

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

WILLIAM HOLLIDAY,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO. 05-2554
v.	:	
	:	
COMCAST CABLE	:	
COMMUNICATIONS, LLC AND	:	
COMCAST CABLE	:	
COMMUNICATIONS HOLDINGS,	:	
INC.,	:	
	:	
Defendants.	:	

**MEMORANDUM**

BUCKWALTER, S. J.

February 16, 2007

Presently before the Court are Defendant’s Comcast Cable Communications, LLC Motion for Summary Judgment (Docket No. 13), Plaintiff’s Response (Docket No. 16), and Defendant’s Reply (Docket No. 17). For the reasons stated below, Defendant’s Motion for Summary Judgment is **GRANTED**.

**I. BACKGROUND**

William Holliday (“Plaintiff”) has been employed by Comcast Cable Communications (“Defendant”) since July, 2001 as an inside sales representative. On July 13, 2004, two of Plaintiff’s supervisors<sup>1</sup>, Brian Devanney and Ted Girdner (“Girdner”), conducted a routine quarterly review of Plaintiff where Plaintiff expressed an interest in further discussion of

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1. At the time, Plaintiff’s direct supervisor was Mr. Stanley Washington. (See Def.’s Mem. Supp. Summ. J. 2.) Mr. Washington was supervised by Mr. Devanney, and Mr. Devanney reported to Mr. Girdner, Manager of the Inside Sales Department. (Def.’s Mem. 2.)

his career objectives. (Def.'s Mem. Supp. Summ. J., Ex. A, Holliday Dep. 45-47.) The following day, July 14, 2004, Girdner approached Plaintiff and requested a meeting to discuss Plaintiff's career plans and employment goals with Defendant. (Def.'s Mem., Ex. A, Holliday Dep. 45.) In response to the requested meeting, Plaintiff asked Girdner if they could meet at a later time as it was late in the day and Plaintiff was preparing to head home. (Id. at 51.) Girdner insisted on meeting right then, and the two entered Girdner's office. (Id. at 52.)

The discussion began by Girdner asking Plaintiff what type of job he was looking for with Defendant. (Id.) Plaintiff suggested the position of national sales representative. (Id.) Girdner responded (in what Plaintiff contends was a nasty tone) by asking Plaintiff to explain to him why he could be a national sales rep. (Id.) Plaintiff replied by stating, "If you were familiar with my qualifications you wouldn't be asking me that question." (Id.) Girdner explained that he asked that question of everyone, to which Plaintiff indicated he felt his qualifications to be "equal to or superior to any national sales rep [Girdner] had there." (Id. at 52-53.) The discussion then quickly escalated into a heated conversation with Girdner listing the qualities expected of a national sales representative and Plaintiff indicating those qualities to be "amongst [his] areas of expertise." (Id. at 53.) Plaintiff then informed Girdner that he had a "genius level IQ." (Id. at 54.) Girdner asked Plaintiff several other questions to which Plaintiff did not respond. (Id.) When asked why he was not responding, Plaintiff replied, "Maybe if we could communicate on equal footing then I would be more responsive to you." (Id. at 55.) This response prompted Girdner to charge in Plaintiff's direction, slam the door, get inches from Plaintiff's face, and aggressively state, "Let's get one thing straight, there is no equal footing

around here.” (Id.) Plaintiff then indicated that he felt threatened by Girdner and exited Girdner’s office. (Id.)

That evening, Plaintiff left a message with Karen Klimasewski, manager of human resources, requesting an immediate meeting to discuss the incident and his desire to file a physical harassment complaint. (Id. 86 - 87.) The following morning, Plaintiff spoke with Ms. Klimasewski in person and described his heated meeting with Girdner the previous evening. (Id. at 90.) At this time, Plaintiff did not allege that Girdner’s actions were racially motivated, but rather filed his complaint on the basis of physical harassment. (Id. at 91.)

As part of her investigation, Ms. Klimasewski reviewed Girdner’s written account of what had transpired during his meeting with Plaintiff and interviewed a Defendant employee who witnessed the event. (Def.’s Mem. Supp. Summ. J., Ex. E, Employee Relations Incident Report.) Ms. Klimasewski then held a meeting with Plaintiff where she updated him on the status of her investigation. (Id.) Ms. Klimasewski later met with Mr. Devanney to discuss Girdner’s character and overall treatment towards other employees of Defendant. (Id.)

On July 30, 2004, Ms. Klimasewski met with Plaintiff and informed him she was unable to substantiate Plaintiff’s physical harassment complaint. (Id.) Ms. Klimasewski recommended a meeting be held with Plaintiff and Girdner to allow them to resolve their differences. (Id.) Unsatisfied with this form of resolution, Plaintiff declined to meet with Girdner and indicated his intent to pursue the complaint further. (Def.’s Mem. Supp. Summ. J., Ex. A, Holliday Dep. 107-108.)

Several weeks later, Plaintiff met with Maureen Clancy, then-Director of Human Resources, to discuss the physical harassment complaint he had filed on July 15. (Def.’s Mem.

Supp. Summ. J., Ex. I, Clancy notes of meeting with Plaintiff.) Following a second investigation, Ms. Clancy also concluded that Plaintiff's allegations of physical harassment could not be substantiated, but in an effort to make Plaintiff more comfortable, Defendant would not require Plaintiff to have any future one-on-one interactions with Girdner. (Def.'s Mem. Supp. Summ. J., Ex. K, Email correspondence between Clancy and Pl.)

Disagreeing with the conclusions reached by Ms. Clancy, Plaintiff pursued his physical harassment complaint further. On October 11, 2004, Plaintiff met with Mike Pascale, Vice President of Human Resources, and explained the incident. (Def.'s Mem. Supp. Summ. J., Ex. M, Pascale statement.) Mr. Pascale agreed to investigate the matter further. (Def.'s Mem. Supp. Summ. J., Ex. A, Holliday Dep. 108-110.)

In the meantime, Defendant was investigating a customer complaint against Plaintiff that had alleged an unprofessional attitude on a customer service call. (Def.'s Mem. Supp. Summ. J., Ex. O, Email correspondence from October 18-27, 2004.) When Plaintiff's supervisors brought this complaint to his attention, he denied any wrongdoing. (Def.'s Mem. Supp. Summ. J., Ex. A, Holliday Dep. 137.) Plaintiff was not disciplined as a result of this customer complaint. (Id.) Plaintiff did, however, report the customer complaint to Mr. Pascale claiming it to be a retaliatory act by Defendant for Plaintiff's physical harassment complaint. (Id.; see also Def.'s Mem. Supp. Summ. J., Ex. P, Email correspondence from October 18, 2004 to November 5, 2004.) On December 10, 2004, Mr. Pascale met again with Plaintiff to discuss his review of the previous investigations and his subsequent independent investigation. (Def.'s Mem. Supp. Summ. J., Ex. Q, Open Door Review Mem. from Pascale to Pl.) Mr. Pascale

likewise concluded that Plaintiff's allegations of both physical harassment and retaliation could not be substantiated. (Id.)

Also at this time, Defendant received another customer complaint involving a dissatisfied customer. Several issues raised in this complaint related to Plaintiff. Specifically, Plaintiff was alleged to have mishandled the customer's check and failed to return the customer's phone calls. (Def.'s Mem. Supp. Summ. J. 9.) Also at issue was Plaintiff's response to the co-worker who answered the customer's call, where Plaintiff stated in jest, "if he asks for me, tell him I don't work here anymore." (Def.'s Mem. Supp. Summ. J., Ex. A, Holliday Dep. 153.) Barbara Kennedy<sup>2</sup> and Mr. Washington, Plaintiff's direct supervisor, met with Plaintiff on January 26, 2005 to discuss the customer's concerns and Plaintiff's jestful remark. Plaintiff responded to the expressed concerns by requesting the discussion be put in writing. (Def.'s Mem. Supp. Summ. J., Ex. S, Kennedy notes.) Subsequently, Plaintiff contacted Mr. Pascale and claimed this customer complaint to be a second act of retaliation by Girdner. (Def.'s Mem. Supp. Summ. J., Ex. Y, Email from Pl. to Pascale dated January 27, 2005.)

On March 11, 2005, Plaintiff met with Melanie Penna, Vice President of Human Resources, to discuss Plaintiff's original complaint against Girdner and his subsequent claims of retaliation. (Def.'s Mem. Supp. Summ. J., Ex. Z, Penna Mem. to file dated March 11, 2005.) Plaintiff showed up 45 minutes late, and shortly thereafter ended the meeting when he felt uncomfortable and as though he was being verbally attacked due to Ms. Penna firing questions at him in an abrupt manner. (Def.'s Mem. Supp. Summ. J., Ex. A, Holliday Dep. 113-114.) Ms. Penna later held another meeting with Plaintiff and explained that her independent investigation

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2. Ms. Kennedy replaced Ms. Klimasewski as Manager of Human Resources in December, 2004.

of Plaintiff's complaint against Girdner and the allegations of retaliation could not be substantiated. (Def.'s Mem. Supp. Summ. J., Ex. BB, Penna letter to Pl. dated April 4, 2005.) The investigation of the customer's complaint and Plaintiff's jestful remark, which was continuing to be investigated at this time, ultimately resulted in Plaintiff receiving a conduct warning for an "inappropriate and unprofessional instruction to tell a customer that he did not work at [Defendant] anymore." (Def.'s Mem. Supp. Summ. J. 12.)

Plaintiff was subsequently placed on a Performance Improvement Plan ("PIP") on May 9, 2005, after Girdner and Mr. Washington determined Plaintiff's performance to be unsatisfactory in the areas of quota achievement, placed order achievement, effective management of activity log, and effective management of workflow. (Id.) Plaintiff's PIP was thereafter extended. (Id. at 13.)

On June 29, 2005, Plaintiff and five other African-American employees of Defendant filed a complaint with the NAACP alleging Defendant created and maintained a hostile and discriminatory work environment. (Id.; Def.'s Mem. Supp. Summ. J., Ex. GG, NAACP Compl. dated June 29, 2005.) Specifically, Plaintiff and the five employees alleged that the mechanisms by which quotas, goals, and incentives were derived and leads were distributed were unequally applied. (Def.'s Mem. Supp. Summ. J., Ex. GG, NAACP Compl.) This complaint stemmed from changes Girdner made to the Department in the fall of 2004, where Girdner split the department into two teams—an East team and a Midwest team—and assigned the teams different sales quotas to account for Defendant's reputation in each region. (Def.'s Mem. Supp. Summ. J. 13-14). While both teams were comprised of white and black employees, the East team was predominantly black and the Midwest team was predominantly white. (Def.'s

Mem. Supp. Summ. J., Ex. A, Holliday Dep. 192-193.) In response to complaint filed with the NAACP, Defendant enlisted an outside attorney, Carl E. Singley, to conduct an independent investigation into the allegations of racial discrimination. (Def.'s Mem. Supp. Summ. J. 14.) Mr. Singley ultimately concluded that there was no evidence of racial discrimination. (Def.'s Mem. Supp. Summ. J., Ex. HH, Singley Mem. dated September 27, 2005.) Plaintiff questions the veracity of Mr. Singley's investigation and suggests a possible conflict of interest between Mr. Singley and Defendant. (Pl.'s Reply Mem. 8.) Despite Mr. Singley's conclusion that no racial discrimination existed, Defendant removed the two team, two quota structure implemented by Girdner and assigned the same quota to all sales representatives. (Def.'s Mem. Supp. Summ. J., Ex. A, Holliday Dep. 205-206.) Defendant also paid Plaintiff and the other members of the East team the commissions they might have lost as a result of the different quotas. (Id.)

Meanwhile, on May 31, 2005, Plaintiff filed this action against Defendant alleging (1) Defendant discriminated against Plaintiff because of his race in violation of 42 U.S.C. §1981; (2) Defendant created a hostile work environment for Plaintiff; (3) Defendant and Girdner retaliated against Plaintiff for his complaint against Girdner; (4) Defendant intentionally inflicted emotional distress upon Plaintiff; and (5) Defendant negligently retained and supervised Girdner. The Court is now presented with Defendant's Motion for Summary Judgment and Plaintiff's response thereto.

## **II. STANDARD**

A motion for summary judgment will be granted where all of the evidence demonstrates "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). A dispute about a material fact is

genuine “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). Because a grant of summary judgment will deny a party its chance in court, all inferences must be drawn in the light most favorable to the party opposing the motion. U.S. v. Diebold, Inc., 369 U.S. 654, 655 (1962).

The ultimate question in determining whether a motion for summary judgment should be granted is “whether reasonable minds may differ as to the verdict.” Schoonejongen v. Curtiss-Wright Corp., 143 F.3d 120, 129 (3d Cir. 1998). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” Anderson, 477 U.S. at 248.

After the moving party satisfies its burden, the nonmoving party "must present affirmative evidence to defeat a properly supported motion for summary judgment." Anderson, 477 U.S. at 256-57. Rule 56 of the Federal Rules of Civil Procedure requires the entry of summary judgment, after adequate time for discovery, where a party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex v. Catrett, 477 U.S. 317, 322 (1986). "The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." Id. at 323.

### **III. DISCUSSION**

After a careful review of the record, and drawing all inferences in light most favorable to Plaintiff, it is clear that there is “no genuine issue of material fact” and Defendants are entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). Courts have held that the legal

standard for a Title VII claim is identical to the standard in a § 1981 claim. Harris v. SmithKline Beecham, 27 F. Supp.2d 569, 576 (E.D. Pa. 1998) (citation omitted). Therefore, the Court will examine Plaintiff's claims referencing both analyses interchangeably. The Court will address each of Plaintiff's claims in turn.

**A. Racial Discrimination**

Plaintiff's first claim that Defendants discriminated against him because of his race in violation of 42 U.S.C. §1981 fails as a matter of law. This claim is governed by the three step burden-shifting framework developed in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Under the McDonnell Douglas model, the plaintiff is first required to set forth sufficient evidence to establish a *prima facie* case. To establish a *prima facie* case of racial discrimination, the plaintiff must show (1) he is a member of a racial minority; (2) the defendant intended to discriminate on the basis of race; and (3) the discrimination concerned one of the activities enumerated in the statute. Brown v. Philip Morris, Inc., 250 F.3d 789, 797 (3d Cir. 2001). Once a *prima facie* case is established, the second stage shifts the burden of production to the defendant, where the defendant must produce evidence sufficient to support a finding that there was a legitimate, nondiscriminatory reason for the employment action. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 506-07 (1993). Summary judgment should be granted for the plaintiff if the defendant is unable to satisfy this burden. Keller v. Orix Credit Alliance, Inc., 130 F.3d 1101, 1108 (3d Cir. 1997). If defendant does satisfy this burden, the third stage shifts the burden back to the plaintiff, and "the plaintiff may survive summary judgment or judgment as a matter of law by submitting 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." Id. at 1109 (citing Fuentes v. Perskie, 32 F.3d 759, 762 (3d Cir. 1994)).

To discredit the employer's proffered reason . . . 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. Rather, the nonmoving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable factfinder could rationally find them unworthy of credence.

Fuentes, 32 F.3d at 765. In other words, "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, 130 F.3d at 1109 (quoting Carson v. Bethlehem Steel Corp., 83 F.3d 157, 159 (7<sup>th</sup> Cir. 1996)).

In the present matter, Plaintiff has failed to even satisfy the first step of the McDonnell Douglas framework—establishing a *prima facie* case of discrimination. While Plaintiff has satisfied the first element because he is African American, Plaintiff has failed to offer any evidence that Defendant intended to racially discriminate against him concerning any activity enumerated in the statute. As Defendant points out, the only evidence suggesting that Girdner acted with racial animus at the July 14, 2004 meeting is Plaintiff's unsupported allegations. Plaintiff has failed to present any evidence that Defendant intended to discriminate on the basis of race. The discussion of the July 14<sup>th</sup> meeting clearly focused on Plaintiff's job qualifications and desire for advancement. While a dispute over the level of Plaintiff's qualifications escalated the discussion to a heated conversation, there is simply no basis for Plaintiff's conclusion that Girdner's reference to "equal footing" is evidence of racial animus. Girdner supervised Plaintiff in the workplace and all evidence points to the statement being made

within an employer hierarchy context. Therefore, Plaintiff has failed to establish a *prima facie* case under § 1981.

Even if Plaintiff could establish a *prima facie* case of racial discrimination, Plaintiff cannot demonstrate that Defendant's articulated reason for its failure to sustain Plaintiff's physical harassment complaint was pretext for discrimination. By way of Plaintiff's own testimony, Defendant has shown the meeting between Plaintiff and Girdner to have been a dispute regarding Plaintiff's qualifications. Defendant investigated Plaintiff's harassment complaint thoroughly. Most importantly, Plaintiff has not brought forth evidence that might cause the Court to disbelieve Defendant's articulated legitimate reasons or believe that a discriminatory reason was more likely.

In regards to Defendant's assignment of quotas to Plaintiff's sales team, Plaintiff has also failed to provide evidence to establish a *prima facie* case of discrimination. Both teams contained both black and white members, and any resulting negative impact on commissions were felt by all members of Plaintiff's team. (Def.'s Mem. Supp. Summ. J. 23.) Even if Plaintiff could establish a *prima facie* case of racial discrimination, Plaintiff provides no evidence to indicate that Defendant's articulated reason was pretext for discrimination. Defendant argues that the differing quota structures was a legitimate business decision implemented to account for the needs of different geographical regions. Plaintiff has provided no evidence to suggest otherwise, therefore failing to satisfy the requirements necessary to avoid summary judgment.

#### **B. Hostile Work Environment**

Plaintiff's next claim is that Defendant subjected him to a hostile work environment. To establish a *prima facie* case for hostile work environment, Plaintiff must show

that: (1) he suffered intentional discrimination because of race; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected him; (4) the discrimination would detrimentally affect a reasonable person of the same race in that position; and (5) the existence of respondeat superior liability. Kunin v. Sears Roebuck & Co., 175 F.3d 289, 293 (3d Cir. 1999) (citing Andrews v. City of Philadelphia, 895 F.2d 1469, 1482 (3d Cir. 1990)). In determining whether an environment is hostile or abusive, the court looks to all of the circumstances, including “the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.” Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993).

The Court’s previous determination that Plaintiff has failed to establish a *prima facie* case of racial discrimination defeats Plaintiff’s hostile work environment claim at the outset. However, the Court also notes that Plaintiff has failed to establish the remaining elements necessary for a hostile work environment claim. As Defendant argues, the single comment made by Girdner and the aftermath that Plaintiff alleges was discriminatory is less severe and pervasive than many other cases where courts rejected claims of a hostile work environment. See Boyer v. Johnson Matthey, Inc., No. CIV. A. 02-8382, 2005 WL 35893, at \*17-18 (E.D. Pa. Jan. 6, 2005) (granting summary judgment on hostile work environment claim when the plaintiff was subjected to six racial comments); Bonora v. UGI Utils., Inc., No. CIV. A. 99-5539, 2000 WL 1539077, at \*4 (E.D. Pa. Oct. 18, 2000) (found that less than ten incidents over two years was not sufficiently pervasive); Johnson v. Souderton Area Sch. Dist., No. CIV. A. 95-7171, 1997 WL 164264, at \*6 (E.D. Pa. April 1, 1997) (found that nine alleged events over three years was

not pervasive or regular). Plaintiff has presented no evidence to indicate that the alleged discrimination detrimentally affected him. Moreover, there is no evidence of conduct that a fact finder might find to detrimentally affect a reasonable person of the same race. Plaintiff has produced no evidence of any changes in relationships, salary, or commissions.

As mentioned, the final element necessary for a hostile work environment claim is respondeat superior. Under this doctrine, an employer is only liable for a hostile work environment claim “if the plaintiff proves that management-level employees had actual or constructive knowledge about the existence of a . . . hostile work environment and failed to take prompt and adequate remedial action.” Andrews, 895 F.2d at 1486. Here, Plaintiff has failed to present evidence of Defendant having actual or constructive knowledge of the racial discrimination claim prior to the allegations made by Plaintiff more than one year after the July 14, 2004 incident. Absent actual or constructive knowledge, there can be no respondeat superior liability. Furthermore, the evidence indicates that Defendant took adequate remedial action—despite not having knowledge of the racial discrimination claim—by thoroughly investigating the claim and holding no less than four meetings with Plaintiff in an effort to resolve Plaintiff’s concerns. It is therefore apparent that respondeat superior liability cannot be made out and Plaintiff’s hostile work environment claim fails as a matter of law.

### **C. Retaliation**

Plaintiff’s next claim is that Defendant retaliated against him because he filed a physical harassment complaint. To make out a *prima facie* case of retaliation under § 1981, the plaintiff must show that: (1) he engaged in protected conduct; (2) his employer took adverse action against him; and (3) there was a causal link between the protected conduct and the adverse

action. Kachmar v. SunGard Data Systems, Inc., 109 F.3d 173,177 (3d Cir. 1997). Plaintiff has failed to establish these elements and thus this claim fails as a matter of law.

In regards to the first element of a claim for retaliation, there is no evidence of Plaintiff having engaged in protected activity. “A protected activity is one where an individual opposed . . . a practice by the employer because it was discriminatory.” Tucker v. Merck & Co., Inc., 2004 WL 350467, \*3 (E.D. Pa. 2004) (citing Wilson v. Supreme Color Card, Inc., 703 F. Supp. 289, 297 (S.D.N.Y. 1997)). In the present case, Plaintiff originally filed a physical harassment complaint and added a charge of racial discrimination over a year later. All of the alleged retaliatory acts occurred prior to Plaintiff altering his physical harassment complaint to include racial discrimination. Defendant argues that they “cannot be said to have retaliated against [P]laintiff for activity it did not know [P]laintiff was engaging in.” (Def.’s Mem. Supp. Summ. J. 31.) The Court agrees. The evidence indicates that Defendant had no knowledge of Plaintiff’s racial discrimination claim until after the alleged retaliatory acts, and therefore Plaintiff cannot be said to have engaged in protected activity.

Likewise, Plaintiff has failed to demonstrate evidence of the second element of a retaliation claim—suffering an adverse employment action. Until recently, those claiming unlawful retaliation were required to “show an adverse employment action that ‘alters the employee’s compensation, terms conditions, or privileges of employment, deprives him or her of employment opportunities, or adversely affects his or her status as an employee.’” Moore v. City of Philadelphia, 461 F.3d 331, 342 (3d Cir. 2006) (quoting Robinson v. City of Pittsburgh, 120 F.3d 1286, 1300 (3d Cir. 1997)). However, in Burlington Northern & Santa Fe Railway Col. v. White, --- U.S. ----, 126 S. Ct. 2405 (2006), the Supreme Court implemented a new standard,

holding that the “challenged action must be materially adverse, which in the context of a retaliation claim ‘means that it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.’”<sup>3</sup> Morrison v. Carpenter Technology Corp., 193 Fed. Appx. 148 (3d Cir. 2006) (quoting Burlington, 126 S. Ct. at 2415).

In the present case, Plaintiff claims that as a result of him complaining to Defendant of the conduct and mistreatment by Girdner, Defendant issued a written warning to Plaintiff, subjected Plaintiff to a two team/quota system, placed Plaintiff on a Performance Improvement Plan, and extended Plaintiff’s term on the PIP. (Pl.’s Reply Mem. 29.) The Court does not find these alleged retaliatory acts to be sufficiently materially adverse to Plaintiff or a reasonable employee. Plaintiff’s compensation remained the same, he was not denied any promotions or transfers,<sup>4</sup> and he was taken off the performance improvement plan upon successfully completing it.

In regards to the third element of a retaliation claim, Plaintiff has failed to provide evidence of a casual connection between the protected conduct and the adverse actions. Defendant’s investigations into the customer complaints against Plaintiff and the resulting conduct warning were justifiable business actions, and Plaintiff has provided no evidence to suggest otherwise. Similarly, Plaintiff has not brought forth any evidence of a casual connection

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3. The Court recognizes that the Supreme Court’s holding in Burlington specifically addressed a retaliation claim based on Title VII. However, as stated before, in light of the strong legal precedent of applying the same standard to both Title VII and § 1981 claims (see Harris, 27 F.Supp.2d at 576), and the Third Circuit’s holding in Morrison where a Title VII retaliation claim and a § 1981 retaliation claim were treated as one, the Court will apply the new Burlington standard to Plaintiff’s § 1981 retaliation claim.

4. Despite Plaintiff’s contention that he was prohibited from transferring or being promoted while on the performance improvement plan, Plaintiff has provided no evidence of having sought a transfer or promotion during this period. (Def.’s Mem. Supp. Summ. J., Ex. A, Holliday Dep. 166:2-168:16.)

between the protected conduct and his placement on and extension of the performance improvement plan. Plaintiff admits that

“the real reason that [he] was put on probation had to do not with sales performance but perhaps with [his] ability or inability to follow appropriate processes where [he] could have been coached, because the process was broken and was later, much later remedied, and [he] could have been coached through the processes without having been placed on probation . . .”

(Def.’s Mem. Supp. Summ. J., Ex. A, Holliday Dep. 160:17-24.) The Court views Plaintiff’s statement as evidence of a clear business decision on Defendant’s part. It is not the Court’s role to question the soundness of Defendant’s decision, but only to determine whether it was predicated on discrimination. See Keller, 130 F.3d at 1109. The Court is unable to find a casual connection between protected conduct and adverse actions, and thus Plaintiff’s retaliation claim must fail.

#### **D. Intentional Infliction of Emotional Distress**

Plaintiff also asserts a claim of intentional infliction of emotional distress (“IIED”) against Defendants. This claim fails on two counts: (1) it is barred by Pennsylvania’s Workers’ Compensation Act, 77 Pa. Cons. Stat. § 1 et. seq. (the “WCA”); and (2) Plaintiff fails to show conduct on behalf of Defendant which meets the extreme and outrageous element of an IIED claim. Each reason is discussed below in detail.

The WCA provides the exclusive remedy for employee work-related injuries. 77 Pa. Cons. Stat. § 481(a). The statute, however, carves out an exception for “employee injuries caused by the intentional conduct of third parties for reasons personal to the tortfeasor and not directed against him as an employee or because of employment.” McInerney v. Moyer Lumber & Hardware, Inc., 244 F. Supp. 2d 393, 400 (E.D. Pa. 2002) (quoting Durham Life Ins. Co. v.

Evans, 166 F.3d 139, 160 (3d Cir. 1999). The “critical inquiry in determining the applicability of the third-party attack exception is whether the attack was motivated by personal reasons, as opposed to generalized contempt or hatred, and was sufficiently unrelated to the work situation so as not to arise out of the employment relationship.” Fugarino v. Univ. Servs., 123 F. Supp. 2d 838, 844 (E.D. Pa. 2000).

In this case, the discrimination Plaintiff alleges was entirely related to and arose solely out of the employment relationship. The meeting between Plaintiff and Girdner was premised on Plaintiff’s desire to discuss employment opportunities with Defendant, and the escalation resulted from differing philosophies on the importance of Plaintiff’s qualifications. The hostile work environment and retaliation that Plaintiff alleges to have suffered also focus entirely on Plaintiff’s employment relationship. Therefore, the WCA exception does not apply and Plaintiff’s IIED claim is consequently barred by the WCA.

Even if the WCA were applicable, Plaintiff has failed to establish the elements necessary for a cognizable IIED claim. To state a claim of IIED under Pennsylvania law, “a plaintiff must show extreme and outrageous conduct that is deliberate or reckless and causes severe emotional distress.” DeWyer v. Temple Univ., No 00-CV-1665, 2001 WL 115461, \*5 (E.D. Pa. Feb. 5, 2001) (citing Wisniewski v. Jons-Manville Corp., 759 F.2d 271, 275-76 (3d Cir. 1985)). “The conduct complained of must be so outrageous, and so extreme in degree, as to be regarded as atrocious and utterly intolerable in a civilized community.” DeWyer, 2001 WL 115461 at \*5 (citation omitted). “The Third Circuit has stated it is ‘extremely rare to find conduct in the employment context that will rise to the level of outrageousness necessary to

provide a basis for recovery for the tort of intentional infliction of emotional distress.” Id.  
(quoting Cox v. Keystone Carbon Co., 861 F.2d 390, 395 (3d. Cir. 1988).

Making every inference in Plaintiff’s favor, the Court does not find the allegations forming the foundation of Plaintiff’s IIED claim to rise to the level of atrociousness necessary for a cognizable claim. Plaintiff alleges that Defendant subjected him to a hostile work environment, harassed and belittled him, and retaliated against him. The specific conduct representing the foundation of these allegations is far less extreme than conduct still found insufficiently outrageous by this Court. It is therefore appropriate to grant Defendants judgment as a matter of law on this claim.

#### **E. Negligent Retention and Supervision**

Plaintiff’s final claim alleges Defendant negligently retained and negligently supervised Girdner. Specifically, Plaintiff argues that Defendant failed to effectively respond and take corrective action following complaints of Girdner’s alleged racially and physically aggressive behavior. This claim is also barred by the WCA. As discussed above, the WCA provides the exclusive remedy for employee work-related injuries. 77 Pa. Cons. Stat. § 481(a). Plaintiff, however, argues that this claim also qualifies under the third party attack exception to the WCA. The Court disagrees. As with Plaintiff’s IIED claim, the record does not support a finding that Girdner intended to injure Plaintiff for purely personal reasons. Plaintiff has provided no evidence suggesting a personal nature to his dispute with Girdner. Girdner called the meeting to discuss Plaintiff’s qualifications and future with Defendant in what can only be interpreted as with an employment context. Absent a suggestion of personal animus, Plaintiff’s claim for negligent retention and supervision is clearly barred by the WCA. Consequently, the

Court need not address whether Plaintiff has provided evidence to establish the elements of this claim.

#### **IV. CONCLUSION**

For the reasons stated above, Defendant's Motion for Summary Judgment is granted. An appropriate order follows.

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

WILLIAM HOLLIDAY,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO. 05-2554
v.	:	
	:	
COMCAST CABLE	:	
COMMUNICATIONS, LLC AND	:	
COMCAST CABLE	:	
COMMUNICATIONS HOLDINGS,	:	
INC.,	:	
	:	
Defendants.	:	

**ORDER**

AND NOW, this 16<sup>th</sup> day of February, 2007, upon consideration for Defendant's Motion for Summary Judgment (Docket No. 13), Plaintiff's Response (Docket No. 16), and Defendant's Reply (Docket No. 17), it is hereby **ORDERED** that Defendant's Motion for Summary Judgment is **GRANTED**. Accordingly, summary judgment is entered in favor of defendant Comcast Cable Communications, LLC and against plaintiff William Holliday.

In that a Stipulation and Order that Plaintiff's Claims of the Complaint Against Comcast Communications Holdings, Inc. are Dismissed with Prejudice was entered on June 26, 2006, this case is now **CLOSED**.

BY THE COURT:

s/ Ronald L. Buckwalter, S. J.  
RONALD L. BUCKWALTER, S.J.