDE positions would not be upgraded while the CA/CR positions would be, the evidence does not establish that the SSA was responsible for this problem in the standard. While the SSA performed the fact-finding and drafting of the standard, the standard that was ultimately adopted and approved by the OPM did differ with respect to some of the language from the SSA proposal. In particular, there were changes to some of the language contained in the key part of the standard - that dealing with complexity. On this record, the Court simply cannot say that the SSA was responsible for establishing a standard that would result in the GS-11 classification.

Furthermore, regardless of any irregularities in the redrafting process, there is insufficient evidence in the record linking that process with any motive to discriminate based on age. In rewriting the GS-105 standard, the SSA's inquiry focused on positions and not individuals. N.T. 8/13/02 at 114 (Testimony of Carol Cronin). Ms. Cronin testified that age was not a factor

¹⁰Nor is there any evidence that any of Ms. Cronin's SSA supervisors took any action to modify her work in such a way as to evidence discriminatory intent.

considered or discussed with respect to the redrafting process. N.T. 8/13/02 at 114. Although Plaintiff presented much testimony aimed at proving that the SSA began the redrafting process with the intent of upgrading the CA/CR positions to a GS-11, this fact, even if true, of and by itself is insufficient to infer a discriminatory motive. Any irregularities and abnormalities in the process - as well as any actual deficiencies or errors in judgment by the key SSA officials, are not sufficient circumstantial evidence of age discrimination. In the Court's view, taking into account all of this evidence relating to creation of the new GS-105 standard, it would require inference upon inference upon inference, and therefore would be sheer speculation, to infer discriminatory motive from the actions taken by the SSA and the SSA officials with respect to the drafting of the new GS-105 standard.

The evidence similarly fails with respect to the actual classification decision based on the final GS-105 standard. Eugene Caruso, a classification team leader, testified credibly that age did not enter into the team's considerations and determination to grade the reconsideration reviewers at GS-11. N.T. 8/14/02 at 16 (Testimony of Eugene Caruso). Mr. Caruso's explanation of the application of the GS-105 standard to the RR and RNDE positions provided a credible explanation of the reasons why the positions were graded at GS-11. N.T. 8/14/02 at 27-46. Furthermore, there is no evidence to suggest that Mr. Caruso had a discriminatory

intent, or that any SSA official of higher rank took any actions to modify his work in such a way as to demonstrate discriminatory intent. There is also insufficient evidence to infer such a discriminatory intent from any of Mr. Caruso's actions or from the evidence presented relating to the classification decisions.

Likewise, there is insufficient evidence of discriminatory intent with respect to the revision of the RR and RNDE position descriptions in 1995. Janice Warden, who approved the new RR position description, testified that she did not ever recall being involved in any discussions relating to problems in training older employees. N.T. 3/22/02 at 51. Roger McDonnell, associate commissioner for Public Service and Operations Support, also testified that to his knowledge, age did not play a role in the development of the position description. N.T. 8/13/02 at 178. Examining all of the circumstantial evidence presented at trial with respect to the new position descriptions, including the testimony by class members regarding the proposals they had made, and the testimony and documentary evidence with respect to the application of the new GS-105 standard, the Court finds that there is an insufficient basis upon which it could infer an intent to discriminate on the basis of age.

Plaintiff and the Class next point to the streamlining project undertaken by the Hagel Committee to prove discriminatory animus. The aim of the streamlining committee was to find ways in which to

delayer the workforce in order to increase the span of managerial control. N.T. 8/13/02 at 182. In a November 12, 1993 memorandum, the Committee recommended the following:

The workgroup unanimously agreed the Reconsideration Reviewer position should be combined with the Claims Authorizer (CA) job. The CA position description already includes a reference to doing reconsideration work. Training for CA's should not be a problem. However, training the Reconsideration Reviewers may be somewhat more problematic. High management overhead would also be abolished by putting the Reconsideration Reviewer job responsibilities in the modules.

(Pl.'s Ex. 16.) (emphasis added) Plaintiff and the Class argue that the only plausible explanation for this statement is that those holding the RR/RNDE positions were older than the CA/CR position holders, and that the "difficulties" therefore referred to stereotypical thinking that older employees do not learn as fast as younger employees. In 1996, several years later and subsequent to the adoption of the new GS-105 standard and the regrading of the CA/CR positions, senior staff in the Office of Disability Operation ("ODO") began formulating a long-range work plan. In the plan, the committee observed that:

Many employees and managers need additional training to perform optimally. Some specific needs include recordation refresher training for RACs, screening skills training for technicians, initial management training for some managers. Our work force is aging and exhibits the problems typical of adult learners (longer learning curve, shorter attention span, decreased retention capability, etc.).

(Pl.'s Ex. 28, "ODO Long-Range Work Plan," at P00442.) Plaintiff and the Class argue that this statement reflects a continued view of older employees as more difficult to train.

Plaintiff's argument is problematic in that the statements are prone to multiple interpretations, and it is not at all clear that Plaintiff's interpretation is the only plausible one.¹¹ Furthermore, regardless of whether the Court were to accept Plaintiff's reading of these statements and the proposed suggestion of discriminatory intent, Plaintiff has failed to establish a sufficient connection between these statements by the Committee and the SSA's actions with respect to the drafting of the new GS-105 standard or the application of the new GS-105 to the RR/RNDE positions. Although there is a temporal overlap between the work of the streamlining committee and the drafting of the new GS-105 standard, the evidence does not establish, for example, that the individuals responsible for making the classification decisions were the same individuals involved in the Hagel Committee, or that they adopted or considered any of the goals or recommendations

¹¹For example, Ruth Pierce, who had been involved in some delaying discussions with respect to management positions, testified that the SSA was concerned about the general aging of its workforce in the context of recruitment efforts to prepare for loss of expertise, retention efforts, and the like. N.T. 1/17/02 at 163-64. Similarly, Rhoda Fassett, who approved the 1995 RNDE position description, testified that the discussions related to re-training of reconsideration reviewers did not also involve any discussion of the age of the individuals holding those positions. N.T. 1/14/02 at 89-90 (Dep. of Rhoda Fassett).

found in the Committee memoranda.¹² See, e.g., N.T. 1/17/02 at 70 (Dep. of Ruth Pierce).¹³ The testimony with respect to the work of the Hagel Committee fails to draw sufficient connections between it and the classification work. See, e.g., N.T. 8/12/02 at 184-88; N.T. 8/14/02 at 182-85. As such, even if the Court were to agree that the committee's recommendations suggested the intent to discriminate based on age, it would still not have a basis for inferring that there was also a discriminatory intent with respect to the classification process.

Finally, Plaintiff and the Class argue that the many different explanations of why the RR/RNDE positions were not upgraded to a

¹²Similarly, Plaintiff and the Class attempt to draw a connection between certain statements by regional commissioners and the classification decision. See, e.g., Pl.'s Ex. 19. The evidence fails to establish a discriminatory intent, or the inference of such a discriminatory intent, on the part of the regional commissioners in question. Moreover, the evidence fails to establish a sufficient connection between the documents created by the regional commissioners and the classification decisions reached by SSA. William Seck testified that the regional commissioners submitted suggested changes to the position descriptions. N.T. 8/14/02 at 121. He also testified that some of the commissioners recommended an upgrade for the RR and RNDE positions to GS-12, while other commissioners took no position with respect to the proposed grade level of the positions. N.T. 8/14/02 at 120-21. In light of the mixed nature of the recommendations made by the commissioners, and considering Mr. Seck's testimony as a whole, there is insufficient evidence to ascribe any sort of discriminatory intent on the part of regional commissioners, or to connect any such intent to the SSA's classification decision.

¹³Pierce did testify that she was involved in delayering of management positions, but did not recall ever having been involved in delayering initiatives involving the RR or other non-management positions. N.T. 1/17/02 at 157-58.

GS-12 demonstrate circumstantially that the SSA's real motive for classifying the positions at GS-11 was actually age. Examining the documentary evidence in the context of the testimony regarding SSA's interpretation of the OPM-adopted GS-105 standard, the Court finds the inconsistencies to be far less glaring than Plaintiff and the Class argue exist. See Pl.'s Ex. 29-31 (SSA Letters to Arlene M. Hudale); Pl.'s Ex. 32 (SSA Letter to Barbara A. Mikulski), Pl.'s Ex. 33 (OPM Letter to Sylvia Merz); Pl.'s Ex. 34 (SSA Letter to Larry Carton); Pl.'s Ex. 35 (SSA Memo); Pl.'s Ex. 36 (SSA Letter to Larry Carton). The testimony by SSA officials, in particular by Ms. Cronin and Mr. Caruso, suggests a plausible reading of the GS-105 standard which, even if incorrect, belies an inference of age discrimination. In other words, taking into account this circumstantial evidence of pretext and discriminatory intent, the Court simply cannot reasonably infer that the SSA's explanations, to the extent they are inconsistent or even incorrect, were a pretext for discrimination, and the Court similarly cannot infer that the SSA had a discriminatory intent which influenced its decision not to grade the RR and RNDE positions at a GS-12.

IV. CONCLUSION

The SSA's efforts to re-draft the GS-105 standard and to reclassify its employees suffered from disconnection and disjuncture that at least in some respects undermined its result. What began as an effort with the laudable goals of updating the

classifications to reflect changes over time and of improving employee morale developed instead into the sound of a discouraging word game which left a small group of employees feeling as though they were unable to reap the benefits available to so many of their fellow employees. The frustration on the part of Plaintiff and the Class members is understandable given the degree to which the process appeared to single out this small group of employees.

Notwithstanding the failure of the redrafting and reclassification processes to meet the needs of those holding the positions of RR and RNDE, however, the evidence presented in this case does not sustain a claim for liability based on age discrimination. The evidence fails to establish, by a preponderance of the evidence, that the explanations offered by the SSA to justify its classification decision were false, and that the real reason was to discriminate against the Plaintiff and Class members based on their age. The evidence in this case provides an insufficient basis for this factfinder to infer any such discriminatory intent, and to do so would require inference upon inference and pure speculation. Accordingly, the Court finds in favor of the Defendants on the claim of discrimination under the ADEA. Judgment is entered in favor of Defendants and against the Plaintiff and the Plaintiff class.

An appropriate Order follows.

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

| | | |
|--------------------------------|---|--------------|
| RICHARD DUFFY, On behalf of |) | CLASS ACTION |
| himself and all others |) | |
| similarly situated |) | CIVIL ACTION |
| |) | |
| v. |) | |
| |) | |
| JOANN B. BARNHART, |) | |
| Commissioner, Social Security |) | |
| Administration, and |) | |
| |) | |
| KAY COLES JAMES, Director, |) | |
| Office of Personnel Management |) | No. 99-3154 |

ORDER

AND NOW, this 21st day of August, 2002, **IT IS HEREBY ORDERED** that **JUDGMENT** is entered in favor of Defendants and against Plaintiff and the Plaintiff Class. This case shall be closed for statistical purposes.

BY THE COURT:

John R. Padova, J.