

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

JACQUELINE EADDY : CIVIL ACTION
 :
v. : NO. 04-5909
 :
PA DEPT. OF PUBLIC WELFARE :
BERKS COUNTY ASSISTANCE OFFICE :

MEMORANDUM AND ORDER

Juan R. Sánchez, J.

March 20, 2006

The Pennsylvania Department of Public Welfare (DPW) asks this Court to grant summary judgment against Plaintiff Jacqueline Eaddy (“Eaddy”) in her civil rights action brought after she was denied promotion. I will grant DPW’s Motion for Summary Judgment because Eaddy cannot establish DPW’s proffered reason for denying her promotion is illegitimate or pretextual.

FACTS¹

DPW is a state agency for the Commonwealth of Pennsylvania, and the Berks County Assistance Office (BCAO) operates under the umbrella of the DPW. (Def.’s Mot. Summ. J. Ex. 3, Rightmore Dep. 5, Dec. 20, 2005.) BCAO currently has more than 200 employees, including 122 Income Maintenance Caseworkers and twenty Income Maintenance Casework Supervisors. (Def.’s Mot. Summ. J. Ex. 3, Rightmore Dep. 6-7.) Gary Rightmore has been the Executive Director of the BCAO for more than twenty-six years. (Def.’s Mot. Summ. J. Ex. 3, Rightmore Dep. 5-6.)

In 1993, the BCAO hired Eaddy as an Income Maintenance Caseworker. (Complaint ¶ 3.) By 1996, she was serving as the agency representative to the family center located at Amanda Stout

¹The facts represent those that are undisputed or unchallenged by the parties.

Elementary School. (Pl.'s Dep. 12-13, Oct. 5, 2005; Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 16.) She also served for several years as a union representative, which required her to assist union members in filing grievances and to represent them at pre-disciplinary conferences. (Pl.'s Dep. 38-39; Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 10, 26).

For calendar year 2000, DPW adopted an Equal Employment Opportunity ("EEO") Plan which contained department-wide objectives to increase the percentage of women and minorities for different job groups. (Def's Mot. Summ. J. Ex. 4, EEO Plan at 25; Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 40-41.) For job group 22, which covered first level supervisors for social services, the EEO Plan specifically aimed "to increase the percentage of women to 63.57 percent, the percentage of African American to 20.01 percent, the percentage of Hispanics to 3.77 percent, and the percentage of minorities in general to 25.03 percent." (Def's Mot. Summ. J. Ex. 4, EEO Plan at 25.)

In 2000, BCAO had three open positions for Income Maintenance Casework Supervisor, a position falling within job group 22. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 18.) The postings for the positions specified applications would be for promotion without examination and based on seniority and meritorious service.² (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 32.) Specifically, a qualified applicant had to have at least one year experience as an Income Maintenance Caseworker, no disciplinary record above a written reprimand within the previous twelve months, and a performance evaluation of satisfactory or above. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 32-33.) To ensure the applicants met these criteria, the Human Resources department reviewed all

²The Pennsylvania Civil Service Commission sets the rules for promotional examination, and DPW sets the criteria for how to determine who can be interviewed. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 49-50.)

the applications. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 33.) Those applicants who met the minimum criteria were deemed qualified for an interview and considered relatively equal entering the interview process. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 33, 44.)

An interview selection panel was scheduled for May, 2000 to consider each of the qualified applicants for the three available supervisory positions. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 18.) The interview process consisted of a structured interview before a three-person panel. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 33.) The panelists were selected by the BCAO based on recommendations from the Office of Equal Opportunity and the labor relations office to create a panel representative of the pool of candidates. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 31.) To ensure diversity, panelists could be drawn from other DPW county offices. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 31.) For the May, 2000 interview, the panelists were one white male, Gary Rightmore, from the BCAO; one African-American male, Joseph Snipes, from the Dauphin County Assistance Office; and one white female, Joan Matterness, from the Lancaster County Assistance Office. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 31.)

One panelist read an introductory statement at the outset of each interview. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 47.) The statement described the interview process and informed each candidate he or she had forty minutes to complete the interview. (Pl.'s Dep. 34-35, Oct. 5, 2005; Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 47.) The candidates also were told a pad and pencil would be provided so they could organize their thoughts and responses to questions. (Pl.'s Dep. 34; Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 48.)

The candidates for the supervisory positions were asked six questions. (Def.'s Mot. Summ. J. Ex. 8, Interview Notes.) The interview questions were designed to elicit responses to indicate a

candidate's understanding of the key factors relevant to the position. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 14-15.) The key factors for the supervisory position included judgment, decision-making, problem-solving skills, interpersonal communication skills, leadership, and technical knowledge. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 15.) The factors derived from a job task analysis, in which the critical elements of the job classification are identified. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 31.) The BCAO constructed the interview questions independently or by asking other county offices to submit questions they have used. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 46.) The panelists reviewed the questions before the interview process began to verify their agreement as to the legitimacy of the questions to be asked. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 46.)

Each candidate was asked the same questions in the same sequence by the same panelist. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 56-57.) The panelists could not prompt answers in any way. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 33.) If a candidate did not understand the question, he or she could ask for clarification; however, the response was always the same: "Please interpret the question the way you would like to interpret it and just let us know which way you're interpreting that." (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 57.)

At the conclusion of each interview, the panelists rated the candidate independently and based solely on the interview. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 33.) The rating sheet used by the panelists listed five factors upon which to evaluate each candidate. The five rating factors corresponded with the key factors identified by the job task analysis, and six evaluation

categories were permitted for each factor.³ The same rating sheet and process was used for all candidates. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 41-42; Def.'s Mot. Summ. J. Ex. 8, Interviews' Notes.) After rating the candidate, the panelists compared the ratings to identify disparities and, where possible, eliminate them using the panelists' contemporaneous notes of the candidates' responses. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 33-34, 35-36.) The panelists then moved on to the next candidate interview. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 34.)

After finishing all the interviews, the panelists calculated an average interview score for each candidate by combining the three independent ratings by the panelists and dividing by three. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 41; Def.'s Mot. Summ. J. Ex. 7, Interview Ranking and Rationale.) The average ratings then were used to rank the candidates from highest to lowest. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 41; Def.'s Mot. Summ. J. Ex. 7, Interview Ranking and Rationale.) The top interview candidate and anyone within ten percent of the highest rating comprised a relative equal group from which the panel could select the successful candidates. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 41-42; Def.'s Mot. Summ. J. Ex. 7, Interview Ranking and Rationale.) The panel also could consider relatively equal any candidate within ten percent of the second ranked candidate when more than one position was available. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 42.)

The panel was not obligated to select the highest scoring candidates for the positions. They

³The rating factors included: ability to communicate (weight = 4), problem solving/decision making ability (weight = 4), leadership/team building (weight = 5), quality of interpersonal relationships (weight = 3), and supervisory skills/job knowledge (weight = 3). The panelists rated the candidate on each factor using an evaluation guide: outstanding (5), very good (4), good (3), satisfactory (2), marginal (1), and unsatisfactory (0). Based on the evaluation guide and the varying weights accorded each rating factor, an outstanding on each rating factor would result in a score of ninety-five, the highest a candidate could receive.

could select any person from the final relative equal group (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 42), but had to reach a consensus on the successful candidates (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 44). If the number of relative equals exceeded the number of positions, the panel could consider other factors to differentiate the relative equals. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 34.) Seniority, performance, and special commendations are possible tiebreakers. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 52, 61.) Race and gender also could factor in if the group of relative equals contained individuals in an under-represented class. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 53.)

Once the successful candidates were identified, the Office of Equal Opportunity and Civil Service Commission had to certify the results. The HR department first completed an Equal Opportunity Certification, which identified the successful and unsuccessful candidates by race, ethnicity and gender. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 18, 36-37.) For any candidate in the final relative equal group who fell into an under-represented group for EEO purposes, the panel had to explain in writing why that person was not selected. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 37, 39.) The HR department includes the justification on the certification. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 39.) Once the Office of Equal Opportunity certified the results, the BCAO next requested the Civil Service Commission to certify the selection of the successful candidates. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 37, 43.) Once the certification process was completed, the successful candidates were offered the positions.

In February, 2000, Eaddy applied for promotion to Income Maintenance Casework Supervisor. (Complaint ¶ 10.) She met the minimum eligibility qualifications because on May 2, 2000, she interviewed for the three open positions. Eaddy completed the interview in twenty

minutes. (Pl.'s Dep. 36.) According to Rightmore, each of the panelists noticed Eaddy failed to answer all of the questions thoroughly and to some extent was disorganized in her responses. She also had a tendency to ramble instead of focusing on the question. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 49.) Eaddy received a score of fifty-two from Rightmore and Snipes and a score of forty-eight from Matterness, resulting in an average score of 50.67. (Def.'s Mot. Summ. J. Ex. 7, Interview Rankings and Rationale; Def.'s Mot. Summ. J. Ex. 8, Interviewers' Notes.) The highest ranking candidate, Thomas Woronko, received an average score of sixty-two (Def.'s Mot. Summ. J. Ex. 7, Interview Rankings and Rationale), making the relative equal group any candidates with a score of 55.8 or above. Along with Woronko, the other relative equals were Carol Bonsall (score of 61.67), Elizabeth Visente (score of 61.67) and Barry Santee (score of fifty-seven). (Def.'s Mot. Summ. J. Ex. 7, Interview Rankings and Rationale.) Eaddy did not qualify as a relative equal. Her average score fell outside ten percent of Woronko's interview rating, and was even more than ten percent below Santee's, the lowest ranked of the relative equals.

The panel selected three of the relative equals for the supervisory positions based on performance evaluations and seniority: Bonsall, a white female; Santee, a white male; and Visente, a Hispanic female. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 18-19; Def.'s Mot. Summ. J. Ex. 7, Interview Rankings and Rationale.) The Office of Equal Opportunity certified the results of the interview process and never requested any justification for Eaddy's non-inclusion in the final group of relative equals. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 49.)

By letter dated May, 30, 2000, BCAO notified Eaddy of her non-selection for promotion. (Pl.'s Resp. to Mot. Summ. J. Ex. C.) After receiving her 2000 rejection letter, Eaddy had a conversation with Patricia Cassidy, the then-acting personnel director, and questioned whether her

non-selection for promotion was because of her race. (Pl.'s Dep. 52-53.) Cassidy responded, "Well, Jackie, Affirmative Action is over now. It's time for the Latinos." (Pl.'s Dep. 52.) Eaddy met with Rightmore subsequent to this conversation and questioned why she was not promoted and what she could do to get promoted. (Pl.'s Dep. 55; Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 23-24.) She also informed him of Cassidy's statement. Rightmore responded he could not control what people say. (Pl.'s Dep. 55.) He did not deny the selection process had anything to do with Latinos (Pl.'s Dep. 55), but Eaddy did not ask him directly whether Vicente was chosen because she was Hispanic (Pl.'s Dep. 56).

In July, 2000, Eaddy filed a Complaint with the Pennsylvania Human Relations Commission (PHRC) and the Equal Employment Opportunity Commission (EEOC) alleging DPW failed to promote her because of her race. After she filed her Complaint she was sent on loan to the Harrisburg office to assist with the Medical Evaluation Determination Automation (MEDA) Project. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 10, 26.) Eaddy's union recommended her for the special assignment. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 26.) Eaddy remained in Harrisburg on special assignment for several months (Pl.'s Dep. 96-97; Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 10), before she accepted a position in the Harrisburg office as Human Resource Program specialist (Pl.'s Dep. 7; Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 26.) The pay range for the specialist position placed Eaddy in the same classification level as an Income Maintenance Casework Supervisor. (Pl.'s Dep. 99; Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 28.) Eaddy remained in the specialist position until she retired for personal reasons. (Pl.'s Dep. 8, 139; Complaint ¶ 22.)

DISCUSSION

A motion for summary judgment will only be granted if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). This initially requires a court to determine whether the moving party has demonstrated there is no dispute concerning the factual resolution of an essential element of the cause of action. A district court must consider the evidence presented by the moving party and draw all reasonable inferences in favor of the non-moving party. *Med. Protective Co. v. Watkins*, 198 F.3d 100, 103 (3d Cir. 1999); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). If the moving party carries the initial burden of demonstrating there is no genuine issue of material fact, then the non-moving party, to withstand a motion for summary judgment, must “come forward with specific facts showing there is a genuine issue for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citing Fed. R. Civ. P. 56(e)).

A plaintiff may succeed on a claim for employment discrimination by presenting either direct evidence of discrimination or circumstantial evidence that gives rise to an inference of discrimination. *Starceski v. Westinghouse Elec. Corp.*, 54 F.3d 1089, 1095 n.4 (3d Cir. 1995); see also *Price Waterhouse v. Hopkins*, 490 U.S. 228, 244-46 (1989) (establishing framework for mixed motive cases involving direct evidence); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) (plurality opinion) (establishing framework for pretext cases involving indirect evidence). In a “mixed motive” case, summary judgment is not proper where there is direct evidence of discriminatory animus “that it is not necessary to rely on any presumption from the *prima facie* case to shift the burden of production.” *Armbruster v. Unisys Corp.*, 32 F.3d 768, 778 (3d Cir. 1994). In a race discrimination case, such as the instant action, this evidence must demonstrate race played

a motivating or significant factor in a particular employment decision, and may include statements by an employer to the employee that she was not being promoted because of her race. *Griffiths v. CIGNA Corp.*, 988 F.2d 457, 469 (3d Cir. 1993) (citing *Price Waterhouse*, 490 U.S. at 244-45). Eaddy claims such evidence exists regarding DPW's failure to promote her based solely on Cassidy's statement Latinos, not African Americans, were targeted for hire. To meet her burden, however, Eaddy must show a decisionmaker related to the hiring process placed substantial negative reliance on an illegitimate criterion, namely race, in reaching the employment decision. *Ezold v. Wolf, Block, Schorr & Solis-Cohen*, 983 F.2d 509, 545 (3d Cir. 1992). Eaddy does not claim Cassidy was a part of the interview panel for the Income Case Maintenance Supervisor position, or she was responsible for making any hiring decisions regarding the position. Therefore, Plaintiff has failed to substantiate her claim that there is direct evidence of discrimination relating to DPW's failure to promote her.

In the absence of direct evidence, a plaintiff may establish discrimination through circumstantial evidence by way of a three-part burden-shifting formula established by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). The *McDonnell Douglas* analysis allocates the burden of proof between the litigants by first requiring the plaintiff to present sufficient evidence to establish a prima facie case of discrimination. 411 U.S. at 802; *Fuentes v. Perskie*, 32 F.3d 759, 763 (3d Cir. 1994) (citing *McDonnell Douglas*). Once the plaintiff establishes a prima facie case, the burden shifts to the defendant to articulate some legitimate, non-discriminatory reason for the adverse employment action. *McDonnell Douglas*, 411 U.S. at 802; *Fuentes*, 32 F.3d at 763. If the defendant presents sufficient evidence, the burden shifts back to plaintiff to be given an opportunity to come forth with sufficient evidence to show the legitimate reasons offered by the defendant were pretextual. *Fuentes*, 32 F.3d 759 at 763.

Eaddy's only cause of action is her Title VII claim for denial of promotion on grounds of her race.⁴ To make out a *prima facie* case for failure to promote, Eaddy must show: (1) she is a member of a protected class; (2) she was qualified for the position; (3) she was rejected (i.e., suffered an adverse employment action); and (4) that action occurred under circumstances giving rise to an inference of discrimination (i.e., nonmembers of the protected class were treated more favorably). *Stewart v. Rutgers, The State Univ.*, 120 F.3d 426, 432 (3d Cir. 1997). DPW does not seriously contest that Eaddy has established a *prima facie* case of discriminatory denial of promotion. Although her grandmother is from Spain, Eaddy self-identifies as African-American. (Pl.'s Dep. 15.) Eaddy was qualified for the supervisory position simply by making it to the interview stage but was denied promotion. An inference of discrimination arises because all the candidates were considered relative equals going into the interview process and thus similarly situated, but none of the successful candidates were African-American.

Because I find Eaddy meets her initial burden, the burden of production shifts to DPW to articulate some legitimate, non-discriminatory reason for the adverse employment action. DPW contends Eaddy was passed over for promotion not because of her race, but because she did not score high enough after the interview process to fall within the relative equal group from which to select the successful candidates. After interviewing all the candidates using the same format and questions and scoring each on the same job task factors, the four top candidates were deemed relative equals. Eaddy's score did not place her within the relative equal group because it was more than ten percent below the top ranking candidate's score. Reliance on an interview score to deny an employee

⁴In June, 2005, this Court dismissed Eaddy's racially hostile work environment claim under Title VII because she had not exhausted her administrative remedies, as well as her PHRA claim on Eleventh Amendment grounds.

promotion qualifies as a legitimate, non-discriminatory reason for an adverse employment action. See, e.g., *Medina v. Income Support Div.*, 413 F.3d 1131, 1137 (5th Cir. 2005) (finding plaintiff's lower interview score a legitimate reason for denial of promotion); *Sutherland v. Mich. Dep't of Treasury*, 344 F.3d 603, 616 (6th Cir. 2003) (same); *Williams v. Potter*, 331 F. Supp. 2d 1331, 1343-44 (D. Kan. 2004) (same); *Mustafa v. Neb. Dep't of Corr. Servs.*, 196 F. Supp. 2d 945, 952-53 (D. Neb. 2002) (same).

Once DPW satisfies its burden of production, which I find it does, Eaddy must be given an opportunity to come forth with sufficient evidence to challenge the employer's proffered reason. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 515 (1993); *Fuentes v. Perskie*, 32 F.3d 759, 763 (3d Cir. 1994). This third step of the *McDonnell Douglas* framework, which is usually the determinative stage of a case, requires the court to determine "whether there is sufficient evidence from which a jury could conclude that the purported reasons for defendant's adverse employment actions were in actuality a pretext for intentional race discrimination." *Jones v. School Dist.*, 198 F.3d 403, 412-413 (3d Cir. 1999) (quoting *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 515 (1993)). The plaintiff can defeat a motion for summary judgment by proffering 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." *Fuentes v. Perskie*, 32 F.3d 759, 764 (3d Cir. 1994).

To challenge the credibility of a proffered non-discriminatory reason, the plaintiff must show "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.* at 765 (internal quotations and citations omitted). Eaddy contends DPW’s reliance on interview scores is a false reason for her denial of promotion because Rightmore never explained how she could get promoted and could not give reasons why she was not supervisor material. The parties disagree as to the content of the conversation between Eaddy and Rightmore after she received her rejection letter. Eaddy claims Rightmore provided her no guidance (Pl.’s Dep. 55), whereas Rightmore asserts he recommended she meet with her supervisor to put together a career development plan and do an honest self-analysis of what she may need to improve (Def.’s Mot. Summ. J. Ex. 3, Rightmore Dep. 23-24, 59). Even if this Court views Eaddy’s version most favorably, which it must in considering a defendant’s motion for summary judgment, Rightmore’s refusal to provide guidance has no causal connection to the interview process itself. The conversation occurred after the panel decision and in no way casts doubt on the process used or the ultimate decision not to promote Eaddy.

Nor does this Court find persuasive Eaddy’s claim of an inconsistency in how performance evaluations and seniority factored into the promotion decision. Seniority and performance evaluations were factors in the hiring process only at the front end – to determine eligibility for the interview process – and back end – to differentiate the final relative equals. All the evidence points to this limited use of these two factors during the 2000 promotion. (Def.’s Mot. Summ. J. Ex. 3, Rightmore Dep. 61). Only the HR department reviewed Eaddy’s evaluation. (Def.’s Mot. Summ. J. Ex. 3, Rightmore Dep. 20). Rightmore never saw her performance evaluation at the time of her interview and subsequently reviewed the document when he prepared materials for the PHRC. (Def.’s Mot. Summ. J. Ex. 3, Rightmore Dep. 20-21.) Even as Executive Director of B CAO, Rightmore would not have reviewed Eaddy’s performance evaluations; the normal practice was for

a reviewing officer to examine employee evaluations. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 11.) The panel documentation also reveals the panelists only applied performance evaluations and seniority to the final relative equal group to identify the successful candidates. (Def.'s Mot. Summ. J. Ex. 7, Interview Ranking and Rationale.)

In addition to her performance evaluations and seniority, Eaddy also asserts her selection as the agency representative to the family center, assignment to the MEDA project and her supervisor equivalent position in Harrisburg demonstrate she was qualified for the Income Maintenance Casework Supervisor position. While Eaddy might believe she deserved the promotion based on these special commendations, it is the perception of the decision maker at issue, not the plaintiff's view of his or her own performance. *Fuentes*, 32 F.3d at 765. Special commendations only could factor in the panel's decision on the back end. (Def.'s Mot. Summ. J. Ex. 3, Rightmore Dep. 52.) All the evidence points to Eaddy's interview performance prevented any consideration of the various projects Eaddy was assigned to and excelled in, not any discriminatory act by DPW. Nor will this Court entertain Eaddy's implicit belief DPW was wrong or mistaken in excluding performance evaluations, seniority and special commendations from the interview rating process. "The question is not whether the employer made the best, or even a sound, business decision; it is whether the real reason is [discrimination]." *Keller v. Orix Credit Alliance*, 130 F.3d 1101, 1109 (3d Cir. 1997) (quoting *Carson v. Bethlehem Steel Corp.*, 82 F.3d 157, 159 (7th Cir. 1996)) (alteration in original).

Eaddy also relies on the rejection of other African-American candidates as proof DPW's reliance on interview scores is illegitimate and discriminatory.⁵ But like Eaddy, these other

⁵Eaddy identified the other African-American candidates as Mary Rogers, Victor Hurdle, Dorraine Ruach, and Brian Richardson. (Pl.'s Dep. 61.) The interview notes, however, reveal Richardson was not considered for the 2000 promotion. (Def.'s Mot. Summ. J. Ex. 7, Interview

candidates did not qualify for the final relative equal group. (Def.'s Mot. Summ. J. Ex. 7, Interview Ranking and Rationale.) There is no evidence the African-American candidates were asked different questions or were subject to different standards. Nor can one argue the panel was biased against African-American candidates because DPW reached out to other counties to ensure the panel was diverse. Indeed, one of the panelists, Snipes, is African-American. Whether based solely on Snipes's score or the average of all the panelists,⁶ Eaddy simply did not interview well enough to fall into the final relative equal group and therefore was not better qualified for promotion. While Eaddy might view her interview rating an insufficient explanation for not being promoted, she has not cited to any record evidence establishing any inconsistency or contradictions in DPW's hiring procedures or otherwise undermining the legitimacy of this proffered reason for denying her the promotion.

This Court also finds Eaddy has failed to raise a genuine issue of material fact with respect to whether DPW's proffered reason for her denial of promotion was pretextual. To establish pretext, a plaintiff must show that "discrimination was more likely than not a motivating or determinative cause of the adverse employment action." *Fuentes*, 32 F.3d at 764. Eaddy contends the statement by Cassidy that Latinos, not African Americans, were targeted for hire is evidence of discrimination in the selection process. She does not claim, however, that Cassidy was a part of the interview panel for the Income Maintenance Casework Supervisor position, or that she was responsible for making any hiring decisions regarding the position. "Stray remarks by non-decisionmakers or by

Ranking and Rationale.)

⁶Snipe gave Eaddy's interview performance a rating of fifty-two, but rated the relative equals more favorably. Specifically, Woronko rated the highest at sixty-one, Santee received a fifty-four, Vicente got a rating of fifty-seven, and Bonsall scored a sixty. Therefore, even if the panel had used only Snipes's scores, Eaddy's rating still fell outside ten percent of Woronko's score and even outside Bonsall's second highest score.

decisionmakers unrelated to the decision process are rarely given great weight” *Ezold*, 983 F.2d at 545. Nor does this Court find relevant Rightmore’s failure to expressly deny Cassidy’s statement. By Eaddy’s own admission, Rightmore indirectly denied the substance of Cassidy’s statement when he said he could not control what people say. Moreover, Eaddy never asked if the panel promoted Vicente, the only Hispanic candidate in the relative equal group in 2000, because of Vicente’s ethnicity.

Cassidy also believes the disparate proportion of Caucasians and Latinos to African Americans in the Income Maintenance Casework Supervisor position is indirect evidence of discrimination. According to Rightmore, between 1997 and 2002 only one African American served as a supervisor. Currently, of the twenty Income Maintenance Casework Supervisors at BCAO, one supervisor identifies as African American and one supervisor is biracial with African American heritage. (Def.’s Mot. Summ. J. Ex. 3, Rightmore Dep. 38, 57.) The remaining Income Maintenance Casework Supervisor positions at BCAO are occupied by four Hispanic and fourteen Caucasian employees (Def.’s Mot. Summ. J. Ex. 3, Rightmore Dep. 58). “Statistical evidence of an employer’s pattern and practice with respect to minority employment may be relevant to a showing of pretext.” *Ezold*, 983 F.2d at 542. The Third Circuit has clarified “raw numerical comparisons, however, [should be] accompanied by “an analysis of either the qualified applicant pool or the flow of qualified candidates over a relevant time period.” *Id.* at 543. Eaddy has not proffered such analysis. Because no conclusion can be drawn from raw numbers on under-representation, they are not probative of alleged discriminatory motive.

Pretext can emerge when an “employer has previously discriminated against [the plaintiff], . . . has previously discriminated against other persons within the plaintiff’s protected class, or . . .

has treated more favorably similarly situated persons not within the protected class.” *Jones v. Sch. Dist. of Phila.*, 198 F.3d 403, 413 (3d Cir. 1999) (citation and quotation omitted). Eaddy claims she has witnesses who will testify as to the discriminatory treatment of African-American employees at BCAO who seek supervisory roles. Outside this bare assertion in her response to DPW’s motion, Eaddy cites to no record evidence to support this contention. While the Court must accept all facts in a light most favorable to the non-moving party, at the summary judgment stage the Court can only consider submitted evidence. A party opposing a summary judgment motion must respond with affidavits or depositions setting forth “specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). Although the discovery period had closed, this Court brought the lack of affidavits by these proffered witnesses to Eaddy’s attention and granted her additional time to procure the evidence. Eaddy never filed the affidavits, and no basis exists upon which I can find the witnesses’ testimony would raise a genuine issue of material fact as to whether DPW’s proffered reason for denying Eaddy the promotion was pretextual.

Finally, Eaddy relies on her subsequent denials for promotion as evidence DPW operated with a discriminatory motive. Specifically, Eaddy applied for an Income Maintenance Casework Supervisor position in 2001 and multiple times in 2002.⁷ (Pl.’s Dep. 66-67; Def.’s Mot. Summ. J. Ex. 3, Rightmore Dep. 17-18, 27.) She was denied promotion each time because her interview scores placed her outside the final group of relative equals. (Def.’s Mot. Summ. J. Ex. 3, Rightmore Dep. 14, 28.) As an initial matter, this Court will not permit Eaddy to recover based on these subsequent occasions DPW denied her promotion after the interview process. Eaddy’s PHRC

⁷Eaddy first applied for and was denied the supervisory position in 1997. (Pl.’s Dep. 24; Def.’s Mot. Summ. J. Ex. 3, Rightmore Dep. 12.) She does not rely on this prior denial of promotion as a basis for recovery or as evidence to support her claim related to the 2000 denial of promotion.

complaint focused solely on the 2000 promotion (Def.'s Mot. Summ. J. Ex. 6, PHRC Complaint ¶ 3), and Eaddy concedes she never amended her complaint to include these later incidents of non-promotion (Pl.'s 19-22). Before proceeding with a Title VII civil suit, a plaintiff must file an employment discrimination claim with a state or local agency within 300 days after the alleged discrimination occurred. 42 U.S.C. § 2000e-5(e); *West v. Phila. Elec. Co.*, 45 F.3d 744, 754 (3d Cir. 1995). Eaddy failed to comply with this statutory mandate for the 2001 and 2002 denials of promotion.

Eaddy relies upon the continuing violations theory to absolve her from Title VII's exhaustion requirement. This equitable theory allows a plaintiff to pursue a Title VII claim for discriminatory conduct that began prior to the filing period if she can demonstrate the act is a part of a pattern of discrimination by the defendant. *Id.* I find this exception fails in this case because the Supreme Court has held failures to promote do not qualify for analysis under the continuing violation theory. A failure to promote, according to the Court, constitutes a "separate actionable 'unlawful employment action'" which "starts a new clock for filing charges alleging that act." *AMTRAK v. Morgan*, 536 U.S. 101, 113, 114 (2002).

Even if this Court treats the subsequent denials as evidence, the denials do not evidence discrimination because DPW's same legitimate, non-discriminatory reason applies – Eaddy did not fall within the final relative equal group to be considered for the promotion. There is no evidence DPW applied different hiring procedures or standards for the subsequent promotions. Eaddy's failure to marshal sufficient evidence to rebut DPW's position as it relates to the 2000 promotion equally applies to her subsequent denials of promotion.

An appropriate Order follows.

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

JACQUELINE EADDY	:	CIVIL ACTION
	:	
v.	:	NO. 04-5909
	:	
PA DEPT. OF PUBLIC WELFARE	:	
BERKS COUNTY ASSISTANCE OFFICE	:	

ORDER

AND NOW this 20th day of March, 2006, Defendant Department of Public Welfare Berks County Assistance Office's Motion for Summary Judgment (Document 17) is GRANTED. Judgment is entered in favor of the Defendant and against Plaintiff, and the Complaint is hereby DISMISSED with prejudice. The Clerk of the Court is directed to close the above-captioned case.

BY THE COURT:

/s/ Juan R. Sánchez

Juan R. Sánchez, J.