

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

JOAN LEE JONES,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 00-2695
	:	
UNIVERSITY OF PENNSYLVANIA,	:	
Defendant.	:	

MEMORANDUM AND O R D E R

LEGROME D. DAVIS, J.

MARCH 20, 2003

Joan Lee Jones (“Plaintiff”) instituted this action for racial discrimination under Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C.A. §§ 2000e to 2000e-17, 42 U.S.C.A. § 1981 (“Section 1981”), and the Pennsylvania Human Relations Act (“PHRA”), 43 Pa. Cons. Stat. Ann. §§ 951 to 963. Plaintiff alleges that she was terminated from her position with the University of Pennsylvania (“Defendant”) as a result of racial discrimination. Defendant counters that Plaintiff was terminated because of poor job performance. Plaintiff also alleges that Defendant retaliated against her.

Presently before the Court are the Motion for Summary Judgment of Defendant Trustees of the University of Pennsylvania (Docket Entry No. 10), Plaintiff’s Answer to Defendant’s Motion for Summary Judgment (Docket Entry No. 11), Plaintiff’s Response to the Statement of Undisputed Facts of the Defendant (Docket Entry No. 12), and the Defendant’s Reply Memorandum in Further Support of its Motion for Summary Judgment (Docket Entry No. 13). For the reasons that follow, the Court will grant the Motion for Summary Judgment.

I. BACKGROUND AND PROCEDURAL HISTORY

The following facts are not in dispute.¹ Plaintiff, an African-American woman, worked as an administrative assistant in the Department of Art History (“Department”) at the University of Pennsylvania from October of 1987 through October of 1998. Up until July of 1994, Plaintiff’s job title was Office Administrative Assistant, and she was responsible for various administrative tasks, including hiring certain departmental aides, editing course bulletins, maintaining information bulletin boards, scheduling the Department classes with the University registrar, answering the telephone, and managing the Department office. In July of 1994, Michael Meister (“Professor Meister”) became the Chair of the Department, at which time he changed Plaintiff’s job title to “Administrative Assistant B,” removed some of her responsibilities (such as managing the Department office) and added other responsibilities. Also at this time, Professor Meister made Elyse Saladoff (“Ms. Saladoff”) the Department’s Business Administrator, and assigned to her the responsibilities of oversight of office tasks, handling budgets, faculty information and staff files, and managing payroll for faculty, staff and students. Ms. Saladoff also began to unofficially supervise Plaintiff, and, beginning in 1996, she became responsible, along with Professor Mesiter, for completing Plaintiff’s performance evaluations. From 1995 until Plaintiff’s termination in October of 1998, Plaintiff, Ms. Saladoff, and Darlene Jackson, who is an African-American woman (and who also held the position of an Administrative Assistant B) were the only full-time office personnel in the Department.

¹ See Separate Statement of Undisputed Facts of Defendant the Trustees of the University of Pennsylvania in Support of its Motion for Summary Judgment (“Def.’s Statement of Facts”) at ¶¶ 6-22, 100-123; Plaintiff’s Response to the Statement of Undisputed Facts of Defendant University of Pennsylvania in Support of its Motion for Summary Judgment (“Pl.’s Statement of Facts”) at ¶¶ 6-22, 100-123.

On July 1, 1997, Elizabeth Johns (“Professor Johns”) took over as Chair of the Department, and she remained in that position until June 30, 2000. In May of 1998, Professor Johns appointed Ms. Saladoff to fill the role of Office Manager, at which time Ms. Saladoff began officially to supervise the office staff, including Plaintiff. In May of 1998, Plaintiff was provided with a “Performance Improvement Plan.” See Def.’s Statement of Facts at Ex. I. On September 14, 1998, Plaintiff was informed in a letter from Professor Johns that Plaintiff’s performance continued to be unsatisfactory in certain areas, and that she was being placed on probation for ninety days. See Def.’s Statement of Facts at Ex. K. On October 12, 1998, Plaintiff was informed in a letter from Professor Johns that her employment was being terminated based upon poor job performance. See Def.’s Statement of Facts at Ex. M. After Plaintiff was terminated, Vilisia Betterson (“Ms. Betterson”), who is also an African-American woman, replaced Plaintiff as the second of two Administrative Assistant B employees in the Department. Plaintiff filed a grievance challenging her termination, but her termination was upheld at each level of review. Plaintiff then filed a charge with the Equal Employment Opportunity Commission (“EEOC”) on August 6, 1999 (297 days after her termination) alleging only racial discrimination. See Def.’s Statement of Facts at Ex. S. Plaintiff subsequently filed a second charge with the EEOC on November 5, 1999, alleging both racial discrimination and retaliation. Id. After receiving a Notice of Right to Sue from the EEOC, Plaintiff filed the instant action on May 26, 2000.

II. LEGAL STANDARD

In order to prevail on a summary judgment motion, the moving party must show from the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the

affidavits, if any” 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). When ruling on a motion for summary judgment, the Court must view the evidence in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). A disputed factual matter is a genuine issue “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is material if it might affect the outcome of the lawsuit under the governing substantive law. Id.

Once the moving party establishes “that there is an absence of evidence to support the non-moving party’s case,” Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986), the nonmoving party must “do more than simply show that there is some metaphysical doubt as to the material facts.” Matsushita, 475 U.S. at 586. The nonmoving party may not rely on bare assertions, conclusory allegations or suspicions. Fireman’s Ins. Co. of Newark v. DuFresne, 676 F.2d 965, 969 (3d Cir.1982). Neither may the nonmoving party rest on the allegations in the pleadings. Celotex Corp., 477 U.S. at 324. Rather, the nonmoving party must “go beyond the pleadings and by her own affidavits, or by the ‘depositions, answers to interrogatories, and admissions on file,’ designate ‘specific facts showing that there is a genuine issue for trial.’” Id.

III. ANALYSIS

A. Legal Framework for Plaintiff’s Racial Discrimination Claims

Plaintiff’s racial discrimination claims under Title VII, the PHRA and § 1981 are analyzed according to the same legal framework. Jones v. School Dist. of Philadelphia, 198 F.3d 403, 410 (3d Cir. 1999). In the absence of direct evidence of discrimination, a plaintiff may

establish discrimination through circumstantial evidence using the burden-shifting established in a number of United States Supreme Court cases. See McDonnell Douglas v. Green, 411 U.S. 792 (1973); Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993). First, the plaintiff must set forth a *prima facie* case of discriminatory discharge by establishing that: (1) she is in a protected class; (2) she is qualified for the position; (3) she suffered an adverse employment action; and (4) she was discharged under circumstances that give rise to an inference of unlawful discrimination. See Pivrotto v. Innovative Sys., Inc., 191 F.3d 344, 356-57 (3d Cir.1999); Waldron v. SL Indus., Inc., 56 F.3d 491, 494 (3d Cir.1995).

As to the fourth prong, Courts have recognized that “[c]ommon circumstances giving rise to an inference of unlawful discrimination include the hiring of someone not in the protected class as a replacement or the more favorable treatment of similarly situated colleagues outside of the relevant class.” Morris v. G.E. Financial Assurance Holdings, 2001 WL 1558039, at *5 (E.D. Pa. 2001) (citing Bullock v. Children’s Hosp. of Philadelphia, 71 F.Supp.2d 482, 487 (E.D. Pa. 1999)). Indeed, the fact that a plaintiff claiming discrimination was replaced by an individual from within the same protected class “might have some evidentiary force, and it would be prudent for a plaintiff in this situation to counter (or explain) such evidence.” Pivrotto, 191 F.3d at 354. However, it is also well-established that a plaintiff is not *required* to show that she was replaced by someone outside of the relevant class, or that employees outside of the relevant class were treated more favorably, in order to establish a *prima facie* case. Id. at 357. A plaintiff is only required to produce evidence sufficient to create an inference that an employment decision was based upon an illegal discriminatory criterion. Id. at 356.

Once the plaintiff establishes a *prima facie* case, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for its employment decision. Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir.1994).

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. 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. 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

Id. (citations omitted). Specifically, in order to withstand a motion for summary judgment where the plaintiff has established a *prima facie* case and the defendant has articulated a legitimate, nondiscriminatory reason for its employment decision, “the plaintiff must point to some evidence, direct or circumstantial, 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.” Id. at 764.

Where a plaintiff seeks to avoid summary judgment by showing that the defendant's proffered reasons are pretextual, “the plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent.” Id. at 765. “Rather, the non-moving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons

for its action that a reasonable factfinder could rationally find them ‘unworthy of credence,’ and hence infer ‘that the employer did not act for [the asserted] non-discriminatory reasons.’” Id. (citations omitted).

It should also be noted that the evidence presented by a plaintiff to establish her *prima facie* case may overlap with the evidence presented to establish that the defendant’s proffered reasons are pretextual. “As our cases have recognized, almost in passing, evidence supporting the prima facie case is often helpful in the pretext stage and nothing about the McDonnell Douglas formula requires us to ration the evidence between one stage or the other.” Farrell v. Planters Lifesavers Co., 206 F.3d 271, 286 (3d Cir. 2000) (citing Iadimarco v. Runyon, 190 F.3d 151, 166 (3d Cir. 1999), and Jalil v. Avdel Corporation, 873 F.2d 701, 709 n.6 (3d Cir.1989)); see also Dillon v. Coles, 746 F.2d 998, 1003 (3d Cir. 1984) (“The formula does not compartmentalize the evidence so as to limit its use to only one phase of the case. The plaintiff’s evidence might serve both to establish a prima facie case and discredit a defendant’s explanation.”).

B. Analysis of Plaintiff’s Racial Discrimination Claims

Defendant argues that it is entitled to summary judgment as to Plaintiff’s racial discrimination claims on two grounds. First, Defendant argues that Plaintiff is unable to establish a *prima facie* case of racial discrimination because she cannot establish the fourth prong, namely that the circumstances of her termination give rise to an inference of unlawful discrimination. Specifically, Defendant points out that Plaintiff was replaced by Ms. Betterson, who is an African-American woman, and that Plaintiff was therefore not replaced with an individual outside of the protected class. Defendant also contends that Plaintiff cannot show that

a similarly situated individual outside of the protected class was treated more favorably than Plaintiff, because the only other Administrative Assistant B during Plaintiff's tenure was Ms. Jackson, who is also an African-American woman.

Second, Defendant argues that even if Plaintiff is able to establish a *prima facie* case, she has not established that Defendant's articulated nondiscriminatory reason for Plaintiff's termination is pretextual. Specifically, Defendant argues that the reason for Plaintiff's termination was her "chronic poor job performance," that Plaintiff's only contention with regard to Defendant's proffered reason is that she disagrees with Defendant's assessment of her job performance, and that this contention alone, absent any other evidence of pretext, is insufficient to withstand the Motion for Summary Judgment.

In response to the Motion for Summary Judgment, Plaintiff addresses Defendant's two grounds for summary judgment (that Plaintiff cannot establish a *prima facie* case and that she cannot establish pretext) jointly, pointing to the same evidence to rebut both grounds.² See Plaintiff's Answer to Defendant's Motion for Summary Judgment ("Pl.'s Answer") at 2-5. In so doing, Plaintiff has set forth only two substantive arguments which need be addressed here.³

² As noted above, the evidence presented by a plaintiff to establish her *prima facie* case may overlap with the evidence presented to establish that the defendant's proffered reasons are pretextual.

³ The Court will not address Plaintiff's assertion that she raised the issue of racial discrimination during the grievance process, see Pl.'s Answer at 4, since this assertion, even if true, is not evidence that Plaintiff's employment was terminated as a result of a discriminatory motive. With respect to Plaintiff's assertion that much of the evidence upon which Defendant relies is inadmissible hearsay, see Pl.'s Answer at 4-5, the Court notes that so long as complaints received by an employer are offered to show the state of mind of the employer (a crucial factor in discrimination cases), and not offered to prove the truth of the matter asserted, such complaints do not constitute hearsay. See, e.g., Hardie v. Cotter and Co., 849 F.2d 1097, 1101 (8th Cir.

(continued...)

First, Plaintiff points out that her employment was terminated before the expiration of the ninety-day probation period set forth in Professor Johns's letter of September 14, 1998, and she argues that "[e]vidence of an employer's failure to follow its own policies and procedures generally supports a claim of discrimination, and does so in this case." Pl.'s Answer at 4. Second, Plaintiff argues that, contrary to the assertions of Defendant, Plaintiff's job performance was at all times satisfactory, and that the evidence clearly establishes "that there are material facts in dispute regarding whether Ms. Jones failed to perform the requirements of her position, timely or at all, and whether she exhibited the proper demeanor and customer service skills in the discharge of her duties." *Id.* at 3. In support of this argument, Plaintiff offers her own testimony, as well as two particular job performance evaluations. See Pl.'s Statement of Facts at ¶ 23. The Court will address each of Plaintiff's arguments in turn.⁴

1. Alleged Policy Violation

Plaintiff first argues that her employment was terminated before the expiration of the ninety-day probation period set forth in Professor Johns' letter of September 14, 1998, and that "[e]vidence of an employer's failure to follow its own policies and procedures generally supports a claim of discrimination, and does so in this case." Pl.'s Answer at 4. Plaintiff's legal assertion here is simply erroneous. "[T]he mere fact that an employer failed to follow its own internal procedures does not necessarily suggest that the employer was motivated by illegal

³(...continued)
1988).

⁴ Plaintiff has not countered or attempted to explain the fact that she was replaced by an individual within the same protected class. See Pivrotto, 191 F.3d at 354.

discriminatory intent or that the substantive reasons given by the employer for its employment decision were pretextual.” Randle v. City of Aurora, 69 F.3d 441, 454 (10th Cir. 1995); see Harris v. Niagara Mohawk Power Corp., 252 F.3d 592, 599 (2d Cir. 2001). Here, even viewing the evidence in the light most favorable to Plaintiff, and assuming that Defendant violated its own policy by terminating Plaintiff prior to the expiration of the ninety-day probation period, Plaintiff has not set forth any evidence as to whether Defendant adhered to the probation policy in other cases. In order to establish an inference of racial discrimination based solely on this alleged policy violation, Plaintiff would have to offer evidence that individuals outside of the protected class were treated differently by Defendant *with respect to the policy in question*, or at least some evidence connecting Defendant’s failure to adhere to the policy to racial discrimination. See Maull v. Division of State Police, Dept. of Public Safety, State of Delaware, 141 F.Supp.2d 463, 482 (D. Del. 2001), *affirmed*, 2002 WL 1480774 (3d Cir. 2002).

2. Plaintiff’s Job Performance

Plaintiff argues that there are genuine issues of material fact as to whether her job performance was satisfactory, and offers as evidence her own testimony and two particular evaluations. Plaintiff’s own assertions that Defendant’s evaluations of her job performance were inaccurate, and that her job performance was actually satisfactory, are not pertinent here; what matters is Defendant’s perception. See Billet v. CIGNA Corp., 940 F.2d 812, 825 (3d Cir. 1991) (holding that “[t]he fact that an employee disagrees with an employer’s evaluation of him does not prove pretext”), *overruled in part on other grounds*, St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); Fatzinger v. Lehigh Valley Hosp., 130 F.Supp.2d 674, 679 (E.D. Pa. 2001) (“it is well-established that neither a simple denial of the charges against her, nor her own rosier

perception of her performance, saves Plaintiff from summary judgment”). Stated another way, the issue is not whether Defendant’s subjective perception of Plaintiff’s job performance is objectively accurate. Rather, the issue is whether it was, in fact, this subjective perception that actually motivated Defendant’s action, rather than some discriminatory purpose. If the evidence tends to show that Defendant perceived Plaintiff’s job performance as unsatisfactory, and that this perception (whether objectively accurate or not) actually motivated Defendant’s action, Plaintiff has not satisfied her burden of establishing pretext. Thus, Plaintiff’s own testimony to the effect that her job performance was at all times satisfactory is not relevant to the issue at hand.

As noted, Plaintiff also points to two particular job performance evaluations as evidence that Defendant did not actually perceive Plaintiff’s job performance as unsatisfactory. Such evidence, unlike Plaintiff’s own assertions, would clearly be relevant if the evaluations, in fact, undermined Defendant’s contention that Plaintiff was fired because Defendant perceived her job performance as poor. However, a review of the evaluations in question reveals that they do not undermine (and in fact support) Defendant’s proffered reason for Plaintiff’s termination.

The first evaluation is a document entitled “Performance Appraisal and Staff Development Program,” dated May of 1996. See Def.’s Statement of Facts at Ex. F. This evaluation contains eight categories (one of which was not applicable to Plaintiff and which was left blank) and, for each, provides three options: “Exceptional Performance,” “Solid Performance,” or “Performance Requires Improvement.” See id. Plaintiff did not receive a rating of “Exceptional Performance” in any of the seven categories in which she was evaluated. See id. She received a rating of “Solid Performance” in four of the seven categories

(Technical/Specialized Skills, Quality, Work Autonomy, and Customer Service Skills), and a rating of “Performance Requires Improvement” in the remaining three categories (Dependability, Attendance/Punctuality, Communication/Interpersonal Skills). See id. Included in the explanation section pertaining to the three categories in which Plaintiff received a rating of “Performance Requires Improvement” were the following comments:

“Joan must work at becoming a better team player.”

“Deadlines need advance planning (proactivity).”

“She must improve time management skills.”

“Often arrived late for work.”

“Customers (faculty, students, staff) must always be treated in the most positive manner Being defensive is destructive behavior not constructive.”

Id. Moreover, even among the explanation sections for the categories in which Plaintiff received a rating of “Solid Performance,” there were comments such as the following:

“Joan gets the job done, but often at the last possible moment. Accuracy and reliability suffer from lack of follow through. Organization skills can improve, as well as those in time management (ex, supply maintenance).”

“Joan is self-motivated in her computer work. This, however, is only part of her job. Other areas of autonomy suffer.”

“Customer service requirements are met. Communicating them needs improvement.”

Id. Thus, although Ms. Saladoff gave Plaintiff an Overall Rating of “Solid Performance,” Plaintiff’s evaluation from May of 1996 indicates that her job performance required some improvement in six of the seven categories in which she was evaluated. The evaluation also provides a list of goals for Plaintiff, including attending a workshop on Interpersonal Communication, a workshop on Customer Service, and a training course on Time Management.

The second evaluation offered as evidence by Plaintiff is a document entitled “Performance and Staff Development Plan,” dated June of 1997. See Def.’s Statement of Facts

at Ex. G. This evaluation contains seven categories (six of which were applicable to Plaintiff). Plaintiff received a rating of “Exceptional Performance” in one, and a rating of “Solid Performance” in the remaining five. See id. However, the explanation sections include the following comments:

“Joan has successfully developed the departmental website. She continues to meet deadlines, however, proactivity and organizational skills still need improvement.”

“Joan is self-motivated particularly in her new computer work about which she is deeply excited . . . other areas of autonomy suffer from lack of continuity in taking charge of responsibilities to the program as a whole.”

“Joan can be courteous and polite to those who seek her help; however . . . [s]ome students still have difficulty working with Joan.”

Id. In addition, the evaluation indicates that Plaintiff failed to enroll in any of the training courses set forth in the previous year’s evaluation. See id.

When considered in isolation, these two evaluations, even viewed in the light most favorable to Plaintiff, establish that Defendant consistently perceived Plaintiff’s job performance as requiring improvement in a number of areas. Moreover, when considered along with all of the other evidence of Plaintiff’s job performance, as set forth in detail below, it is clear that Defendant consistently perceived Plaintiff’s job performance as being significantly deficient in numerous areas. The following is a summary of just some of the evidence of Plaintiff’s unsatisfactory job performance.

The record contains a copy of a letter sent to Professor Meister on February 24, 1995 by a student who was a senior at the University of Pennsylvania at the time and an art history major.

The student states:

I wish to bring to your attention the manner with which a certain Mrs. Jones, a secretary in the art history department conducts herself in the

front office. This is my fourth year at Penn as a major and in that time I have had many occasions to interact with Mrs. Jones. I am sorry to report that not once has she been amiable, helpful, respectful or kind but on the contrary is always confrontational, rude, uninformed and condescending. . . . I am hesitant to bring this to anyone's attention for fear of reprisal since she handles department paper work and I am not graduating until December, 1995. But I refuse to idly tolerate her verbally abusive manner

Def.'s Statement of Facts at Ex. E, p. D00294. The record also contains an email from a course instructor to Ms. Saladoff dated October 1, 1998, in which the instructor states:

Here's my complaint. As I told you the other day, over the past two years Joan has been increasingly surly and unhelpful when asked to do tasks that are clearly her responsibility. . . .

The other day I asked her to create three recitation times and to set up rooms for those recitations. To begin with, she did not look carefully at the times I gave her and first reserved rooms . . . for the wrong times. . . . She also first scheduled me to teach in two different buildings, clearly unacceptable. Finally, it took all day for her to create the sections and to get the rooms and announced to me at the end of the day that she had triumphed. As though this was a very difficult . . . task and one that should take all day. . . .

Also, I sent her the below email asking for web site information. I found her response terse and unfriendly as I do all my interactions with her. I can't really say that her behavior is entirely unprofessional, but she is not really helpful. I suppose my true complaint [is] that she is not competent and is also lazy.

Def.'s Statement of Facts at Ex. L.

Ms. Saladoff testified in her deposition that Plaintiff's job performance suffered from numerous deficiencies prior to the first evaluation discussed above, including that Plaintiff was not a friendly person, that she made errors because she was not organized, that she would frequently fail to deliver phone messages in a timely manner, that she had difficulty completing her tasks and working autonomously, and that she failed to keep track of supplies. See Def.'s Statement of Facts at Ex. C, p. 28-31. Also included in the record is a performance appraisal

from May of 1998 entitled “Performance Improvement Plan for Joan Lee Jones” (“Improvement Plan”). See Def.’s Statement of Facts at Ex. I. This Improvement Plan lists objectives toward which Plaintiff was to work, including: performance of tasks in a timely manner, updating the filing system, being courteous and responsive to customer requests, and acquiring better telephone and communication skills. See id. The record also contains notes taken by Ms. Saladoff during the summer and fall of 1998, indicating that Plaintiff continued to perform in an unsatisfactory manner, including: failing to deliver phone messages, failing to accurately maintain a calendar of appointments, failing to undertake certain classroom scheduling tasks, and failing to interact with students in a positive manner. See Def.’s Statement of Facts at Ex. J.

Professor Johns testified that from July of 1997 through the time of Plaintiff’s termination she observed a number of performance issues, including mismanagement of files, rudeness to students, and errors in maintaining statistics pertaining to student records and graduation requirements. See Def.’s Statement of Facts at Ex. D, p. 8-9. Professor Johns testified that she discussed these issues with Plaintiff each time they arose, but that “[e]ach time it was as though she forgot what we had talked about,” and that Plaintiff never improved the quality of her job performance as a result of these discussions. Id. at 10. Professor Johns also described various specific instances in which Plaintiff failed to perform her job duties in a satisfactory manner. See id. at 15-17, 26-32, 47-48.

On one occasion, Professor Johns had asked Plaintiff to make “slight modifications” to the information posted on a course website. See id. at 15-16. Although Plaintiff was apparently spending a considerable amount of time each day on this task, she failed to make the “minor changes” in a timely manner, which resulted in approximately 250 students not having the

necessary material with which to study. See id. On a second occasion, Plaintiff missed two deadlines relating to scheduling courses for the College of General Studies program (also referred to as the “night study” program), resulting in “a great inconvenience in the central scheduling office” and a significant scheduling inconvenience for the instructors teaching these courses. Id. at 26-30.

On a third occasion, Professor Johns was expecting a visit from an individual who had donated the \$5.5 million building in which the Department is located, and from whom Professor Johns was hoping to solicit additional financial contributions. See id. at 33. Although Plaintiff was the only staff member in the building at the time, and although she knew this individual was expected and that Professor Johns was hoping to solicit a contribution from him, she departed the building and left a note stating that she would be back “after a while.” See id. Professor Johns discovered the empty office and the note, and the time indicated on the note was approximately forty-five minutes prior to when Professor Johns discovered it. See id.

On a fourth occasion, Professor Johns gave Plaintiff a hard copy of a letter which Plaintiff was to send out to potential contributors to the Department. See id. at 65-67. Professor Johns also sent Plaintiff an email containing the precise text of the letter so that Plaintiff “would not have to retype it and introduce errors.” Id. at 65. Nonetheless, Professor Johns discovered errors in the letter after Plaintiff had completed the letter and had printed out 150 final copies on Department letterhead. Id. at 65-67. “[E]verybody in the office” then had to work in order to send the corrected letters out on time. Id. at 66.

To reiterate, the pertinent issue regarding Plaintiff’s job performance is whether Defendant believed that her job performance was unsatisfactory, and whether this belief

motivated Defendant's termination of Plaintiff. Whether Defendant's assessment of Plaintiff's job performance was objectively accurate is not determinative. The Court finds that the evidence does not establish a genuine issue of material fact as to whether Defendant believed Plaintiff's job performance was unsatisfactory, and that, in fact, the evidence so clearly establishes that Defendant believed Plaintiff's job performance was at all times unsatisfactory and deficient in numerous areas that no reasonable juror could find otherwise. Thus, the job performance evidence to which Plaintiff points does not establish either that the circumstances of her termination give rise to an inference of unlawful discrimination, or that Defendant's articulated nondiscriminatory reason for Plaintiff's termination is pretextual.

C. Retaliation

In a "deferral state" such as Pennsylvania, a charge under Title VII must be filed with the EEOC within 300 days of when the alleged unlawful employment practice occurred. Seredinski v. Clifton Precision Products Co., Div., of Litton Systems, Inc., 776 F.2d 56, 61 (3d Cir. 1985) (citing 42 U.S.C. § 2000e-5(e)). As noted at the outset, Plaintiff's initial EEOC charge filed on August 6, 1999 (297 days after her termination) alleged only racial discrimination and did not allege retaliation. See Def.'s Statement of Facts at Ex. S. Further, although Plaintiff did include an allegation of retaliation in her second EEOC charge, this second charge was not filed until November 5, 1999, more than 300 days after her termination. See id. On this basis, Defendant contends that Plaintiff's retaliation claim is barred due to Plaintiff's failure to exhaust administrative remedies. Plaintiff has failed to assert that any pertinent exception applies, such as waiver, estoppel, or equitable tolling. See Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982). In fact, Plaintiff has notably failed to provide any response whatsoever to

Defendant's argument that her retaliation claim is barred. Based upon the undisputed fact that Plaintiff failed to file an EEOC charge alleging retaliation until after the statutory limitations period had expired, the Court concludes that Defendant is entitled to summary judgment as to Plaintiff's retaliation claim as a result of Plaintiff's failure to exhaust her administrative remedies.

Moreover, the Court finds that even if Plaintiff's retaliation claim were not barred for failing to exhaust administrative remedies, the evidence set forth by Plaintiff would be insufficient to establish a *prima facie* case of retaliation. To establish a *prima facie* case of retaliation, a plaintiff must show that: (1) she engaged in a protected employee activity; (2) the employer took an adverse employment action after or contemporaneous with the protected activity; and (3) a causal link exists between the protected activity and the adverse action.

Weston v. Pennsylvania, 251 F.3d 420, 430 (3d Cir. 2001). As to the first element, a "protected activity" in the context of Title VII exists where an employee "has opposed any practice made an unlawful employment practice by [Title VII]," or where an employee "has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII]." 42 U.S.C. § 2000e-3(a). Thus, in order for an employee's complaints to constitute protected activity, the complaints must pertain to conduct that is prohibited by Title VII. See Walden v. Georgia-Pacific Corp., 126 F.3d 506, 513 n. 4 (3d Cir. 1997) (grievances about working conditions not protected activity when they do not concern acts made unlawful by Title VII), *cert. denied*, 523 U.S. 1074 (1998). "[A] general complaint of unfair treatment does not translate into a charge of illegal discrimination, and is not protected conduct under Title VII."

Gharzouzi v. Northwestern Human Services of Penn., 225 F.Supp.2d 514, 540 (E.D. Pa. 2002) (citing Barber v. CSX Distrib. Servs., 68 F.3d 694, 701-02 (3d Cir. 1995)).

Plaintiff contends that “it is undisputed that in the spring of 1998, Ms. Jones informed defendant’s Ombudsman of race discrimination and racially hostile incidents.” Pl.’s Answer at 5. However, Plaintiff fails to cite any evidence to support this factual allegation. Furthermore, in a formal statement made by Plaintiff during the grievance hearing process after her termination, Plaintiff stated that she had visited the Ombudsman in April of 1998 due to her concern that her performance evaluations were “unfair and lacking in objectivity”; Plaintiff did not state that she complained about racially discriminatory conduct. Def.’s Statement of Facts at Ex. H. In fact, even in her Affidavit attached to her Response to the Motion for Summary Judgment, Plaintiff avers only that: “I visited defendant’s Office of the Ombudsman in spring 1998 because [Ms. Saladoff] was building a case against me in order to fire me and I knew that she intended to give me an inaccurate Performance Appraisal as part of the case.” Pl.’s Response at Ex. A, ¶ 17. Thus, Plaintiff has failed to provide any evidence to show that she engaged in a protected activity.

IV. CONCLUSION

In summary, the Court concludes that Defendant is entitled to summary judgment as to Plaintiff’s racial discrimination claims on two grounds. First, Plaintiff has not presented evidence to show that she was discharged under circumstances giving rise to an inference of unlawful discrimination, and Plaintiff has therefore failed to establish a *prima facie* case. See Pivrotto, 191 F.3d at 356-57. Moreover, even if the evidence is sufficient to establish a *prima facie* case, Plaintiff has failed to point to any evidence from which a factfinder could reasonably

either (1) disbelieve Defendant's articulated legitimate reason, or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of Defendant's action. See Fuentes, 32 F.3d at 764.

In addition, Defendant is entitled to summary judgment as to Plaintiff's retaliation claim because the claim is barred due to a failure to exhaust administrative remedies. Furthermore, even if Plaintiff's retaliation claim were not barred based on a failure to exhaust administrative remedies, Defendant would be entitled to summary judgment because Plaintiff is unable to establish a *prima facie* case of retaliation. An order follows.

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

JOAN LEE JONES,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 00-2695
	:	
UNIVERSITY OF PENNSYLVANIA,	:	
Defendant.	:	

ORDER

AND NOW, this 20th day of March, 2003, upon consideration of the Motion for Summary Judgment of Defendant the Trustees of the University of Pennsylvania (Docket Entry No. 10), Plaintiff's Answer to Defendant's Summary Judgment Motion (Docket Entry No. 11), Plaintiff's Response to the Statement of Undisputed Facts of the Defendant (Docket Entry No. 12), and Defendant's Reply Memorandum in further support of its Motion for Summary Judgment (Docket Entry No. 13), it is hereby ORDERED that the Defendant's Motion for Summary Judgment is GRANTED.

Pursuant to Fed. R. Civ. P. 58, judgment is hereby entered in favor of Defendant University of Pennsylvania and against Plaintiff Joan Lee Jones. The Clerk of Court is directed to close this matter for statistical purposes.

BY THE COURT:

Legrome D. Davis