



defunct, School of Medical Technology.

In 1995, defendant hired an outside consultant to evaluate the competitive position of the Pathology Department and recommend potential areas for cost savings. The consultant concluded that the lab's scope of chemistry testing did not require the services of a full-time PhD scientist and that the role of chemist should be greatly expanded beyond the in-house laboratory or be made into a part-time consulting position. Defendant contends that in response to a decreased need for plaintiff's service and as an effort to preserve plaintiff's job the hospital contracted with Health Network Laboratories ("HNL") in 1998 so that plaintiff would spend two days a week working at HNL's facilities.

In 2000, the Pathology Department's Chairperson, Herbert Auerbach, D.O., and Administrative Director, Kathryn Durr, began reorganizing the department's lab to increase efficiency and reduce cost. Defendant contends that as part of the reorganization all lab supervisor and managerial positions were eliminated, including plaintiff's. Plaintiff was 60 years old at this time.

New positions subsequently were created within the restructured department to which the terminated supervisors were encouraged to apply. Plaintiff applied for the position of Training/Q.I. specialist. Plaintiff contends that he was fully qualified for this position, but the hospital hired a younger (54 year-old) and less qualified applicant, Stephanie Rupert. Moreover, plaintiff asserts that many of the functions he performed in his former position are now being performed by younger and less qualified personnel at the hospital.

### III. STANDARD FOR SUMMARY JUDGMENT

Federal Rule of Civil Procedure 56(c) provides that 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.” The Supreme Court has recognized that the moving party “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions . . . which it believes demonstrate the absence of a genuine issue of material fact.” Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). After the moving party has filed a properly supported motion, the burden shifts to the nonmoving party to “set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). The non-moving party, to prevail, must make a showing sufficient to establish the existence of every element essential to that party's case and on which that party will bear the burden of proof at trial. Celotex, 477 U.S. at 322. The nonmoving party may not simply rest upon the allegations or denials of the party's pleading. See id. at 324.

I must determine whether any genuine issue of material fact exists. An issue is “material” only if the factual dispute “might affect the outcome of the suit under the governing law.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). If the record taken as a whole in a light most favorable to the nonmoving party “could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’” Matsushita Elec. Co. v. Zenith Radio, 475 U.S. 574, 587 (1986) (citation omitted). If the evidence for the nonmoving party is merely colorable, or is not significantly probative, summary judgment may be granted. Anderson, 477 U.S. at 249-50 (citations omitted).

#### IV. DISCUSSION

In Count I of his complaint, plaintiff contends that defendant violated the ADEA (1) by selectively eliminating his position as clinical chemist based on his age, and (2) by refusing to rehire him for the subsequently created position of Training/Q.I. specialist. The Court of Appeals has applied a slightly modified version of the Title VII burden-shifting framework created in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) to ADEA cases:

First, the plaintiff must produce evidence that is sufficient to convince a reasonable factfinder to find all of the elements of a prima facie case [of age discrimination] . . . . If the plaintiff establishes a prima facie case, then “[t]he burden of production (but not the burden of persuasion) shifts to the defendant, who must then offer evidence that is sufficient, if believed, to support a finding that it had a legitimate, nondiscriminatory reason for the discharge.” Should the defendant fail to satisfy this burden, judgment should be entered for the plaintiff. But if the defendant satisfies this burden, then the burden of production shifts back to the plaintiff to proffer evidence ““from which a factfinder could reasonably either (1) disbelieve the employer’s articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer’s action.””

Showalter v. University of Pittsburgh Medical Ctr., 190 F.3d 231, 234-35 (3d Cir. 1999) (internal citations omitted). Although Count I of plaintiff’s appears to lump both ADEA claims together, I will address each one separately using this framework.

##### A. Wrongful Dismissal Claim

Defendant is entitled to summary judgment on the wrongful dismissal claim because plaintiff has failed to produce evidence of a prima facie case. When a plaintiff alleges unlawful discharge based on age, the prima facie case requires proof that (1) plaintiff was at least 40 years of age at the time of termination; (2) plaintiff was qualified for the position at issue; (3) plaintiff was terminated; and (4) the defendant retained someone who was similarly situated

and sufficiently younger to raise an inference of age discrimination. Anderson v. Consolidated Rail Corp., No. Civ. A. 98-6043, 2000 WL 1201534, at \*4 (E.D. Pa. Aug. 9, 2000), citing Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 142 (2000); see also Showalter, 190 F.3d at 235-36; Simpson v. Kay Jewelers, Div. of Sterling, Inc., 142 F.3d 639, 645 (3d Cir.1998).

In the present case, plaintiff has produced no evidence of the fourth element of a prima facie case: that the Pathology Department retained similarly situated younger managers when plaintiff's managerial position was eliminated. Rather, all managerial positions were eliminated regardless of the ages of the individuals that held them.<sup>1</sup>

Moreover, even if plaintiff were able to make out a prima facie case, he has failed to produce evidence from which a jury could reasonably disbelieve defendant's reasons for elimination of the clinical chemist position or conclude that a discriminatory reason was more likely the determinative cause.

To show that discrimination was more likely than not a cause for the employer's action, the plaintiff must point to evidence with sufficient probative force that a factfinder could conclude by a preponderance of the evidence that age was a motivating or determinative factor in the employment decision . . . . For example, the plaintiff may show that the employer has previously discriminated against her, that the employer has discriminated against other persons within the plaintiff's protected class or within another protected class, or that the employer has treated more favorably similarly situated persons not within the protected class.

Simpson v. Kay Jewelers, Div. of Sterling, Inc., 142 F.3d 639, 644-45 (3d Cir. 1998).

Defendant's articulated reasons for restructuring the Pathology Department, and

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<sup>1</sup> Plaintiff does not appear to dispute this assertion by defendant. Although plaintiff points out that certain younger individuals were eventually rehired for various newly created managerial positions that incorporated some of the clinical chemist's former responsibilities, all individuals rehired had to reapply for specific new positions. Plaintiff never applied for most of the positions to which many of his former responsibilities were redistributed. In fact, plaintiff applied for only one of these newly created positions.

consequently eliminating the position of Clinical Chemist, were to decrease cost and increase efficiency. Additionally, defendant cited a declining need for a PhD-level Chemist in the department because many of the department's procedures had become automated. As early as 1995, an independent consulting firm recommended that the Pathology Department needed to decrease costs by eliminating personnel:

[Abington Memorial Hospital] has long tradition of achieving reduced staffing goals through attrition. It is the only hospital laboratory in the Philadelphia metropolitan area that has not had major personnel layoffs. The Hospital is to be commended for its loyalty and concern for its employees. However, the financial goals required to retain the Laboratory's current outpatient business and compete for managed care business may require a more accelerated down sizing program. This is a difficult and sensitive issue for the hospital and laboratory administration. Whichever method of reduction is selected, defining a down sizing plan with significant cost impact will require Laboratory Administration to objectively challenge long standing traditions regarding staffing and organizational structure.

(Consultant's Report at 52.) In addition, the consultant's report recognized that the Pathology Department did not require the services of a full-time PhD-level Clinical Chemist and that the role should either be greatly expanded beyond the in-house laboratory or be made into a part-time consulting position.<sup>2</sup> This reason is further supported by the fact that in an effort to preserve plaintiff's job the defendant hospital arrived at an agreement with HNL in 1998 so that plaintiff would spend two days a week working at HNL's facilities and work part-time at Abington Memorial Hospital.

The Court of Appeals has described the plaintiff's burden in demonstrating that a

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<sup>2</sup> Plaintiff contends that this statement does not suggest that the hospital should have wholly eliminated the position of Clinical Chemist. However, the consultant recommends at the end of its report: "[R]eduction in the Chemistry and Microbiology doctoral level scientist and scaling staffing back to budget should yield a significant reduction in labor costs." (Consultant's Report at 61.)

defendant's articulated reasons for an adverse employment decision are pretext for discrimination on summary judgment:

To discredit the employer's articulated reason, the plaintiff need not produce evidence that necessarily leads to the conclusion that the employer acted for discriminatory reasons . . . nor produce additional evidence beyond her prima facie case . . . . The plaintiff must, however, point to "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons [such] that a reasonable factfinder could rationally find them 'unworthy of credence'" and hence infer that the proffered nondiscriminatory reason "did not actually motivate" the employer's action.

Simpson v. Kay Jewelers, Div. of Sterling, Inc., 142 F.3d 639, 644 (3d Cir. 1998).

In response to defendant's articulated reasons for eliminating the Clinical Chemist position, plaintiff points out that before leaving he had to educate the individual who received the newly created Core Lab Manager position on regulatory matters and had to review with him the method for evaluating certain data. Although this may constitute evidence that defendant still required someone to perform some of the chores that were once performed by a PhD-level clinical chemist, plaintiff has not produced any evidence that these chores could not adequately be performed by a lesser-educated and lower-paid individual. Moreover, plaintiff admitted multiple times in his deposition that the tasks he performed for defendant did not require the expertise of a PhD-level Clinical Chemist and that most non-teaching hospitals do not employ such chemists. Without more, plaintiff has not produced sufficient evidence "from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." Showalter, 190 F.3d at 234-35.

B. Failure To Hire

Defendant is also entitled to summary judgement on plaintiff's failure to hire claim. Although plaintiff has produced evidence of a prima facie case on this claim, a jury could not reasonably disbelieve defendant's stated reasons for choosing Stephanie Rupert over plaintiff for the position of Training/Q.I. specialist or conclude that a discriminatory reason was more likely the determinative cause.

Defendant contends that plaintiff has not demonstrated the fourth element of his prima facie case, that defendant hired a sufficiently younger person to raise an inference of age discrimination, because the woman hired for Training/Q.I. specialist was 54 years old and plaintiff was only 60 years old.<sup>3</sup> The Court of Appeals, however, has not adopted a fixed age difference that will be considered "sufficiently younger." See Showalter, 190 F.3d at 236 ("[W]e have noted that there is no 'particular age difference that must be shown,' but while 'different courts have held . . . that a five year difference can be sufficient, . . . a one year difference cannot.'"), quoting Sempier v. Johnson & Higgins, 45 F.3d 724, 729 (3d Cir.1995). Therefore, I cannot say that a six-year difference in age is insufficient as a matter of law and will examine whether plaintiff has produced evidence of pretext.

Defendant's primary stated reason for hiring Rupert instead of plaintiff was that Rupert established good working relationships with other employees at the hospital, particularly with the

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<sup>3</sup> Defendant concedes that plaintiff has fulfilled the other three elements of his prima facie case: (1) plaintiff was at least 40 years of age at the time of termination; (2) plaintiff was qualified for the position at issue; and (3) plaintiff was subject to an adverse employment decision.

nursing staff with respect to point-of-care testing issues.<sup>4</sup> The hospital sought an individual who could work collaboratively and diplomatically with the nursing staff, physicians and others in the Pathology Department. Defendant has presented evidence that plaintiff's confrontational approach to compliance and regulatory matters had diminished his effectiveness and led to complaints from the nursing staff and members of the Pathology Department and that this was one of the primary reasons why he was not selected for newly created position.

In an effort to demonstrate that these articulated reasons were a pretext for discrimination, plaintiff points to some reservations that defendant held about awarding the position to Rupert. Specifically, plaintiff cites to handwritten notes where Dr. Auerbach weighed the "pros and cons" of both plaintiff and Rupert. However, these notes do little to help plaintiff's case. Dr. Auerbach listed many more "pros" than "cons" for Ms. Rupert, while the opposite was true for plaintiff. Although Dr. Auerbach recognized that Ms. Rupert could "sometimes be overly emotional," did not have as strong an understanding of statistics as Dr. Coffman and was "not a great people manager," he noted that plaintiff was not effective at improving operations, needed constant guidance, had questionable organizational skills, had questionable computer skills, did not work well with other people, and was not as effective at documentation. Nothing in Dr. Auerbach's notes suggest that defendant's articulated reason for choosing Rupert, that she worked more cooperatively with hospital staff, was a pretext for discrimination. Moreover, in his

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<sup>4</sup> In addition, defendant cited other qualifications necessary to the position that Rupert possessed: she had excellent organizational, documentation, and computer skills, which had helped the hospital achieve good reviews in the bi-annual Certification Inspections by the College of American Pathology; she was instrumental in correcting inspection deficiencies in documentation and written procedures related to the Pathology Department's point-of-care testing program; and she had demonstrated the ability to supervise projects effectively without constant guidance or input from her superiors.

role as Clinical Chemist, plaintiff admits that he had taken an adversarial approach to workplace relationships and had stated that being an “SOB” was “part of the job.” In sum, plaintiff has produced no evidence that would allow reasonable jury either to disbelieve defendant’s articulated reason or to believe that invidious discrimination was more likely than not a motivating or determinative cause of defendant’s refusal to hire plaintiff for the position.

C. Remaining State Claims

Title 28 U.S.C. § 1367(c)(3) authorizes a district court to dismiss supplemental state law claims if all of the claims over which it has original jurisdiction have been dismissed. “[W]here the claim over which the district court has original jurisdiction is dismissed before trial, the district court must decline to decide the pendant state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so.” Hedges v. Musco, 204 F.3d 109, 123 (3d Cir. 2000) (emphasis in original), quoting Borough of West Mifflin v. Lancaster, 45 F.3d 780, 788 (3d Cir. 1995). Here, judicial economy, convenience and fairness do not require me to decide the pendant state claims. Therefore, I will dismiss the remaining state law claims against defendant without prejudice.

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

DR. NORMAN B. COFFMAN

v.

ABINGTON MEMORIAL HOSPITAL

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CIVIL ACTION

No. 02-CV-2192

**ORDER**

AND NOW, this        day of June 2003, after considering defendant's motion for summary judgement and plaintiff's response thereto, the motion is GRANTED with respect to the ADEA claims. The remaining state law claims are DISMISSED without prejudice. Judgment is ENTERED in favor of defendants and against plaintiff with respect to plaintiff's ADEA claims.

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THOMAS N. O'NEILL, JR., J.