

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

CALVIN L. SWARTZENTRUBER	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 97-7050
BELL ATLANTIC CORPORATION, et al.	:	

**MEMORANDUM AND ORDER**

YOHN, J. June , 1999

Plaintiff, Calvin Swartzentruber, claims that Bell Atlantic Corporation terminated his employment after twenty-seven years of service because of his age in violation of the 29 U.S.C. §§ 621-29., the Age Discrimination in Employment Act (“ADEA”), and 43 Pa. Cons. Stat. Ann. § 951, the Pennsylvania Human Relations Act (“PHRA”). Pending before the court is defendant’s motion for summary judgment. Because plaintiff has met his burden of producing evidence which could lead a jury reasonably to disbelieve defendant’s non-discriminatory reason for firing plaintiff, defendant’s motion will be denied.

**I. BACKGROUND**

The following facts are undisputed except where noted.

Swartzentruber began working for Bell Atlantic, then Bell of Pennsylvania, in 1967 as a lineman. See Swartzentruber Dep. Vol. 1 at 9; Def.’s Statement of Material Facts ¶ 1. In 1973, plaintiff assumed a first level management position (the lowest management level) as a construction foreman/supervisor and began supervising other employees in 1976. See

Swartzentruber Dep. Vol. 1 at 15-16. Plaintiff transferred to a design engineering position, also a level one managerial position, in 1977. See id. at 19. Beginning in 1985, with the exception of 1991, Jesse Guarneri, a level two manager, was plaintiff's supervisor. See Swartzentruber Dep. Vol. 1 at 25. Until 1989, supervisors evaluated employees yearly using a rating scale of "unsatisfactory," "satisfactory," or "outstanding." See id. at 27-28. During this period, plaintiff consistently received "satisfactory" ratings from Guarneri. See id. In 1990, Bell Atlantic switched to a new evaluation scale on which employees' performances were rated as "fails to meet requirements," "meets most requirements," "meets all requirements," and "far exceeds position requirements." From 1990 through 1993, plaintiff received overall ratings of "meets most requirements" (sometimes reported as a "2").<sup>1</sup> See Def.'s Exs. 7, 8, 11, 12 (Performance Reviews for 1990-1993).

In October 1993, Sharon Cook became General Manager (a level three management position) of the Eastern South Customer Service District, which included plaintiff's office in West Chester. See Cook Dep. at 130; Declaration of Sharon R. Cook ("Cook Decl.") ¶¶ 1, 8. Shortly thereafter, Bell Atlantic management determined it needed to reduce the number of the 102 first level managers in the entire Eastern South district by three as part of an overall reduction in force. See Cook Decl. ¶¶ 19-20. The process for selecting which employees would

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<sup>1</sup> During 1991, plaintiff reported to Joseph McCollian who initially rated plaintiff's performance as "fails to meet." This rating was later changed by McCollian's supervisor following further review and investigation of a misunderstanding over plaintiff's handling of an extended vacation. See Swartzentruber Dep. Vol. 1 at 152, 162-79.

Plaintiff also disputes his "meets most" rating for 1993. According to plaintiff, Guarneri told him that he would be receiving a "meets all requirements" rating. See Swartzentruber Aff. ¶ 32. In support of this contention, plaintiff points to the rating sheet used during the layoffs on which Swartzentruber is listed as having received a "meets all" rating that year. See Def.'s Exhibit 16. Defendant alleges that higher designation on the rating sheet was a mistake.

be terminated, began with every second level manager filling out a Selection Criteria Appraisal Worksheet (“Appraisal Worksheet”) for each level one manager that they supervised. This evaluation sheet contained three sections in which the evaluator rated each employee on his or her: (1) performance on Bell Atlantic’s six “Components of Change,” which accounted for 40% of the total; (2) job knowledge, 20% of the total; and (3) job performance, which was based on the three most recent performance evaluations<sup>2</sup> and comprised 40% of the total score. See Def.’s Ex. 15, Selection Criteria Appraisal Worksheet. After the appraisal scores for all level one managers were tallied, the supervisors met to discuss the eleven individuals who had received the lowest scores. See Cook Dep. at 22, 67. After they had discussed each employee, Cook then asked the supervisors to rank the individuals in the order in which they should be let go. See id. at 67-68; Guarneri Dep. Vol. II at 180. The three individuals who had received the lowest appraisal scores based on the evaluations were also ranked as the first three to be laid off.<sup>3</sup> See Cook Decl. ¶ 9. Ultimately, it was Cook’s decision to lay off the three employees, including plaintiff, that had been chosen by the supervisors. See Cook Dep. at 61. Guarneri told Swartzentruber of the decision to terminate him on February 7, 1994. Pl.’s Ex. 32. On March 4, 1994, plaintiff received his official termination notification. See Def.’s Ex. 18. Although the record contains conflicting evidence, it appears that the employees affected by the RIF, plaintiff,

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<sup>2</sup>The overall rating received on the 1993 evaluation counted twice as much as the rating received on either the 1991 or 1992 annual reviews.

<sup>3</sup>Plaintiff claims that the facts regarding the layoff process are in dispute. See Pl.’s Resp. to the Material Facts ¶¶ 19-29. Plaintiff however, does not appear to be disputing the fact of the evaluations and meeting but rather he is insisting that the entire reduction-in-force (“RIF”) process was a charade -- that Swartzentruber’s scores were incorrect and that the supervisors were simply trying to get rid of older employees. See id. ¶ 26-27.

Antoinette Valgus, and Kenneth Brunt, were not the oldest employees under review in connection with the RIF but that each was over forty at the time they were laid off. See Def.'s Exhibits 18, 19.

## II. SUMMARY JUDGMENT STANDARD

Summary judgment is to be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56 (c). The court should not resolve disputed factual issues, but rather, should determine whether there are factual issues which require a trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). If no factual issues exist and the only issues before the court are legal, then summary judgment is appropriate. See Sempier v. Johnson & Higgins, 45 F.3d 724, 727 (3d Cir.), cert. denied, 515 U.S. 1159 (1995). If, after giving the nonmoving party the “benefit of all reasonable inferences,” id. at 727, the record taken as a whole “could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial,’” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986), and the motion for summary judgment should be granted.

In ADEA cases, the court’s decision to grant or deny summary judgment is closely linked to the substantive burden of proof that the plaintiff must meet. As with other employment discrimination claims, ADEA claims can be established in either, or both, of two ways: (1) by direct evidence that Bell Atlantic’s decisions were motivated by age discrimination under Price Waterhouse v. Hopkins, 490 U.S. 228 (1989), or (2) by evidence which creates an inference of discrimination under the burden-shifting framework of the McDonnell Douglas/Burdine/Hicks

trilogy. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981); McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Swartzentruber seeks to have his claim evaluated under the burden-shifting framework of McDonnell Douglas/Burdine/Hicks.

The burden-shifting framework initially requires the plaintiff to establish a prima facie case of disparate treatment by a preponderance of the evidence. See Burdine, 450 U.S. at 252. To establish a prima facie case in a suit involving a RIF, a plaintiff must demonstrate that “he was in the protected class, he was qualified, he was laid off and other unprotected workers were retained.” Marzano v. Computer Science Corp. Inc., 91 F.3d 497, 506 (3d Cir. 1996) (quoting DiBase v. SmithKline Beecham Corp., 48 F.3d 719, 723 (3d Cir.), cert. denied, 516 U.S. 916 (1995)). Once plaintiff succeeds in presenting a prima facie case, the burden of production shifts to the defendant to “articulate some legitimate, nondiscriminatory reason” for the unfavorable treatment. McDonnell Douglas, 411 U.S. at 802; Keller v. Orix Credit Alliance, Inc., 130 F.3d 1101, 1108 (3d Cir. 1997).

After the defendant produces a legitimate, nondiscriminatory reason, the plaintiff can defeat summary judgment by pointing to some direct or circumstantial evidence from which a jury could either reasonably: “(1) disbelieve the employer's articulated legitimate reason; or (2) believe that an invidious discriminatory reason was more likely than not the motivating or determinative cause of the employer's action.” Simpson, 142 F.3d at 644 (quoting Fuentes, 32 F.3d at 764). The plaintiff cannot, however, “avoid summary judgment simply by arguing that the factfinder need not believe the defendant's proffered legitimate explanations.” Fuentes, 32 F.3d at 764. On the other hand, the plaintiff is not required to “adduce evidence directly

contradicting the defendant's proffered legitimate explanations" to survive a summary judgment motion. Id. (quoting Chauhan v. M. Alfieri Co., Inc., 897 F.2d 123, 128 (3d Cir.1990)):

The correct solution lies somewhere in between: to avoid summary judgment, the plaintiff's evidence rebutting the employer's proffered legitimate reasons must allow a factfinder reasonably to infer that each of the employer's proffered non-discriminatory reasons, . . . was either a post hoc fabrication or otherwise did not actually motivate the employment action (that is, the proffered reason is a pretext).

Id. (citations omitted).

The ultimate focus of this inquiry at trial is on whether the plaintiff has met his burden of showing that the employer has discriminated against a member of a protected class. Burdine, 450 U.S. at 253. Accordingly, the ADEA does not command employers to be wise or efficient or even rational - it only restricts them from making employment decisions motivated by discriminatory animus. See Keller, 130 F.3d at 1108-09. To that end, a plaintiff must cast "substantial doubt" upon the proffered legitimate reason by demonstrating "such weaknesses or implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable fact-finder could rationally find them 'unworthy of credence[.]' " Fuentes, 32 F.3d at 765 (quoting Ezold v. Wolf, Block, Schorr & Solis-Cohen, 983 F.2d 509, 531 (3d Cir.), cert. denied, 510 U.S. 826 (1993)); see also Smith v. Borough of Wilkinsburg, 147 F.3d 272, 278-79 (3d Cir. 1998) (commenting that unexplained employment action is more likely to be motivated by impermissible concerns); Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1071 (3d Cir. 1996) (endorsing Fuentes), cert. denied, 117 S. Ct. 2532 (1997). While this standard places a difficult burden on plaintiffs, "[i]t arises from an inherent tension between the goal of all discrimination law and our society's commitment to free

decisionmaking by the private sector in economic affairs." Fuentes, 32 F.3d at 765 (quoting Ezold, 983 F.2d at 531).

If, however, a plaintiff cannot cast substantial doubt on the defendant's proffered reason, he can still avoid summary judgment by producing sufficient evidence that would allow a factfinder reasonably to infer that the employer was motivated by discriminatory animus. Id. In other words, the plaintiff must show, by a preponderance of the evidence, that "discrimination was more likely than not a motivating or determinative cause of the adverse employment action." Keller, 130 F.3d at 1111.

#### **IV. DISCUSSION**

##### **A. ADEA Claim**

For purposes of summary judgment, defendant accepts that plaintiff has established a prima facie case of age discrimination, and instead seeks dismissal on the basis that Bell Atlantic had a legitimate non-discriminatory reason for terminating plaintiff's employment. See Mem. of Law in Supp. of Def.'s Mot. for Summ. J. ("Def.'s Mem.") at 9. Defendant asserts that Swartzentruber lost his job because the company needed to reduce the size of its management force in the Eastern South District by three, and plaintiff had the third lowest layoff ranking<sup>4</sup> among the first level managers. See id. at 3-5, 9.

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<sup>4</sup> Defendant evaluated one hundred and two first level managers in the Eastern South District as part of the layoff process. Level one managers were evaluated by their level two supervisors based on identical criteria: the components of change; job knowledge; and the three most recent job performance overall evaluation rating. To ensure that the evaluators were being consistent with each other in their assessments, they then met as a group to discuss each of the lowest ranking employees. Following this discussion, each second level manager ranked the individuals in the order in which they believed the layoffs should occur. At each step of the process, plaintiff was among the three lowest ranking employees.

Plaintiff contends that the proffered reasons of a RIF and plaintiff's low performance ranking are a pretext masking defendant's true, discriminatory purpose for terminating his employment. See Pl.'s Mem. of Law in Opp. to Def.'s Mot. for Summ. J. ("Pl.'s Mem.") at 18.

1. Defendant Did Not Reduce Its Force

Plaintiff contests the fact that defendant was actually reducing its force in that Bell Atlantic "continued to use contract design engineers and transferred and trained substantially younger under-qualified employees into positions of design engineers at the time Mr. Swartzentruber was being terminated." Pl.'s Resp. to the Material Facts ¶ 19. While Bell Atlantic may have filled Swartzentruber's position in this manner, see Guarneri Dep. at 329-30; Cook Dep. at 30-33, 37, 154-55, and may even have terminated people for discriminatory reasons, plaintiff has produced no evidence disputing the fact that Cook was required to reduce the overall number of level one managers in her district by three and did not hire new employees to replace plaintiff. See Guarneri Dep. at 329-30; Cook Dep. at 30-33, 37, 154-55.

2. Plaintiff's Low Score on Selection Criteria Appraisal Worksheet Resulted from Discriminatory Animus

The bulk of the evidence cited by plaintiff raises questions about the validity of the information included on the Appraisal Worksheet by his supervisor Jesse Guarneri.

*Annual Evaluation Ratings*

Forty percent of the overall appraisal score calculated using the Appraisal Worksheet was based on plaintiff's annual evaluations from 1991, 1992, and 1993. See Def.'s Ex. 15. Although plaintiff's precise argument is not specifically spelled out in his brief, he seems to contend that beginning in 1990, his supervisors demonstrated a clear discriminatory animus toward him

because of his age and this resulted in lower than warranted ratings on his annual reviews and consequently a low appraisal score. Swartzentruber points to the following evidence to support this claim. On his midyear review in 1990, plaintiff received all positive comments from Guarneri. See Pl.’s Exhibits in Support of its Opp. to Def.’s Mot. for Summ. J. (“Pl.’s Ex.”) 20. In his 1990 annual review, Guarneri described Swartzentruber’s year as being “up and down” and disappointing in the last half. See id. Although the evaluation is dated March 31, 1991, plaintiff claims that he did not receive it until October 15, 1991, and that Guarneri never discussed the review with him prior to October 1991. Swartzentruber Dep., Vol. I, at 92-93; Pl.’s Aff. of March 30, 1999 (“March 1999 Aff.”), ¶ 8. On his 1990 evaluation, plaintiff received an overall performance rating of “meets most.”<sup>5</sup> See Pl.’s Ex. 20. Prior to 1990, Guarneri had rated plaintiff as satisfactory on all of his previous reviews and had written overwhelmingly positive remarks. See, e.g., Pl.’s Ex. 12-19. In late summer 1991, between Swartzentruber’s six-month review and when he finally received his 1990 evaluation, Bell Atlantic instituted an early retirement plan. Although plaintiff was eligible at that time, he declined to participate in the plan. See March 1999 Aff., ¶ 6.

In 1991, Joe McCollian replaced Guarneri as plaintiff’s supervisor. See Swartzentruber Dep., Vol. I, at 92-93. Plaintiff alleges that McCollian repeatedly told plaintiff that he was “useless” and should retire and that McCollian became angry when he refused to do so. See id. at 130; March 1999 Aff. ¶ 9. Additionally, on one occasion when plaintiff sought permission for an extended vacation McCollian stated that “If anyone takes seven weeks vacation they ought to

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<sup>5</sup> A “meets most” rating is numerically represented as a “2.” The highest rating possible is “far exceeds” also referred to as a “4.”

retire.” See Swartzentruber Dep., Vol. I, at 130. For his 1991 annual evaluation, McCollian initially gave plaintiff an overall rating of “fails to meet.” See March 1999 Aff. ¶ 12. This was upgraded by McCollian’s boss, Ray Klauss, to “meets most” only after plaintiff was able to prove, contrary to McCollian’s claims, that he had arranged to have coworkers cover his work while he was on a six-week vacation. See March 1999 Aff. ¶ 12; Swartzentruber Dep., Vol. I, at 152-169.

Guarneri resumed his position as plaintiff’s supervisor in 1992. Plaintiff alleges that throughout 1992 and 1993, Guarneri often “made negative references to older employees.” March 1999 Aff. ¶ 24. During a discussion at a meeting regarding the possibility of a RIF on October 5, 1992, Guarneri reportedly made a point of stating that the oldest person could be let go and that the company was running out of older people to retire. See id. ¶ 26; Swartzentruber Dep., Vol. II, at 58-59, 72-73, 212; Pl.’s Ex. 83. Plaintiff was the oldest employee in Guarneri’s group and the only one eligible for retirement. See Swartzentruber Dep., Vol. II, at 58-59; March 1999 Aff., ¶ 26. Plaintiff was again offered early retirement soon after this meeting, and he again declined to take it. March 1999 Aff. ¶ 26. Plaintiff did not receive a copy of his 1992 annual review until 1994, after he had already been laid off. See Swartzentruber Dep., Vol. I, at 179-184. The only copy of his evaluation produced by defendant does not contain plaintiff’s signature. See Def.’s Ex. 11. For 1992, plaintiff was rated “meets most.” See id.

Plaintiff testified at his deposition that he received a good mid-year review in 1993. See Swartzentruber Dep., Vol. 1, at 184; Swartzentruber Vol. II, at 152. In November 1993, while discussing the then impending RIF, Guarneri allegedly stated that “older employees were a drag on the company.” March 1999 Aff., ¶ 25; Swartzentruber Dep., Vol. II, at 58-59. During the

same meeting Guarneri allegedly looked directly at plaintiff and stated that: “older employees could take retirement, getting about ½ pay or could be RIF’d or quit.” See March 1999 Aff., ¶ 25. Again, at this time, plaintiff was the oldest person in Guarneri’s group and the only one eligible for retirement. See id. On his annual review for 1993, plaintiff received a numerical rating of “2+” which falls into “meets most.” See Def.’s Ex. 12. Guarneri signed plaintiff’s 1993 review on March 1, 1994, two weeks after he told plaintiff that he was being let go.

Guarneri testified at his deposition that during the 1990-1993 period, he received various complaints about Swartzentruber’s work from Bill Walsh, Jim Miller, and James Cibroski which would seemingly justify, at least in part, plaintiff’s low ratings on his evaluations. See Guarneri Dep. at 99, 105, 407. The record reveals some dispute over these complaints, however. Guarneri’s own testimony is inconsistent in that he first stated that Walsh complained to him, see id. at 105, but then later stated that he did not hear much from Walsh in terms of complaints. See id. at 407. Additionally, Cibroski submitted an affidavit in which he claims that he never complained to Guarneri about Swartzentruber. See Pl.’s Ex. 72. The extent of any complaints involving plaintiff’s work, therefore, appears to be in question.

#### *Bell Atlantic Way Rating*

Another forty percent of the appraisal score was based upon six “Components of Change” which included: Bell Atlantic Way (“BAW”) Behaviors;<sup>6</sup> Best Cost; Quality Improvement;

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<sup>6</sup> The Bell Atlantic Way was described by Sharon Cook as “a program that was introduced to impact the culture of the organization, to drive more team work.” Cook Dep. at 82. In a document detailing Bell Atlantic’s “Seven Concepts of Cultural Change,” the Bell Atlantic Way is defined as “Being truly responsive to customer requirements through the following concepts: Be Here Now, Teamwork, Accountability, Coaching, Feedback, Empowerment, Shadow of the Leader, Getting Outside the Nine Dots, Blue Chip, Personal Commitment.” Pl.’s Ex. 63.

Performance Appraisal Process; Employee Training/Development Process; and Employee Communication and Education. See Def.'s Ex. 15. The level one managers were rated on a scale of one to five, with five being the highest, in each of the categories. See id. Plaintiff received a rating of three in four categories, a "not applicable" in the employee training/development process, and a two in BAW Behaviors. See id. Swartzentruber alleges that his low BAW Behaviors rating demonstrates a clear prejudice against him given his demonstrated success in this area. First, plaintiff cites his selection as a manager-in-residence ("MIR") for his office in 1993. See Pl.'s Mem. at 7. In his role as MIR, plaintiff was asked to participate in at least one of the Bell Atlantic Way forums being held by the company. See Pl.'s Ex. 28. During the forum sessions, MIRs were supposed to assist the facilitators by responding to questions, contributing personal experiences, and demonstrating by their presence their support for the Bell Atlantic Way. See id.

Second, plaintiff cites awards and recognition that he received for his dedication to "Quality Customer Service," his "commitment to the Quality Improvement Process and the Bell Atlantic way," his ability to "get[] outside the nine dots," and the manner in which he exemplified the "Bell Atlantic Way principles" of "creativity," "accountability," and "dedication to quality service." See Pl.'s Ex. 4 (letters from 1992 and 1993 recognizing plaintiff's achievements as part of "Power Plus Club").

Finally, the record also contains peer reviews of Swartzentruber conducted in the midst of the layoff decisionmaking process.<sup>7</sup> On November 23, 1993, Guarneri requested that all of his

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<sup>7</sup> Defendant disputes that the assessments had any connection to the evaluations being conducted for the RIF, stating that the fact that the assessments were due in December of 1993 in the midst of the layoff decisionmaking process was simply a coincidence. See Cook Dep. at 116.

level one managers complete a Components of Change self-assessment, complete an assessment of Guarneri, and have twelve people do assessments of them and then provide Guarneri with the average of the twelve. See Pl.’s Ex. 56. The assessment package was due to Guarneri on December 10, 1993. See id. The record contains thirteen assessments with the first labeled “Cal By peers etc. Average.” See id. According to these assessments, Swartzentruber received an average score of four out of five (with five being the highest) in the “Bell Atlantic Way” category. See id.

#### *Production Numbers*

Finally, plaintiff spends a significant amount of time arguing that the size of his budget and his production numbers demonstrate that he was qualified for the design engineer position and, to a lesser extent, that he should have received higher ratings on his evaluations. See e.g., Pl.’s Mem. at 4. Plaintiff asserts that he “was the highest producer in his office” in terms of dollar amounts and had the largest budget of all the design engineers. See Swartzentruber Aff., April 16, 1999, ¶ 5.

In response, defendant initially argues that plaintiff was not laid off for performance reasons. See Reply Brief in Supp. of Def.’s Mot. for Summ. J. (“Def.’s Reply”) at 3. While plaintiff does not appear to have been fired for being incompetent, defendant cannot honestly argue that his performance did not play a role in his termination given that forty percent of the appraisal score was based on performance evaluation ratings. See Def. Ex. 15.

Alternatively, defendant claims that the evidence above demonstrates only those areas of performance that plaintiff feels were important and not the areas believed to be important to defendant and upon which the decision to fire people was made. See Def.’s Reply at 4-5. The

court agrees with defendant that plaintiff's evidence regarding his production numbers would not support a finding of pretext. No dispute exists with respect to whether plaintiff was qualified to be a design engineer. Defendant does not contend that it fired Swartzentruber because he was unqualified but rather because he was one of the lowest ranking first level managers when overall performance was assessed. Therefore, evidence that he was qualified has little probative value.

Plaintiff's contentions about this production are also unpersuasive as a means of demonstrating a disparity between his actual performance and his evaluation ratings. Plaintiff is the only person asserting that production demonstrates high quality performance. Plaintiff has produced no evidence from which a jury could conclude that an employee's production as indicated by dollar amounts has any correlation to how the company rates job performance. This is not a criterion listed on the yearly evaluations and does not appear as a category on the Selection Criteria Appraisal Worksheet used during the layoff process. Additionally, both Guarneri and Cook testified that production is not considered a good indicator of performance quality and thus is not a major factor in evaluating the performance of design engineers. See Guarneri Dep. at 18; Cook Dep. at 86. Plaintiff cannot demonstrate pretext by pointing to high production numbers when he has not shown that low production was a reason for firing him or even a factor in the layoff process. See Simpson v. Kay Jewelers, Division of Sterling, Inc., 142 F.3d 639, 647 (3d Cir. 1998) (stating that pretext analysis must focus on criteria used by employer as basis for adverse action; employee's performance in other areas and belief as to importance of other criteria is irrelevant); Ezold v. Wolf, Block, Schorr & Solis-Cohen, 983 F.2d 509, 526 (3d Cir. 1992) (same).

The court does not agree with defendant, however, that plaintiff's evidence with respect

to the evaluations and his BAW rating is irrelevant. Both of these appear as categories on the Appraisal Worksheet which served as the basis for the layoff decisions. Defendant contends that the evaluations were not prepared as part of the layoff process even though they undeniably were incorporated into the appraisal score. See Def.'s Reply at 5.

Notably, to rebut defendant's non-discriminatory reason and defeat summary judgment, plaintiff does not need to produce evidence showing intentional discrimination at every stage of the layoff ranking process if that aspect of the process tainted by discrimination could have corrupted the final decision. See Roebuck v. Drexel Univ., 852 F.2d 715, 727 (3d Cir. 1988) (stating that, at trial, professor alleging race discrimination did not have to prove intentional discrimination occurred at every stage of tenure review process where each subsequent evaluator had and considered recommendations of previous evaluators). The fact that plaintiff allegedly did not receive two evaluations until 1994, and that the RIF appears to have been anticipated as far back as October 1992, raises some doubt as to when they were actually prepared and with what purpose. Plaintiff has presented just enough evidence that a jury could reasonably find that Guarneri and McCollian allowed their desire to have plaintiff retire because of his age to color their ratings of him in the performance evaluations, that Guarneri intentionally incorporated the unwarranted evaluation ratings into the appraisal score, and even that discrimination may have factored into the supervisors' comments and votes during discussion among supervisors about the level one managers. Because all of these elements were factors in the layoff decisionmaking process, a jury could find that the entire process was infected by intentional discrimination and thus, plaintiff's low performance ranking was merely a pretext for dismissing him.

Finally, defendant contends that this case presents the same issues that were involved in

Storti v. First Fidelity Bank, No. 97-5283, 1998 WL 404814, \*1 (E.D. Pa. July 16, 1998). In Storti, the plaintiff was also let go from her job pursuant to a RIF. See id. at \*5. In the years preceding the RIF, Storti's supervisor had ranked each person in the department in order to assess training needs and to determine salary increases; Storti consistently ranked at the bottom in her group. See id. When told of the need to eliminate a position, the supervisor informed her boss that Storti was ranked as the lowest performer. See id. Based on that information, Storti was let go. See id. The plaintiff attempted to overcome summary judgment by introducing evidence that her performance was adequate and that the RIF process was flawed. See id. at \*6. To prevail using this first approach, "the relevant question is whether the evidence shows that it was so clear that [the employee] could not have done better that [the employer] could not have believed otherwise." Id. (quoting Keller, 130 F.3d at 1109). The court found that Storti had failed to present evidence that would "call into question the decisionmaker's actual beliefs regarding [Storti's] performance" and thus had failed to meet her burden. Id.

In the case at bar, plaintiff has presented sufficient evidence to call into question the decisionmaker's beliefs about his performance. Drawing all reasonable inferences from the circumstantial evidence in plaintiff's favor, a jury could find that Guarneri and McCollian did not accurately represent what they knew to be plaintiff's true performance on the yearly evaluations and that Guarneri used those evaluations and other inaccurate information on the Appraisal Worksheet to shape the RIF decisionmaking process as it involved plaintiff. See Roebuck, 852 F.2d at 727.

3. Defendant Demonstrated Discriminatory Intent by Making Improper Comparisons of Employees During Layoff Procedure

Plaintiff also attacks the layoff process on grounds that defendant improperly compared all level one managers based on the same criteria keeping the highest performers regardless of their current position. See Pl.’s Mem. at 18-19. Plaintiff further argues that as a result of this approach, retained employees who assumed some of plaintiff’s responsibilities were less qualified and experienced in design engineering than plaintiff. See id. at 7, 18-19. This, plaintiff claims, demonstrates that the RIF process was a pretext for age discrimination. See id.

The court has previously rejected an attack on a defendant’s chosen method of comparing individuals for purposes of reductions in force and does so again here. See, Storti, 1998 WL 404814, at \*8 (rejecting argument that plaintiff should have been compared only to people in her specific unit within Trust section rather than entire section). The court will not “substitute its business judgment for that of the employer,” simply because plaintiff feels that he would have fared better if he had been compared only to design engineers. Id. Bell Atlantic chose to keep the best overall managers regardless of position and to then reassign the remaining employees as necessary to cover the responsibilities of the terminated employees. See Cook Dep. at 53-59, 60, 154-55. Plaintiff has provided no evidence that employing this force reduction plan served as a pretext for age discrimination.

**B. PHRA Claim**

Because Pennsylvania courts’ interpretation of the PHRA generally parallels the federal courts’ interpretations of Title VII, the ADA, and the ADEA, the Third Circuit has held the state and federal laws to be coextensive. See Kelly v. Drexel University, 94 F.3d 102, 105 (3d Cir. 1996) (stating that district court properly applied same standards to PHRA claims as had to ADA and ADEA claims). The preceding analysis, therefore, applies equally to plaintiff’s claims under

the PHRA.

## **V. CONCLUSION**

Although not all of plaintiff's attempts to undermine defendant's legitimate non-discriminatory reason for firing him succeed, he has presented sufficient evidence for a jury to find that defendant's proffered reason that plaintiff had one of the lowest performance rankings was unworthy of credence and thus pretextual. Therefore, the court will deny defendant's motion for summary judgment.

An appropriate order follows.

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BELL ATLANTIC CORPORATION, et al.	:	NO. 97-7050
	:	

**ORDER**

AND NOW, this        day of June, 1999, upon consideration of defendant's motion for summary judgment, plaintiff's response, defendant's reply, and plaintiff's surreply thereto, IT IS HEREBY ORDERED that the motion is DENIED.

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William H. Yohn, Jr., J.