

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

WALTER ADAMS, SR. : CIVIL ACTION  
v. :  
COMMONWEALTH OF PENNSYLVANIA, : NO. 03-1994  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION :

**MEMORANDUM OF DECISION**

THOMAS J. RUETER  
United States Magistrate Judge

April 8, 2005

In this case, plaintiff alleges discrimination and retaliation in connection with his discharge as a probationary employee with defendant, the Pennsylvania Department of Environmental Protection (“DEP”). Plaintiff brought suit against his former employer asserting claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) et seq. (“Title VII”).<sup>1</sup> On December 13, 14 and 15, 2004, this court conducted a non-jury trial. Pursuant to Fed. R. Civ. P. 52, the court makes the following:

**FINDINGS OF FACT**

1. Plaintiff, Walter B. Adams, Sr., is an African-American male.
2. Prior to joining the DEP, plaintiff was a corporal, non-commissioned officer, in the United States Marine Corps. (N.T., 12/13/04, at 29-30.) Plaintiff was in the Marine Corps for six years where he worked as an administrative clerk and received an honorable discharge. (N.T., 12/13/04, at 33.)
3. In May 2001, plaintiff was hired for a six-month probationary period as a

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<sup>1</sup> In his Complaint, plaintiff also raised a claim pursuant to 42 U.S.C. § 1981. Plaintiff voluntarily withdrew this claim and the court dismissed it with prejudice. (N.T., 12/13/04, at 3.)

Clerk 2 in the Records Management Unit of the DEP. (N.T., 12/13/04, at 33, 35; Def.'s Ex. 1.) The probationary period was to expire on or about November 16, 2001. (N.T., 12/13/04, at 36, 38.)

4. Plaintiff's duties as a Clerk 2 included working at the front desk to greet customers, maintaining files, assisting in the mail room and with mail distribution, and relieving other co-workers of their duties when they were on breaks. (N.T., 12/13/04, at 35.)

5. In 2001, Robert Robinson, a Caucasian male, held the title of Clerk Supervisor 1 in the Records Management Unit of the DEP. (N.T., 12/15/04, at 40.) Mr. Robinson was responsible for supervising the daily workings of the Records Management Unit and was plaintiff's immediate supervisor. (N.T., 12/13/04, at 41; N.T., 12/14/04, at 33; N.T., 12/15/04, at 40-42.) Mr. Robinson supervised approximately eight employees. (N.T., 12/15/04, at 56.)

6. At the time of plaintiff's employment with the DEP, Jessie Serrano, Daniel Craig and Aaron Redmond, each an African-American, worked in the Records Management Unit. (N.T., 12/13/04, at 39-40, 51-52, 68, 74-75, 90-92; N.T., 12/15/04, at 3.)

7. After plaintiff was dismissed from the DEP, Ms. Serrano was promoted from a wage employee in the Records Management Unit to the position of Clerk 2. (N.T., 12/13/04 at 91.)

8. Mr. Craig was terminated from his employment with the DEP because he was unable to complete all of the necessary job functions. (N.T., 12/15/04, at 66.) Mr. Robinson recommended Mr. Craig's dismissal. Id.

9. At the time of plaintiff's employment with the DEP, Celine Horning and

Annmarie Gerstlauer each held the position of Clerk 2 in the Records Management Unit of the DEP. (N.T., 12/15/04, at 16-17; Def.'s Ex. 13 at 5-6.)

10. Although she did not work in the Records Management Unit, Charlene Bass, an African-American female, was a union representative at the DEP at the time of plaintiff's employment. (N.T., 12/13/04, at 44; N.T., 12/14/04, at 120, 126.) Probationary employees do not pay union dues and do not receive full union benefits. (N.T., 12/14/04, at 121, 125.) If a probationary employee presented a complaint to Ms. Bass, however, she listened to the complaint and relayed the complaint to a relevant individual if she felt it necessary. (N.T., 12/14/04, at 125.) Plaintiff believed that the union representative was the appropriate person to contact in the event he had a complaint of discrimination. (N.T., 12/13/04, at 43, 182.)

11. At the time of plaintiff's employment with the DEP, Laura Schrack was a Personnel Analyst with the DEP. (N.T., 12/13/04, at 44, 61.) If a complaint of discrimination were addressed to Ms. Schrack, she referred the employee to the Equal Employment Opportunity Office in Central Office, Harrisburg or to file a complaint. (N.T., 12/14/04, at 69.)

12. At the time of plaintiff's employment with the DEP, Susan Martin was the Southeast Region Business Manager at the DEP. (N.T., 12/14/04, at 5.) In this position, Ms. Martin was a supervisor of the Records Management Unit, although Ms. Martin was not plaintiff's direct supervisor and did not directly oversee his work. (N.T., 12/14/04, at 5-6, 24.)

13. When Mr. Robinson was out of the office, he typically put Ms. Horning in charge of the Records Management Unit in his absence. (N.T., 12/13/04, at 93, 113, 174.) Prior to planned absences, Mr. Robinson also typically instructed his employees either individually or in a group, to "keep the peace" in his absence and reminded them that Ms. Horning was in

charge. (N.T., 12/13/04, at 99; N.T., 12/15/04, at 48, 56-57.)

14. At times, plaintiff was argumentative with Ms. Horning and refused to complete work she assigned to him. (N.T., 12/13/04, at 94; N.T., 12/15/04, at 19-20, 22.) Ms. Horning reported plaintiff to Ms. Martin for his failure to follow Ms. Horning's instructions. (N.T., 12/15/04, at 23.)

15. Plaintiff was perceived as disruptive, disrespectful to other employees, arrogant, and intimidating. (N.T., 12/14/04, at 7, 25; N.T., 12/14/04, at 111.) Ms. Martin observed plaintiff conversing with co-workers at times when he was not on break and should have been working. (N.T., 12/14/04, at 11, 25-26.) Plaintiff's co-workers complained to Ms. Martin about plaintiff's excessive use of the telephone for personal phone calls. (N.T., 12/14/04, at 11-12; Def.'s Ex. 13 at 14-15.) Ms. Martin also received a complaint from a client regarding the poor service he had received from plaintiff. (N.T., 12/14/04, at 12-13, 59.) Employees complained to Ms. Bass that plaintiff used ethnic slurs at work. (N.T., 12/14/04, at 129.) Mr. Robinson observed plaintiff talking with co-workers or making personal phone calls at times when he should have been working. (N.T., 12/15/04, at 44.)

16. Mr. Redmond described plaintiff's behavior as threatening and hostile toward his co-workers. (N.T., 12/15/04, at 5.) Mr. Redmond transferred out of the Records Management Unit because he did not get along with plaintiff but wanted to keep his job with the DEP. (N.T., 12/15/04, at 7.)

17. Ms. Horning perceived plaintiff's behavior to be argumentative, threatening, and disruptive. (N.T., 12/15/04, at 18.)

18. Ms. Serrano counseled plaintiff to be less argumentative. (N.T., 12/13/04,

at 104-06.)

19. On numerous occasions, Ms. Bass counseled plaintiff about his use of ethnic slurs in the workplace and his conduct. (N.T., 12/14/04, at 130, 149.)

20. Mr. Robinson counseled plaintiff about his behavior. (N.T., 12/15/04, at 45.)

21. On one occasion while Mr. Robinson was out of the office, Ms. Martin overheard an argument between plaintiff and Ms. Horning regarding plaintiff's refusal to complete an assignment. Ms. Martin counseled plaintiff to follow Ms. Horning's direction in Mr. Robinson's absence. (N.T., 12/14/04, at 9-10; N.T., 12/15/04, at 20.)

22. In September 2001, after being out of the office for several days for vacation, Mr. Robinson received a report that there had been personnel problems with the employees under his supervision. (N.T., 12/15/04, at 49.) Mr. Robinson counseled Ms. Serrano, Ms. Horning, and plaintiff individually regarding their behavior during his absence. (N.T., 12/13/04, at 54-56, 106-07, 111; N.T., 12/15/04, at 49.)

23. As of October 2, 2001, DEP management considered extending plaintiff's probationary period for another six months, until May 17, 2002, because plaintiff exhibited behavioral problems. (Pl.'s Ex. 11; N.T., 12/14/04, at 85-86.)

24. On October 19, 2001, plaintiff had a verbal altercation with Ms. Gerstlauer during which plaintiff alleged Ms. Gerstlauer called him a "nigger." (N.T., 12/13/04, at 57-58, 183, 187.) Plaintiff reported this incident to Ms. Bass. (N.T., 12/13/04, at 58; N.T., 12/14/04, at 126-27.) That day, Ms. Bass and Ms. Schrack conducted an investigation and questioned plaintiff and Ms. Gerstlauer regarding the incident. (N.T., 12/13/04, at 59, 63-64, 188; N.T.,

12/14/04, at 72, 83.) Ms. Gerstlauer denied using the racial epithet. (N.T., 12/13/04, at 64; Def.'s Ex. 13 at 7-8.) No further action was taken because plaintiff's claim could not be substantiated. (N.T., 12/13/04, at 189-90; N.T., 12/14/04, at 108.) Plaintiff did not appeal the results of the investigation or file a grievance. Id. Mr. Robinson was not in the office on the day of the incident between plaintiff and Ms. Gerstlauer. (N.T., 12/13/04, at 190.)

25. Sometime in October 2001, Mr. Robinson spoke with several employees in his department regarding an upcoming planned absence. (N.T., 12/15/04, at 54-56.) Mr. Robinson spoke individually with Ms. Serrano and plaintiff. Plaintiff complained to Ms. Bass that Mr. Robinson singled out the African-American employees and told them to "behave" during his upcoming absence from the office. (N.T., 12/13/04, at 66-67, 179-80.) Mr. Robinson had planned to speak with each of the employees under his supervision, one by one, but was called by Ms. Bass regarding plaintiff's complaint before he was able to speak with everyone. (N.T., 12/15/04, at 56.) Mr. Robinson eventually completed the task. Id. Ms. Serrano was not offended that Mr. Robinson had spoken with her and felt that it was the type of direction that a supervisor would give. (N.T., 12/13/04, at 99-101.)

26. During October 2001, in response to the then current anthrax threat, the DEP instructed its employees regarding safety procedures for the distribution of mail and instructed its employees on precautions to take in the event they identified a suspicious package. (N.T., 12/13/04, at 97-98, 170-71; N.T., 12/14/04, at 13-14.)

27. On October 31, 2001, during the course of a conversation amongst several employees of the Records Management Unit including plaintiff, Ms. Serrano and Mr. Robinson, plaintiff made a statement about employees at DEP contracting anthrax poisoning. (N.T.,

12/13/04, at 81, 118-20.) Plaintiff's comment was perceived as threatening. (N.T., 12/14/04, at 93, 112.; N.T., 12/15/04, at 27, 35.) Two employees complained to Ms. Martin about plaintiff's comment and Ms. Bass received a complaint about the comment. (N.T., 12/14/04, at 14, 131.) As a result, plaintiff was instructed to meet with Joseph Feola, a DEP regional director. (N.T., 12/13/04, at 120-23.) In addition, Ms. Schrack filed a report with the Whitemarsh Police Department regarding plaintiff's anthrax comment in connection with her duties as Workplace Violence Coordinator. (Def.'s Ex. 2; N.T., 12/14/04, at 91.)

28. On November 9, 2001, Mr. Robinson met with plaintiff and conducted plaintiff's disciplinary performance evaluation review. (Def.'s Ex. 3; N.T., 12/13/04, at 124.) Plaintiff was given an overall rating of unsatisfactory. (Pl.'s Ex. 7.) Plaintiff disagreed with the ratings in the performance review and Mr. Robinson instructed plaintiff to speak with the reviewing officer, Ms. Martin, regarding his comments. (N.T., 12/13/04, at 130.) At the time plaintiff met with Mr. Robinson to review his evaluation, Mr. Robinson's recommendation as to plaintiff's status was not yet on the evaluation form. (N.T., 12/13/04, at 198-99.) See Pl.'s Exs. 7 and 9.

29. Plaintiff met with Ms. Martin regarding his performance evaluation. (N.T., 12/13/04, at 136; N.T., 12/14/04, at 17.) Ms. Martin then met with Mr. Robinson regarding the evaluation. (N.T., 12/14/04, at 18.) At that time, the decision was made to recommend plaintiff's termination from his employment with the DEP. (N.T., 12/14/04, at 18.) Neither Ms. Martin nor Mr. Robinson made the final decision to terminate plaintiff's employment. (N.T., 12/14/04, at 18.)

30. Mr. Robinson recommended plaintiff's dismissal to the Employee

Relation and Safety Division of the DEP on the basis of plaintiff's unsatisfactory interpersonal relations and his impact on the performance of the entire Records Management Unit. (Def.'s Ex. 4.) Ms. Martin and Mr. Feola signed off on Mr. Robinson's recommendation. Id. The dismissal recommendation states that plaintiff was disruptive, that he had been counseled on his performance, and that plaintiff's comment regarding anthrax was an example of his disruptive behavior. Id. According to Ms. Martin and Ms. Schrack, the anthrax comment greatly influenced the decision not to extend plaintiff's probationary period and instead to terminate plaintiff's employment with the DEP. (N.T., 12/14/04, at 61, 89.)

31. When plaintiff first returned to work several days later on November 13, 2001 after a holiday weekend, plaintiff's building access had been revoked and plaintiff was instructed to meet with Mr. Feola. (N.T., 12/13/04, at 137.) Mr. Feola informed plaintiff that his employment with the DEP was terminated. (N.T., 12/13/04, at 200; N.T., 12/15/04, at 64.) At this meeting, plaintiff received a letter dated November 9, 2001 which also informed him of his dismissal from the DEP. (N.T., 12/13/04, at 139, 200-01; Def.'s Ex. 5.) After collecting his personal belongings, plaintiff was escorted out of the building by Mr. Robinson. (N.T., 12/13/04, at 140; N.T., 12/15/04, at 64.)

32. It was reported to Ms. Martin that plaintiff made a remark as he left the building that "he was going to get all the white people in the agency." (N.T., 12/14/04, at 21-22; N.T., 12/15/04, at 65.) Ms. Martin contacted the police to report this comment. (Def.'s Ex. 6; N.T., 12/14/04, at 22.) Ms. Martin testified that employees were intimidated by plaintiff and she was afraid that plaintiff would harm someone. (N.T., 12/14/04, at 22.)

Having made the foregoing Findings of Fact, the court makes the following:

## CONCLUSIONS OF LAW

1. Plaintiff alleges that defendant retaliated against him in violation of Title VII. Title VII prohibits retaliatory conduct against employees who “opposed any practice made an unlawful employment practice” by Title VII and any employee who 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).

2. To establish a prima facie case of retaliation, a plaintiff must show that: (1) he engaged in a protected activity; (2) the defendant took an adverse employment action after or contemporaneous with plaintiff’s protected activity; and (3) a causal link exists between plaintiff’s protected activity and the defendant’s adverse action. Farrell v. Planters Lifesavers Co., 206 F.3d 271, 279 (3d Cir. 2000). The merits of plaintiff’s retaliation claim are analyzed under the burden-shifting analysis set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Woodson v. Scott Paper Co., 109 F.3d 913, 920 n.2 (3d Cir. 1997). Once a plaintiff presents a prima facie case of retaliation, the burden then shifts to the defendant to put forth a legitimate, nondiscriminatory reason for the adverse employment action, though the employer need not prove that this was the actual reason for the action. Krouse v. Am. Sterilizer Co., 126 F.3d 494, 500-01 (3d Cir. 1997). If defendant satisfies its burden, plaintiff must demonstrate that defendant’s proffered explanation was false and that retaliation was the real reason for the adverse employment action. Id. Although the burden of production shifts, the ultimate burden of persuasion remains with the plaintiff at all times. See Barber v. CSX Distrib. Servs., 68 F.3d 694, 698 (3d Cir. 1995).

3. Protesting what an employee believes in good faith to be a discriminatory

practice is protected conduct. Aman v. Cort Furniture Rental Corp., 85 F.3d 1074, 1085 (3d Cir. 1996). A plaintiff is not required to prove the merits of an underlying discrimination complaint to prove a cause of action for retaliation; however, plaintiff must demonstrate that he was acting in good faith and under a reasonable belief that a violation existed. Id. An informal complaint can be a protected activity so long as the complainant “possessed the requisite good faith belief that he was protesting conduct outlawed by Title VII.” Bianchi v. City of Philadelphia, 183 F. Supp. 2d 726, 739 (E.D. Pa. 2002). See also Abramson v. William Paterson College of New Jersey, 260 F.3d 265, 288 (3d Cir. 2001) (finding that complaints to employer, whether oral or written, formal or informal, are sufficient to satisfy the first prong of the prima facie case provided the complaints expressed plaintiff’s opposition to protected activity under Title VII). However, a general complaint of unfair treatment does not translate into a charge of illegal discrimination, and is not protected conduct under Title VII. See Barber, 68 F.3d at 701-02 (holding that plaintiff’s letter to the human resources department complaining of unfair treatment in general and not specifically complaining about age discrimination did not constitute protected activity).

4. In the present case, plaintiff complained to a union representative on two occasions about what he perceived as instances of discrimination. Plaintiff complained about a co-worker’s use of a racial epithet and plaintiff complained that his supervisor singled him out for reprimand on account of his race. Plaintiff believed each instance to be a protest against racial discrimination and that Ms. Bass was the appropriate person to contact regarding his complaints. Thus, plaintiff’s complaints constitute protected activity under Title VII. See, e.g., Burton v. Pennsylvania Bd. of Prob. and Parole, 2004 WL 2943725, at \*4 (E.D. Pa. Dec. 20,

2004) (finding plaintiff provided sufficient evidence that he engaged in protected activity when he complained about a racially offensive shirt worn by a Board agent and that he was assigned almost twice the number of cases as his co-workers because of his race).

5. With respect to the second element of his prima facie case, *i.e.*, adverse employment action, plaintiff's termination from employment with the DEP clearly meets this element.

6. With respect to the third element of the prima facie case, Third Circuit case law "has focused on two main factors in finding the causal link necessary for retaliation: timing and evidence of ongoing antagonism." Abramson, 260 F.3d at 288. *See also Shellenberger v. Summit Bancorp, Inc.*, 318 F.3d 183, 189 (3d Cir. 2003) ("The amount of time between the protected activity and the alleged retaliation is a circumstance to be considered by a fact-finder in determining if the plaintiff has established the required causation."). The timing of the alleged adverse employment action must be "unusually suggestive of retaliatory motive before a causal link will be inferred." Shellenberger, 318 F.3d at 189 n.9 (citations and internal quotations omitted). In Farrell, the Third Circuit also explained that evidence of a causal link can be the temporal proximity between the protected activity and the alleged retaliatory act, evidence of other intervening retaliatory acts, or other evidence gleaned from the record as a whole from which causation can be inferred. Farrell, 206 F.3d at 281.

7. Looking at the evidence as a whole, the evidence of record does not support a causal link between plaintiff's complaints of discrimination and plaintiff's termination. Here, plaintiff argues that the temporal proximity of his complaints during October 2001 and his subsequent termination on November 13, 2001 is conclusive evidence of a causal link. Although

plaintiff's termination was temporally close to his complaints of discrimination, the termination occurred at the end of his probationary period and after a performance review was conducted. **No evidence of record other than temporal proximity supports a causal link between** plaintiff's complaints of discrimination and his termination. Plaintiff has failed to establish that he was terminated because he complained of discrimination. Rather, the evidence establishes that plaintiff was terminated because he was disruptive, argumentative, threatening and hostile to his co-workers. Plaintiff refused to perform job assignments and repeatedly disrupted operations at the DEP.

8. Even assuming that the close temporal proximity of the protected activity and the adverse employment decision was sufficient to establish the third prong of plaintiff's prima facie case, defendant presented evidence of a legitimate, nondiscriminatory reason for terminating plaintiff. Plaintiff was terminated because of his disruptive and threatening behavior including his comment regarding anthrax poisoning.

9. Furthermore, plaintiff has not persuaded the court that defendant's proffered reason for termination was merely a pretext for discriminating against plaintiff and that plaintiff's race was the real reason for his termination.<sup>2</sup> In order to do so, he must either: (1)

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<sup>2</sup> The Third Circuit in Farrell noted that the analysis of causal link and pretext are similar. The court stated:

We recognize that by acknowledging that evidence in the causal chain can include more than demonstrative acts of antagonism or acts actually reflecting animus, we may possibly conflate the test for causation under the prima facie case with that for pretext. But perhaps that is inherent in the nature of the two questions being asked – which are quite similar. The question: “Did her firing result from her rejection of his advance?” is not easily distinguishable from the question: “Was the explanation given for her firing the real reason?” Both should permit permissible inferences to be drawn in order to be answered. As our cases have

point to some evidence that discredits the proffered reasons, either circumstantially or directly; or (2) adduce evidence, whether circumstantial or direct, that discrimination was more likely than not a motivation or determinative cause of the adverse employment action. Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994). In the present case, plaintiff simply has not discredited defendant's proffered reason for his termination, nor has plaintiff shown that discrimination was more likely than not a motivating cause of his termination from the DEP. Accordingly, plaintiff's claim of retaliatory discharge fails as a matter of law.

10. To establish a prima facie case of race discrimination under Title VII based on his termination, plaintiff must prove that: (1) he is a member of a protected class; (2) he suffered some form of adverse employment action; and (3) **this action occurred under circumstances that give rise to an inference of unlawful discrimination such as might occur when a similarly situated person not of the protected class is treated differently.**<sup>3</sup> See Boykins v.

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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. . . . It is enough to note that we will not limit the kinds of evidence that can be probative of a causal link any more than the courts have limited the type of evidence that can be used to demonstrate pretext.

Farrell, 206 F.3d at 287 (citations omitted).

<sup>3</sup> The Third Circuit recognizes that the elements of a prima facie case may vary depending on the facts and context of the particular situation. See Sarullo v. United States Postal Serv., 352 F.3d 789, 797-98 (3d Cir. 2003) (per curiam), cert. denied, 124 S. Ct. 2392 (2004). In Sarullo, the court also noted that current Third Circuit law does not require a plaintiff to show that other similarly situated employees outside of the plaintiff's class were more favorably treated under similar circumstances. Id. at 798 n.7. **Rather, the court clarified that it had rejected a requirement that a plaintiff prove he was replaced by someone outside the protected class and that current law in this circuit "requires only that the plaintiff show that the employer continued to seek out individuals with similar qualifications after refusing to rehire the plaintiff under circumstances that raise an inference of unlawful discrimination."** Id. See also Harry v. City of

Lucent Techs., Inc., 78 F. Supp. 2d 402, 409 (E.D. Pa. 2000) (citing Jones v. Sch. Dist. of Phila., 198 F.3d 403, 410 (3d Cir. 1999)), aff'd, 29 Fed. Appx. 100, 2002 WL 402718 (3d Cir. Feb. 4, 2002). As with his retaliatory discharge claim, once plaintiff establishes a prima facie case of discrimination, the burden shifts to the defendant to present a legitimate, nondiscriminatory reason for the adverse employment action. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). If defendant satisfies its burden, plaintiff must demonstrate that defendant's proffered explanation was merely pretext for unlawful discrimination. Sarullo, 352 F.3d at 799-800; Goosby v. Johnson & Johnson Med., Inc., 228 F.3d 313, 319 (3d Cir. 2000).

11. Plaintiff has failed to establish a prima facie case of race discrimination under Title VII. Although plaintiff, as an African-American male, is a member of a protected class and he suffered an adverse employment action when he was dismissed from the DEP, plaintiff has not demonstrated that he was treated less favorably than other employees because of his race. See Sarullo, 352 F.3d at 798 ("The central focus of the prima facie case is always whether the employer is treating some people less favorably than others because of their race, color, religion, sex or national origin.") (citations and internal quotations omitted). Plaintiff's evidence of race discrimination consists solely of his own assertion that he was terminated because he is African-American. Plaintiff has failed to present any credible evidence other than his own allegation. Although plaintiff claims that Mr. Robinson singled him out for reprimand because of his race, Mr. Robinson counseled all of the employees under his supervision regarding their behavior in his absence from the office. Moreover, after plaintiff's employment with the DEP was terminated, Ms. Serrano, an African-American female, succeeded plaintiff as a Clerk 2

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Philadelphia, 2004 WL 1387319, at \*3 n.8 (E.D. Pa. June 18, 2004).

in the Records Management Unit. In addition, plaintiff's hostile, threatening, disruptive behavior in the workplace undermines his suggestion that the DEP's actions raise the inference of discrimination necessary to his prima facie case. Plaintiff simply has not demonstrated that he was treated less favorably because of his race and has not shown that his discharge raises an inference of discriminatory animus.

12. Assuming, arguendo, that plaintiff has presented a prima facie case of race discrimination, defendant has presented a legitimate, nondiscriminatory reason for terminating plaintiff's employment with the DEP. Plaintiff was disruptive, argumentative, threatening and hostile to his co-workers and he refused to perform work assigned to him. In addition, plaintiff's comment regarding anthrax was perceived as threatening, and disrupted operations at the DEP.

13. Because defendant has articulated a legitimate, nondiscriminatory reason for terminating plaintiff from employment with the DEP, plaintiff must point to some evidence which would: (1) discredit defendant's articulated legitimate reason, or (2) adduce evidence that discrimination was more likely than not a motivating or determinative cause of defendant's action. See Jones v. Sch. Dist. of Phila., 198 F.3d 403, 413 (3d Cir. 1999); Fuentes, 32 F.3d at 764. A plaintiff may prove the first alternative prong of pretext by showing "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employee's proffered legitimate reasons for its actions that a reasonable factfinder could rationally find them unworthy of credence." Jones, 198 F.3d at 413 (quoting Keller v. Orix Credit Alliance, Inc., 130 F.3d 1101, 1108-1109 (3d Cir. 1997)). Alternatively, plaintiff can satisfy the second prong by demonstrating that the employer's articulated reason was not merely wrong, but that it was so plainly wrong that it cannot have been the employer's real reason. Bazargani v. Haverford State

Hosp., 90 F. Supp. 2d. 643 (E.D. Pa. 2000) (citing Jones, 198 F.3d at 413), aff'd, 33 Fed. Appx. 647, 2002 WL 895653 (3d Cir. Apr. 12, 2002). Plaintiff has not produced sufficient evidence to refute defendant's explanation of why he was terminated from employment with the DEP. Plaintiff simply has not presented any evidence that defendant's reason is implausible or unworthy of credence. The witnesses presented at trial supported defendant's contention that plaintiff was disruptive, argumentative and threatening. Moreover, plaintiff has not shown that defendant's reason could not have been the real reason. The evidence of record supports defendant's contention that the decision to terminate plaintiff's employment was based on plaintiff's disruptive, threatening nature and not his race.

14. For all the above reasons, judgment will be entered in favor of defendant and against plaintiff on all claims.

BY THE COURT:

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THOMAS J. RUETER  
United States Magistrate Judge

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

WALTER ADAMS, SR. : CIVIL ACTION

v. :

COMMONWEALTH OF PENNSYLVANIA, : NO. 03-1994  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

**CIVIL JUDGEMENT ORDER**

AND NOW, this 8th day of April, 2005, after a Bench Trial before the undersigned, and in accordance with the court's Memorandum of Decision filed this day, IT IS ORDERED that Judgment be and the same is hereby entered in favor of Defendant, Commonwealth of Pennsylvania, Department of Environmental Protection and against Plaintiff, Walter Adams, Sr. in the above-captioned matter.

BY THE COURT:

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THOMAS J. RUETER  
United States Magistrate Judge