

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

RONALD LONG : CIVIL ACTION
 :
 v. :
 :
 THOMSON INDUSTRIES, INC. : NO. 99-CV-1693

MEMORANDUM

Padova, J. **October** , **2000**

Plaintiff Ronald Long (“Long”) brought this action against his former employer, Thomson Industries, Incorporated (“Thomson”) alleging discrimination on the basis of race, disability, and age. Before the Court is Defendant’s Motion for Summary Judgment. The matter has been fully briefed and is ripe for decision. For the reasons that follow, the Court grants in part and denies in part Defendant’s Motion.

I. BACKGROUND

Plaintiff alleges the following facts. Thomson manufactures steel shafts out of a plant located in Lancaster, Pennsylvania. Thomson hired Long in 1977 as a machine operator. Thomson’s plant has several departments including the special machine shop (“Machine Shop”) and the general production area (“Production Department). Over the years, Long was eventually promoted to the position of foreman for the third shift responsible for supervising both the Machine Shop and Production Department. He worked in this capacity during the events in question until August 1995.

During 1993, Plaintiff began to complain to Thomson’s management about the presence of

racist graffiti on the walls of the restroom stalls, and the circulation of white supremacist literature throughout the plant. Although Thomson cleaned the wall, the graffiti returned. For his opposition to the racial climate, Long allegedly was subjected to negative and harassing treatment from coworkers and management. Long's performance evaluations also began to decline beginning in 1994. In July 1995, Plaintiff, in conjunction with several minority workers, submitted a written complaint notifying Thomson that they intended to pursue formal action if the problems were not immediately rectified.

In August, 1995, Thomson altered the supervisory structure of the second and third shift by adding a foreman to each shift. One foreman was assigned to the Machine Shop and the other to the Production Department. Thomson assigned Long to supervise the Production Department, and replaced him in the Machine Shop with Marty Waltman ("Waltman"), an allegedly younger and less experienced employee. Long considers this transfer to be a demotion because the Production Department is allegedly an entry level work assignment with a very noisy and dangerous atmosphere. The transfer to the Production Department, combined with the allegedly racially hostile environment, allegedly exacerbated the post-traumatic stress syndrome ("PTSD") from which Long allegedly suffers. Long claims that Thomson allegedly ignored or denied Plaintiff's requests for accommodation despite knowledge that the work environment aggravated Plaintiff's disorder. As a result, Long took a leave of absence and eventually left his job in January 1996.

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with 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). An issue is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is “material” if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant’s initial Celotex burden can be met simply by “pointing out to the district court that there is an absence of evidence to support the non-moving party’s case.” Id. at 325. After the moving party has met its initial burden, “the adverse party’s response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual 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, 477 U.S. at 322. “[I]f the opponent [of summary judgment] has exceeded the ‘mere scintilla’ [of evidence] threshold and has offered a genuine issue of material fact, then the court cannot credit the movant’s version of events against the opponent, even if the quantity of the movant’s evidence far outweighs that of its opponent. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255.

III. DISCUSSION

The Amended Complaint states three counts. Count I alleges racial discrimination and retaliation pursuant to section 704(a) of Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000e et seq. (“Title VII”). Count II alleges age discrimination pursuant to the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621. Count III claims discrimination under the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101. Defendant seeks summary judgment on all counts. At the threshold, Defendant argues that Plaintiff failed to comply with the procedural prerequisites necessary to assert ADA and Title VII claims. Next Defendant challenges Plaintiff’s ability to establish a prima facie case under all three statutes or establish that Thomson’s justification for transferring Long to the Production Department is pretextual. The Court will address each issue in turn.

A. Procedural Exhaustion

Defendant argues that Long failed to timely raise his Title VII retaliation claim with the EEOC, or timely file an EEOC charge with respect to his ADA or Title VII claims.

1. Failure to Raise Title VII Retaliation Claim

Defendant argues that Plaintiff failed to properly raise the issue of retaliation based on race before the EEOC.¹ Defendant claims that Long failed to raise the issue in his initial charge or even in early communications with the EEOC. Rather, Long first raised the issue of retaliation

¹The Court notes that Defendant initially raised this argument on a Motion to Dismiss. The Court denied Defendant’s Motion by Order dated November 18, 1999, based on the EEOC determination letter (“EEOC Determination”) concluding that the Title VII claim was fairly within the scope of the EEOC investigation even though it was not explicitly identified on Long’s initial charge.

only after the EEOC advised him that it would issue a no cause determination on his discrimination claims. The Court rejects Defendant's arguments largely for the reasons outlined in its previous Order and determines that Long raised his Title VII retaliation claim before the EEOC.

It is undisputed that Long's formal EEOC charge of discrimination ("Charge") failed to specifically assert any allegations or claims of discrimination based on race or retaliation. Def. Ex. A. Rather, Long first raised the issue of racial harassment at Thomson in a letter dated February 9, 1998, sent to the EEOC during the course of the investigation. Def. Ex. G. The EEOC issued a Determination on March 30, 1998, concluding that evidence of retaliation based on race established a violation of Title VII and evincing an intention to begin conciliation. Def. Ex. H. On April 17, 1998, Defendant wrote a letter to the EEOC requesting rescission of the Determination on the same grounds asserted now, namely that it never received notice of a racial retaliation claim. Def. Ex. I. The letter alleged that the EEOC never requested any information related to any of the allegations made in Long's claim of retaliation on the basis of race, nor did Thomson ever receive Long's February 9 1998 letter. Id. In December 1998, the EEOC issued a Right to Sue letter dismissing Long's Charge as untimely. Def. Ex. J.

The filing of a charge with the EEOC and receipt of a Notice to Sue are prerequisites to a civil action under Title VII. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 798 (1976). The purpose of this requirement is to enable the EEOC to attempt informal conciliation between the parties prior to suit. Hicks v. ABT Assoc., 572 F.2d 960, 963 (3d Cir. 1978). District courts generally may not hear claims that the plaintiff fails to timely bring before the EEOC, Trevino-Barton v. Pittsburgh Nat'l Bank, 919 F.2d 874, 878-79 (3d Cir. 1990), unless the claim falls

within the scope of an EEOC investigation that could “reasonably be expected to grow out of the charge of discrimination.” Hicks, 572 F.2d at 964; see also Antol v. Perry, 82 F.3d 1291, 1295-96 (3d Cir. 1996); Clarkson v. Pa. State Police – Bureau of Liquor Control Enforcement, No. Civ. A. 99-783, 2000 WL 974361, at *7 (E.D. Pa. July 14, 2000). In this case, the EEOC actually investigated the omitted Title VII retaliation claim. Thus, the purpose behind requiring an EEOC charge prior to filing a civil complaint, namely to provide the opportunity for extrajudicial conciliation, was satisfied. The EEOC’s ultimate decision regarding the resolution of Plaintiff’s claim is of no moment. The Court further rejects Defendant’s complaint of lack of notice of the claim. The EEOC’s failure to give the employer notice of a charge or investigation generally does not bar a civil suit by the charging party where the employer fails to show prejudice from expansion of the civil action. Hicks, 572 F.2d at 964-66. Defendant provides no evidence of prejudice in this case. In any case, Defendant eventually received notice of the possibility of a racial retaliation claim through the EEOC Determination. For these reasons, the Court concludes that Plaintiff raised his Title VII retaliation claim before the EEOC and such claim may be heard in this action.

2. Failure to Timely File

Defendant also argues that Counts I and III should be dismissed because Long failed to file his Charge within the 180 day deadline. Defendant initially raised this argument in its Motion to Dismiss. The Court rejected Defendant’s argument based on the doctrine of equitable tolling due to Plaintiff’s allegations that Defendant induced the delay. Defendant now argues that Plaintiff’s allegations lack factual support. The Court finds that a genuine issue of material fact persists as to whether Defendant induced Plaintiff to delay filing a charge. This issue, therefore,

is most appropriately resolved at trial after hearing all of the relevant evidence.

A plaintiff who alleges claims under either Title VII or the ADA must file a charge with the EEOC within 180 days after occurrence of the alleged unlawful conduct.² 42 U.S.C. § 2000e-5(e) (1994); Churchill v. Star Enter., 183 F.3d 184, 190 (3d Cir. 1999). There is no genuine dispute that Plaintiff failed to file a charge with the EEOC within 180 days of his constructive discharge, by July 10, 1996³. Long's attorney at the time, Matthew Samely ("Samely"), sent a letter and an allegation form to the EEOC on August 1, 1996, that the EEOC docketed and treated as a charge of discrimination.⁴ Def. Ex. B; Def. Ex. C. Long then filed a formal Charge on December 30, 1996. Both Samely's letter and the Charge are clearly outside the 180 day deadline⁵.

²This deadline is extended to 300 days only if the charge is first filed with the Pennsylvania Human Relations Commission ("PHRC"). 42 U.S.C. §2000e-5(e)(1); Rush v. Scott Specialty Gases, Inc., 113 F.3d 476, 480 (3d Cir. 1997). There is no evidence that Long filed charges with the PHRC.

³Long claims to have been constructively discharged on January 12, 1996, his last day of employment. Def. Ex. B; Am. Compl. ¶ 36; Pl. Ex. 1. One hundred and eighty days after his constructive discharge is July 10, 1996.

⁴Courts have accepted letters from counsel to the EEOC as substitutes for a formal charge of discrimination if the letter contains or attaches information that is substantially similar to that requested on an EEOC charge form. See Clark v Johnson Controls World Services, Inc., 939 F.Supp. 884, 888 (S.D. Ga.), aff'd, 124 F.3d 222 (11th Cir. 1997). This is consistent with the statutory requirements that the charge be "in writing under oath or affirmation and contain such information and be in such form as the Commission requires." 42 U.S.C. § 2000e-5(b) (1994). Defendant concedes that Samely's letter and attachments are an adequate substitute for an official charge.

⁵Long claims that Thomson notified the EEOC of Long's charges on June 28, 1996 within the 180 day deadline. (Pl. Ex. 1 ¶ 42.) Even if true, an oral notification by Thomson is insufficient to satisfy the statutory requirement that the charge be made in writing by the charging party. See 42 U.S.C. 2000e-5(b) (1994).

The 180 day deadline, however, is not a jurisdictional prerequisite, and is subject to equitable tolling. Zipes v. Transworld Airlines, Inc., 455 U.S. 385, 393 (1982). Equitable tolling is based on the fundamental rule of equity that a party should not profit from its own wrongdoing. Oshiver v. Levin, Fishbein, Sedran & Berman 38 F.3d. 1380, 1388 (3d Cir. 1997). Equitable tolling, therefore, may be appropriate where: (1) the defendant has actively misled the plaintiff with respect to the plaintiff's cause of action; (2) the plaintiff, in some extraordinary way, has been prevented from asserting his rights; or (3) the plaintiff has timely asserted his rights mistakenly in the wrong forum. Id. at 1387. Plaintiff argues that Defendant actively misled him into delaying filing charges. Under such circumstances, the equitable tolling doctrine applies where the "employer's own acts or omissions have lulled the plaintiff into foregoing prompt attempts to vindicate his rights." Meyer v. Riegel Prod. Corp., 720 F.2d 303, 307 (3d Cir. 1983). This occurs where defendant actively misled the plaintiff and the deception caused the plaintiff's non-compliance. Oshiver, 38 F.3d at 1387. Wrongful conduct by the defendants, however, is not required. Mathews v. Little, Civ. A. No. 92-CV-1114, 1992 WL 192542, at *2 (E.D. Pa. July 31, 1992).

The evidence submitted by both parties reveals the existence of a genuine issue of material fact as to whether Long was misled into delaying filing suit by Defendant's promises to investigate his concerns and assess the possibility of reemployment. The Court, therefore, will defer final determination of the propriety of applying the equitable tolling doctrine to this case until trial.

B. Merits of the Claims

Under the ADEA, it is "unlawful for an employer . . . to fail or refuse to hire or to

discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. S 623(a)(1). When a plaintiff alleges disparate treatment, the plaintiff's age must have "actually played a role in [the employer's decisionmaking] process and had a determinative influence on the outcome." Reeves v. Sanderson Plumbing Prod. Inc., 120 S.Ct. 2097, 2105 (2000). Similarly, federal law prohibits employers from discriminating "against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a) (1994). Title VII prohibits an employer from engaging in race or gender discrimination against an employee. 42 U.S.C. §2000e-5 (1994). A plaintiff may sustain these types of discrimination claims by presenting either direct or circumstantial evidence of discrimination. Plaintiff does not purport to have any direct evidence of discrimination.

In cases in which the plaintiff produces no direct evidence of discrimination, courts employ the burden-shifting framework outlined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Reeves, 120 S.Ct. at 2105 (ADEA); Goosby v. Johnson & Johnson Med., Inc., No. 99-3819, 2000 WL 1372825, at *4 (3d Cir. Sept. 25, 2000) (Title VII); Walton v. Mental Health Ass'n of Southeastern Pa., 168 F.3d 661, 667-68 (3d Cir.1999) (ADA). Under this framework, the plaintiff must first produce sufficient evidence to convince a reasonable factfinder of all elements of a prima facie case of discrimination. Reeves, 120 S.Ct. at 2106; Stanziale v. Jargowsky, 200 F.3d 101, 105 (3d Cir. 2000). Once the plaintiff satisfies this requirement, the burden shifts to the defendant to produce adequate evidence of a legitimate,

nondiscriminatory reason for the adverse employment decision. Reeves, 120 S.Ct. at 2106; Stanziale, 200 F.3d at 105. Because the defendant bears only a burden of production, he need not persuade the factfinder that the proffered reason actually motivated the adverse employment decision. Stanziale, 200 F.3d at 105. If the defendant satisfies this burden, the presumption of discrimination created by the presentation of a prima facie case “drops out of the picture.” Reeves, 120 S.Ct. at 2106 (citing St. Mary’s Honor Center v. Hicks, 509 U.S. 502, 511 (1993)). Plaintiff must then submit evidence from which a factfinder could find that the defendant’s allegedly legitimate reason was a pretext for discrimination. Reeves, 120 S.Ct. at 2106.

1. Prima Facie Case

Defendant attacks Plaintiff’s ability to establish a prima facie case on two fronts. First, Defendant argues that all of Plaintiff’s claims fail because he cannot demonstrate an adverse employment action. Second, Defendant asserts that Count III fails because Plaintiff failed to notify Thomson of his disability or his need for accommodation.

An essential element of a prima facie case of discrimination is proof of an adverse employment action. Jones v. Sch. Dist. of Philadelphia, 198 F.3d 403, 411 (3d Cir. 1999) (Title VII context); Connors v. Chrysler Fin. Corp., 160 F.3d 971, 974 (3d Cir.1998) (ADEA); Deane v. Pocono Med. Ctr., 142 F.3d 138, 142 (3d Cir.1998) (ADA). Courts have defined actionable adverse employment actions to include actions that do not amount to discharge. Jones, 198 F.3d at 411. Under appropriate circumstances, courts consider transfers, demotions, and even negative performance evaluations to constitute adverse employment actions. Id. at 411-12; Mitura v. Daulton, No. Civ. A. 98-2006, 1999 WL 163629, at *4 (E.D. Pa. Mar. 18, 1999). Plaintiff claims that his transfer to the Production Department in 1995, and the negative

appraisals of his job performance issued between 1994 and 1996, constitute adverse employment actions. Plaintiff further asserts that he was constructively discharged.

Courts generally hold that purely lateral transfers that do not involve “demotion[s] in form or substance” cannot constitute a materially adverse employment action. Ledergerber v. Stangler, 122 F.3d 1142, 1144 (8th Cir. 1997); Williams v. Bristol-Myers Squibb Co., 85 F.3d 270, 274 (7th Cir. 1996). In certain circumstances a transfer or reassignment, however, may constitute a materially adverse employment action, even absent a loss in pay or benefits. Jones, 198 F.3d at 412; Mitura, 1999 WL 163629, at *3. An example would be where the transfer results in significantly diminished job responsibilities. See Rabinovitz v. Pena, 89 F.3d 482, 488 (3d Cir. 1996). The Court determines that Plaintiff presents sufficient evidence by which a reasonable factfinder could determine that Plaintiff’s transfer from supervisor of both the Machine Shop and Production Department to foreman only of the Production Department constitutes a demotion that satisfies a prima facie case. In this case, Plaintiff’s job responsibilities were halved as a result of the transfer since he was no longer responsible for supervising the Machine Shop workers. Furthermore, he retained only that portion of his job that related to an entry-level department that required relatively less expertise. Long Aff. at ¶ 24; Long Dep. at 112. A reasonable factfinder, therefore, could determine that the transfer constitutes a materially adverse employment action.

Negative performance evaluations may also constitute adverse employment actions. Mitura, 1999 WL 163629, at *4 (citing Hernandez-Torres v. Intercontinental Trading, Inc., 158 F.3d 43, 47 (1st Cir. 1998)). To qualify, the performance evaluation must be unwarranted and affect the conditions of the plaintiff’s employment. Id. (citing Rabinovitz, 89 F.3d at 488-89).

Plaintiff's performance evaluations after 1993 with respect to his ability to work effectively with and gain the respect of other employees became increasingly negative at around the same time that Plaintiff began to report the racist atmosphere at Thomson. Pl. Ex. 11, 12, 13; Long Aff. ¶ 10. This evidence could allow a reasonable factfinder to infer that the evaluation was unwarranted. Furthermore, the 1994 evaluation indicates that if Long failed to 'get back on track' a change would be made. Pl. Ex. 12. This evidence could allow a reasonable factfinder to infer that the evaluation affected the conditions of his employment. The Court, therefore, determines that the negative performance appraisals could constitute an adverse employment action.

The Court further rejects Defendant's contention that the job transfer cannot constitute a constructive discharge as a matter of law. Plaintiffs who voluntarily resign may maintain a case for constructive discharge when the employer's alleged conduct creates or supports an intolerable atmosphere. Jones, 19 F. Supp. 2d at 419. Courts apply an objective test of whether the employer knowingly permitted employment conditions so intolerable that a reasonable person subject to them would resign. Id. Courts have recognized that an involuntary transfer to a less desirable position may support a claim of constructive discharge, "especially where the surrounding circumstances indicate a pattern of discriminatory treatment." Jones, 198 F.3d at 412. It is undisputed that Plaintiff resigned his employment at Thomson. Long Aff. ¶ 30. Plaintiff claims, however, that he resigned because of intolerable employment conditions resulting from discrimination on the basis of his disability, race, and age. In support, Long submits evidence of his demotion, harassment by coworkers, negative and allegedly discriminatory performance reviews, and the failure of Thomson to provide appropriate redress.

See e.g. Long Aff. ¶¶ 15, 19; Pl. Ex. 7, 8, 9, 12, 13. Plaintiff, therefore, presents adequate evidence by which a reasonable factfinder could conclude that Plaintiff was subject to an intolerable workplace and was constructively discharged.

Defendant next argues that Plaintiff's ADA claim fails at the prima facie stage because he never advised Thomson that he was disabled or requested accommodation.⁶ Under the ADA, the employer discriminates when it fails or refuses "to make reasonable accommodations to the known physical or mental limitations of the individual." 42 U.S.C. § 12112(b)(5)(A) (1994); Gaul v. Lucent Tech., Inc., 134 F.3d 576, 579 (3d Cir. 1998). To establish disability discrimination, therefore, courts have uniformly required proof that the employer acted with an awareness of the disability itself to satisfy the causation requirement. Crandall v. Paralyzed Veterans of Am., 146 F.3d 894, 897 (D.C. Cir. 1998) (listing cases). The plaintiff, therefore, must establish either actual or constructive knowledge of his disability. Crandall, 146 F.3d at 898; Huppenbauer v. The May Dept. Stores Co., 99 F.3d 1130, 1996 WL 607087, at *7 (4th Cir. 1996); Monette v. Electronic Data Sys. Corp., 90 F.3d 1173, 1175 (6th Cir.1996); Morisky v. Broward County, 80 F.3d 445, 448 (11th Cir.1996); Lyons v. Legal Aid Soc., 68 F.3d 1512, 1515 (2d Cir. 1995); Hedberg v. Indiana Bell Tel. Co., 47 F.3d 928, 932 (7th Cir. 1995); see also Taylor v. Phoenixville Sch. Dist., 184 F.3d 296, 313 (3d Cir. 1999) (stating that employers who have no knowledge of the plaintiff's disability and of the plaintiff's desire for accommodations are not liable under the ADA). Plaintiff fails to present evidence that Thomson actually knew of his disability, Long Dep. at 376, and therefore must rely on a theory of constructive knowledge.

⁶Defendant does not challenge whether Plaintiff is a qualified individual with a disability under the ADA. For the purposes of this Motion, the Court assumes Plaintiff is such an individual.

To prove constructive knowledge, the plaintiff must show that the employer knew of symptoms of the disability and also knew or should have known that the symptoms were caused by a disability. Burns v. City of Columbus, 91 F.3d 836, 844 (6th Cir. 1996). The Court concludes that Plaintiff's evidence and all reasonable inferences therefrom do not create a genuine issue of material fact by which a reasonable factfinder could find that Thomson knew that Plaintiff suffered from a disability.⁷ Plaintiff submits evidence that Thomson management knew that he was having problems sleeping and that the noise in the Production Department made him 'uncomfortable' and 'uptight.' Long Dep. at 235, 377. Plaintiff further adduces evidence that he twice took time off work for one week each due to stress, once in November 1994 after a negative performance review and again in August 1995 after he was demoted. Id. at 427. With respect to the August 1995 leave, Plaintiff submitted a doctor's note stating a diagnosis of 'acute stress adjustment reaction.' Pl. Ex. 6. Plaintiff submits no evidence that Thomson knew or should have known that such symptoms were caused by PTSD. Absent such evidence, no reasonable jury could infer constructive knowledge based on general symptoms like sleeplessness and noise discomfort, combined with two instances of stress-related absences occurring nearly a year apart. Plaintiff, therefore, fails to submit sufficient evidence supporting a prima facie case of ADA discrimination.

2. Pretext

⁷The Court rejects Plaintiff's argument that Long's informing Thomson of his health problems after he left his employment is sufficient to establish causation. Notice after the adverse employment action was taken does not demonstrate that the employer acted because of the disability.

Defendant next argues that Plaintiff cannot produce evidence establishing that its asserted reason for transferring Plaintiff was pretextual. As a preliminary matter, the Court determines that Defendant can satisfy its burden to produce a legitimate, nondiscriminatory reason for Long's transferral to the Production Department. See Reeves, 120 S.Ct. at 2106; Stanziale, 200 F.3d at 105. Thomson submits evidence that it decided to add a foreman to the second and third shifts because of an increase in the number of employees hired for those shifts and the enhanced complexity of the business. Def. Ex. O. Thomson justifies its choice to place Long in the Production Department by submitting evidence that it believed that Long was unable or unwilling to communicate complex instructions effectively from one shift to another and Long made decisions without appropriate information. Id.; Pl. Ex. 11, 12, 13. These alleged shortcomings "led [Thomson] to believe that Ron's skills could be better utilized on the production side of the business." Def. Ex. O.

Once the employer produces sufficient evidence to support a nondiscriminatory explanation for its decision, the plaintiff must produce evidence that the reasons offered by the employer were not its true reasons, but were a pretext for discrimination. Reeves, 120 S.Ct. at 2106. "That is, the plaintiff may attempt to establish that he was the victim of intentional discrimination 'by showing that the employer's proffered explanation is unworthy of credence.'" Id. (quoting Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981)). Under this standard, the court may not grant summary judgment in favor of the defendant if there is sufficient evidence for the factfinder to disbelieve the defendant's proffered explanation. Anderson v. Consol. Rail Corp., No. Civ. A. 98-6043, 2000 WL 1201534, at *5 (E.D. Pa. Aug. 9, 2000) (applying Reeves to summary judgment). A factfinder may conclude that the employer

engaged in unlawful discrimination based on plaintiff's prima facie case when combined with evidence indicating that the employer's asserted justification is false. Reeves, 120 S.Ct. at 2109.

The germane issue is whether discriminatory animus motivated the employer, not whether the employer is wise, or competent. Fuentes v. Perskie, 32 F.3d 759, 765 (3d Cir. 1994). To discredit the employer's justification, therefore, the plaintiff cannot simply show that the employer's decision was erroneous or mistaken. Id. "Rather, the non-moving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them 'unworthy of credence' . . . and hence infer 'that the employer did not act for [the asserted] non-discriminatory reasons.'" Id. (internal quotations omitted).

Plaintiff presents adequate evidence to allow a reasonable jury to determine that Thomson's justification is pretextual with respect to Plaintiff's Title VII retaliation claim. Plaintiff submits evidence of continuing altercations with management regarding the allegedly hostile racial climate at the plant beginning in 1993 and culminating with the filing of an informal complaint in 1995. Long Aff. ¶¶ 5-9, 12. During this period, Long's performance appraisals also declined with respect to some evaluation criteria. Pl. Ex. 11, 12, 13. Soon after submission of the formal complaint, Thomson transferred Long to the position of foreman of the Production Department. Long Aff. ¶13. The timing of the negative evaluations and the transfer provide sufficient circumstantial evidence for a reasonable jury to conclude that Thomson's justification is pretextual. Furthermore, a reasonable jury could find that Plaintiff's evidence of the generally hostile atmosphere of the plant and the harassment targeted at Plaintiff by Thomson employees cast doubt on the credibility of the criticisms of Long's supervisory ability outlined in

Thomson's performance appraisals.

Plaintiff's evidence, however, is insufficient with respect to his ADEA claim. Plaintiff argues that Waltman, the younger employee who replaced Long as foreman of the Machine Shop, had previously worked exclusively in the Production Department and lacked expertise in the Machine Shop, but cites no supporting evidence. Although the evidence indicates that Waltman was eventually terminated for poor performance, the record also reveals that he was not fired until January 1999, over three years after he became Machine Shop foreman. Pl. Ex. 16. Plaintiff cites only two isolated instances of age-related comments, one of which occurred six years prior to Long's demotion.⁸ No reasonable jury could find on the basis of this evidence that Defendant's justifications for transferring Plaintiff were pretextual and actually due to discriminatory animus based on age.

Furthermore, Plaintiff's argument with respect to age amounts to a disagreement over the logic of Thomson's decision. According to Plaintiff, Thomson's division of supervisory duties was irrational because it placed both Long and Waltman in departments for which they lacked expertise, moving Long out of the department in which he had the most experience. Survival of summary judgment, however, requires evidence of more than a mistaken or illogical decision. See Fuentes, 32 F.3d at 765. Plaintiff's theory fails to cast doubt on the credibility of Thomson's assessment of Long's communication or decision-making skills contained in the performance evaluations that justified the job transfer. No reasonable jury, therefore, could

⁸Plaintiff only submits evidence of two age-related comments. In 1990 (six years prior to Long's demotion) Richard McGough, Thomson's Operations Manager, called Long an "Old F—." Meade Dep. at 125. In November 1994, when Long met with a supervisor, Richard Fenstermacher, about his poor performance appraisal, Fenstermacher said, "There are a lot of young bucks out there ready to take your job." Long Dep. at 426.

conclude that Thomson's justification is pretextual with respect to the ADEA claim.

IV. CONCLUSION

In conclusion, the Court grants in part and denies in part Defendant's Motion for Summary Judgment. Judgment is granted in favor of Defendant on Counts II and III. Count I may proceed to trial. An appropriate Order follows.