

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

TIMOTHY D. MORRIS	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	NO. 00-3849
	:	
G.E. FINANCIAL ASSURANCE HOLDINGS,	:	
et al.	:	
	:	
Defendants.	:	

Reed, S.J.

December 5, 2001

M E M O R A N D U M

Plaintiff Timothy D. Morris (“Morris”) filed this lawsuit under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and the Pennsylvania Human Relations Act, 43 Pa.C.S. § 951, et seq.,¹ alleging that he was terminated from his position with Union Fidelity Life Insurance Company² (“Union Fidelity”) because of his gender. Defendants counter that plaintiff was terminated because of poor performance. Presently before the Court is the motion of defendants for summary judgment (Document No. 12), pursuant to Rule 56 of the Federal Rules of Civil Procedure, as well as the response, reply and sur-reply. For the following reasons, the motion will be granted.³

¹ Plaintiff also brought suit under the Americans with Disabilities Act, 42 U.S.C. § 12111, et seq., which was subsequently dismissed by stipulation of the parties. (Document No. 9).

² Apparently, defendant is incorrectly named on the docket as G.E. Financial Assurance Holdings, Inc., individually and t/d/b/a G.E. Financial Assurance and GEFA. Because both parties seem to refer to the defendant company as Union Fidelity, and for the sake of simplicity, I will refer to the company as Union Fidelity in this memorandum.

³ Because this case raises a federal question, jurisdiction is proper pursuant to 28 U.S.C. § 1331.

I. Background⁴

Union Fidelity is a life and health insurance company that underwrites insurance products for customers throughout the United States. In 1996, Union Fidelity was acquired by General Electric Capital Corporation and is now part of the G.E. Financial Assurance (“GEFA”) family of insurance companies. Morris was hired by Union Fidelity in May of 1995, as Manager of the Regulatory Filing and Compliance Group which is part of the Legal Department. Glenn L. Joppa (“Joppa”) is General Counsel of Union Fidelity and the head of its legal department and has had this position at all times relevant to plaintiff’s complaint. Morris reported directly to Joppa, who also made the decision to hire Morris. (Dep. of Morris at 102; Dep. of Joppa at 8.) Morris’ group worked with other units within Union Fidelity to prepare appropriate policies and marketing materials that complied with state insurance laws and negotiated with state insurance regulators to correct any deficiencies in either Union Fidelity policies or advertisements.

Morris was the only male in his immediate department. As a manager, Morris made hiring decisions, but not termination decisions, for his group. (Morris Dep. at 117.) During his tenure, he hired or recommended that at least five females be hired within his department.⁵ (Id. at 123-25, 128.) He was also responsible for the overall management of the group and for supervising employees in that group, which included disciplining and evaluating these employees. His assistant manager was Pat Power (“Power”), a female, who seems to have been

⁴ The facts laid out in this opinion are based on the evidence of record viewed in the light most favorable to the plaintiff Timothy D. Morris, the nonmoving party, as required when considering a motion for summary judgment. See Carnegie Mellon University v. Schwartz, 105 F.3d 863, 865 (3d Cir. 1997).

⁵ It is unclear how many people worked in his group, but it appears there were between five and ten employees. (Joppa Dep. Ex. 0020014.)

hired in January, 1997, when defendant acquired Germantown Life Assurance Corporation.

In 1996, Sue Wicks (“Wicks”), an employee within Morris’ division, made complaints to Joppa about Morris and ultimately left the group because of Morris. (Wicks Dep. at 6, 12-13, 23-24, 26.) Wicks gave the following testimony at her deposition:

- Q. Tell me about the problems that you had [working for Mr. Morris.]
A. He would ask you to spy on other employees, spy on their time, look at their work without them knowing and report to him any errors with them.

.....

- Q. Okay. Tell me the reasons why you left because of Tim.
A. I was emotionally stressed working for that man and I couldn’t work for him any longer.

.....

- Q. Tell me what it was that caused you to reach that point?
A. The constant game playing that he played. He hindered our ability to do our work, he was always badmouthing us behind our back. It would get back to us from other people. The constant trying to pit one employee against the other. He was very devious, he was very manipulative. Just everything he did seemed sneaky and it just was not a pleasant situation to be in.

(Wicks Dep. at 6, 12-13.)

Management problems began to surface in Morris’ Annual Accomplishment Summary and Development Reviews. The review dated July 1, 1997, provides: “Mr. Morris needs to demonstrate stronger management skills in organizing and motivating his Department. Additionally, he needs to delegate to the Assistant Manager in order that he can be more available for quick hit projects. He needs to avoid being everything to everyone.” (Pl.’s Ex. 2 at 1.) Morris received positive comments in other areas. Around this time, Joppa also began receiving verbal complaints at weekly meetings that other departments within Union Fidelity were

“disenchant[ed]” with the timeliness of the work coming out of Morris’ division. (Joppa Dep. at 26-28.)

On November 17, 1997, Morris sent Joppa a memorandum requesting that Power be transferred to another group. (Pl.’s Ex. 6.) Morris outlined the problems he was having with her, including, *inter alia*, insubordination and failure to train employees and provide guidance, and inability to work as a team player. (Id.) It appears that before sending this memorandum, the division engaged in the “Why Why Why” test, which is a questionnaire designed to discover the root of an organizational problem such as a lack of cohesion among employees. (Pl.’s Ex. 5.) The responses to this test were apparently attached to this memorandum. (Pl.’s Ex. 6.) Respondents clearly identified Power as a root of the problem. (Pl.’s Ex. 5.) Some of the longer responses also discuss a “power struggle” between Morris and Power. (Id.) It also appears that prior to sending this memorandum, the division had attended training sessions to improve the lack of cohesion among the division. (Pl.’s Ex. 6; Joppa Dep. at 53.) Joppa denied Morris’ request that Power be transferred to another position.

At some point toward the end of 1997 or the beginning of 1998, Joppa asked Power to “take on more of the responsibility from the day-to-day things.” (Joppa Dep. at 30.) She still reported to Morris, and he still headed the department. (Id. at 31.) Joppa testified that he made this decision because Morris’ expertise lied in the credit filing area which was very active, and the department was not running smoothly. (Id.) He felt that if Morris no longer had to be responsible for some of the more “mundane kind of things,” his time could be better spent on the more important tasks. (Id.)

The next Annual Accomplishment Summary and Development Review, dated March 31,

1998, identifies Morris as struggling with the same management problems: “Mr. Morris needs to work on the management of his department to evaluate whether he has the right people doing the right things. He need[s] to focus on the critical projects in the credit area that will ensure that product remains available for our clients in all jurisdiction.” (Pl.’s Ex. 3 at 1.) In addition, it was noted that he needed improvement in the area of “teamwork” within his group. (Id.; April 13, 1998 Memorandum from Morris to Personnel File and Joppa, Pl.’s Ex. 4.) As with the previous review, plaintiff received favorable remarks in other areas.

In the spring or summer of 1998, Joppa made the decision to have both Morris and Power report directly to him. (Joppa Dep. at 62.) Power testified that she requested this change and told Joppa that she could no longer report to Morris. (Power Dep. at 91-92.)

Joppa testified that around the summer of 1998, a group of employees from Morris’ division, came to see him, and told him that they had come to realize that Morris, and not Power, was to blame for the problems in the department. (Joppa Dep. at 163-67.) Joppa testified that the employees told Joppa that Morris constantly tried to undermine Power’s position. (Id.) Joppa could not recall specifically which employees came to his office. (Id.) He identified three by name and testified that others were in his office. (Id.)

In August, 1998, Morris requested that he be moved to another position within Union Fidelity. (Morris Dep. at 205.) Morris was not transferred. He was officially terminated on September 29, 1998. A lengthy memorandum from Joppa to Morris on that date details the reasons why Joppa was firing plaintiff. (Pl.’s Ex. 8.) In summary, it provides the following reasons: Morris was unable to effectively manage his department. The associates in the group complained about both he and Power as managers. The initial complaints focused on Power;

however, en masse the department later confided in Joppa that Morris was the true problem. One employee, Janet Urda, upon leaving her employment with defendant told Joppa that Morris was a chief reason she was leaving. She stated her discomfort in part stemmed from being asked by Morris to “spy” on Power and report any problems to him. Having been warned of his problems by Joppa, Morris failed to work out his problems with Power and within his group and never took advantage of the training opportunities provided to him.

Joppa testified at his deposition that at around this time, he also conducted a review of Power. (Joppa Dep. at 84-85.) While the actual review was not submitted to this Court, Joppa testified that “I don’t think it was probably glowing.” (Id. at 85.) Joppa then made the decision to demote Power from assistant manager to senior compliance analyst. (Id.)

Plaintiff claims that this is a case of a dedicated, competent and loyal employee who, as the only male in his department, was continually and deliberately undermined by his female staff and male supervisor to the point where his management decisions were overruled and his authority undermined. The following exchange occurred at Morris’ deposition:

- Q. You said you were constantly being undermined?
- A. Yes
- Q. What time frame are we talking about that you were being undermined?
- A. It appears I was always undermined as a manager in that whole department from start to finish. It just got worse towards the end. Like ‘97 and ‘98 where it really got really bad for undermining. I couldn’t have conversations in my cubical without interruption. There was no professionalism there.
- Q. . . . [W]ho are you talking about being undermined by?
- A. The staff members who worked for me, including, not excluding, Pat Power, Kathy Potok, Christy Robinson, Patty Greiner. Everyone that worked for me ended up undermining me.

(Morris Dep. at 190.)

II. Legal Standard

In deciding a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, the “test is whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.” Medical Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999). “As to materiality, the substantive law will identify which facts are material. 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 v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Furthermore, “summary judgment will not lie if the dispute about a material fact is ‘genuine,’ that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Id. at 250.

On a motion for summary judgment, the facts should be reviewed in the light most favorable to the non-moving party. See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986) (quoting United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 176 (1962)). The nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts,” Matsushita, 475 U.S. at 586, and must produce more than a “mere scintilla” of evidence to demonstrate a genuine issue of material fact and avoid summary judgment. See Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

III. Analysis

Plaintiff claims defendant intentionally discriminated against him because of his gender in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. and the Pennsylvania Human Relations Act, (“PHRA”), 43 Pa.C.S. § 951, et seq. Employer liability

under the PHRA follows the standards set out for employer liability under Title VII. See Knabe v. Boury Corp., 114 F.3d 407, 410 n.5 (3d Cir. 1997). Thus, I will analyze Morris' claim only under Title VII below; however, my analysis and conclusions are equally applicable to his claim of discrimination in violation of the PHRA.

Morris may sustain his Title VII claim by presenting direct evidence of gender discrimination or by using circumstantial evidence that would allow a reasonable factfinder to infer discrimination. See Starceski v. Westinghouse Elec. Corp., 54 F.3d 1089, 1095 n. 4 (3d Cir. 1995); see also Price Waterhouse v. Hopkins, 490 U.S. 228, 244-46, 109 S. Ct. 1775, 104 L. Ed. 2d 268 (1989) (establishing framework for mixed motive cases that involve direct evidence); McDonnell Douglas Corp., v. Green, 411 U.S. 792, 802-04, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) (establishing framework for pretext cases that involve circumstantial evidence).

In the absence of direct evidence of discrimination, as is the case here, a plaintiff may proceed under the burden shifting paradigm of McDonnell Douglas and its progeny. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506, 113 S. Ct. 2742, 125 L. Ed. 2d 407 (1993); McDonnell Douglas, 411 U.S. at 802; Simpson v. Kay Jewelers, Div. of Sterling, Inc., 142 F.3d 639, 643-44 (3d Cir. 1998). To survive summary judgment, the plaintiff must first prove by a preponderance of the evidence that a *prima facie* case of discrimination exists. See Reeves v. Sanderson Plumbing Products, 530 U.S. 133, 143, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000); Stanziale v. Jargowsky, 200 F.3d 101, 105 (3d Cir. 2000).

To establish a *prima facie* case of reverse discrimination, Morris must show that (1) he is in a protected class, (2) is qualified for the position, (3) suffered an adverse employment action, and (4) was discharged under circumstances that give rise to an inference of unlawful

discrimination. See Pivirotto v. Innovative Sys., Inc., 191 F.3d 344, 357 (3d Cir. 1999); Waldron v. SL Indus., Inc., 56 F.3d 491, 494 (3d Cir. 1995). See also Iadimarco v. Runyon, 190 F.3d 151, 160-61 (3d Cir. 1999) (recognizing that Title VII protects against “reverse discrimination” and rejecting requirement adopted in other appellate courts that plaintiff must show “background circumstances” in order to make out *prima facie* case of reverse discrimination). Common circumstances giving rise to an inference of unlawful discrimination include the hiring of someone not in the protected class as a replacement or the more favorable treatment of similarly situated colleagues outside of the relevant class. See Bullock v. Children’s Hosp. of Philadelphia, 71 F. Supp. 2d 482, 487 (E.D. Pa. 1999).

While a plaintiff *may* make out a *prima facie* case with evidence that similarly situated individuals were treated more favorably, as the Court of Appeals clarified, however, such proof is not required. See Pivirotto, 191 F.3d at 356-57. A plaintiff can make out a *prima facie* case even without demonstrating that employees outside of the relevant class were treated more favorably, let alone that the plaintiff was replaced by someone outside of the relevant class. See id. at 357; Matczak v. Frankford Candy & Chocolate Co., 136 F.3d 933, 939 (3d Cir. 1997); Bullock, 71 F. Supp. 2d at 489. There is no rigid formulation of a *prima facie* case, and the requirement may vary with “differing factual situations.” Matczak, 136 F.3d at 938 (quoting McDonnell Douglas, 411 U.S. at 802 n.13). The *prima facie* case requires “only ‘evidence adequate to create an inference that an employment decision was based on an illegal discriminatory criterion.’” See Pivirotto, 191 F.3d at 356 (quoting O’Connor v. Consolidated Coin Caterers Corp., 517 U.S. 308, 312, 116 S. Ct. 1307, 1310, 134 L. Ed. 2d 433 (1996)). Nevertheless, the plaintiff must ultimately prove by a preponderance of the evidence that a

prima facie case of discrimination exists. See Bullock, 71 F. Supp. 2d at 490. Demonstrating only a mere possibility of discrimination will not suffice. See id.

After the plaintiff has proven a *prima facie* case, the burden of going forward shifts to the defendant to produce a legitimate, nondiscriminatory reason for the termination. See Ezold v. Wolf, Block, Schorr and Solis-Cohen, 983 F.2d 509, 522 (3d Cir. 1992). After a legitimate, nondiscriminatory reason is provided, the burden of going forward shifts back to the plaintiff to prove that the proffered reason is a pretext for discrimination. See McDonnell Douglas, 411 U.S. at 802; Ezold 983 F.2d at 522. In order to prove pretext, the plaintiff must provide either direct or circumstantial evidence from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons or (2) believe that a discriminatory reason was more likely than not a motivating or determinative cause of the employer's action. See Fuentes, 32 F.3d at 764 (citing Hicks, 509 U.S. at 511; Ezold, 983 F.2d at 521-522). In order to prove this, the 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.'" Fuentes, 32 F.3d at 765 (quoting Ezold, 983 F.2d at 531). "[T]he 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." Id.

Defendant does not dispute that Morris is a member of a protected class, is objectively qualified for the manager position, and suffered adverse employment action when he was fired. Union Fidelity argues that plaintiff cannot make out a *prima facie* case because he fails to adduce evidence showing that he was terminated under circumstances that gave rise to an inference of

discrimination. Defendant alternatively argues that even if Morris could prove a *prima facie* case, he produces no evidence showing that Union Fidelity's legitimate reasons for terminating plaintiff were a pretext for discrimination. For the sole purpose of adjudicating this motion, this Court will assume that Morris makes out a *prima facie* case and will analyze whether he has raised a genuine issue of material fact as to whether Union Fidelity's stated reasons for terminating plaintiff are pretextual.⁶

Union Fidelity argues that Morris was fired for the following reasons. First, as indicated in his last two annual reviews, he was unable to manage his division. Even Morris testified at his deposition that it became "unbearable" to work in his division and that "it was not a cohesive group." (Morris Dep. at 217.) He felt undermined by his entire staff. (*Id.* at 190.) Plaintiff also accepted the fact that as manager of the division, he was "held accountable" for the fact that the group did not act as a team. (April 13, 1998 Mem. from Morris to Personnel File and Joppa, Pl.'s Ex. 4.) Second, during his tenure, two employees, Wicks and Urda, told Joppa that Morris was the main reason for their departure. Wicks left explaining that she was made to feel uncomfortable by, *inter alia*, plaintiff's requests that she spy on other employees. Urda also complained of being asked to spy on Power. Third, a group of employees from Morris' group came to Joppa en masse and told him that while they initially thought that Power was to blame for the problems in the division, they had then come to believe that plaintiff was to blame. The employees told Joppa that Morris created difficulties in their division by undermining Power. Finally, Defendant had received verbal complaints from clients within Union Fidelity that

⁶ I note, however, that I harbor great doubts that plaintiff would be able to make out even a *prima facie* case if this suit were to go forward.

Morris' division was not conducting its work in a timely fashion.

Morris contends that the following evidence indicates that the real reason he was fired was because he was a man. First, plaintiff claims that Power is a similarly situated employee who was treated more favorably because despite bad reviews, she was not terminated. In order for employees to be deemed similarly situated, it has been determined that “the individuals with whom the plaintiff seeks to compare [his] treatment must have dealt with the same supervisor, have been subject to the same standards and have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it.” Waterhouse v. District of Columbia, 124 F. Supp. 2d 1, 13-14 (D.D.C. 2000) (quoting Phillips v. Holladay Property Servs., Inc., 937 F.Supp. 32, 37 (D.D.C.1996), aff'd without op., 1997 WL 411695 (D.C.Cir. June 19, 1997)). See also Norville v. Staten Island Univ. Hosp., 196 F.3d 89, 96 (2d Cir. 1999) (comparators “must have been subject to the same standards governing performance evaluation and discipline, and must have engaged in conduct similar to the plaintiff's....”) (citation omitted); Holbrook v. Reno, 196 F.3d 255, 261 (D.C.Cir.1999) (“A plaintiff must ... demonstrate that all of the relevant aspects of her employment situation were nearly identical to those" of the comparators) (citation omitted); O'Neill v. Sears, Roebuck and Co., 108 F. Supp. 2d 433, 439 (E.D. Pa. 2000) (“comparators should have dealt with the same supervisor, have been subject to the same standards, and have engaged in the same conduct”); Bullock, 71 F. Supp. 2d at 489 (“the individuals with whom a plaintiff seeks to be compared must have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it.”) (citation omitted).

While Morris and Power had different job titles, plaintiff argues that when Power was given additional responsibilities and later made to report directly to Joppa, she was given a *de facto* promotion which made her similarly situated to Morris. As detailed above, the record indicates that Joppa evaluated Morris as having weak management skills on July 1, 1997. Around the same time, Joppa began hearing that clients within Union Fidelity were “disenchant[ed]” with the speed in which plaintiff’s division was accomplishing its work. On November 17, 1997, Morris sent a memorandum to Joppa requesting that Power be transferred out of his division and attaching to the memorandum the results of the “Why Why Why” test which revealed dissatisfaction with Power among employees in Morris’ group. Soon after, Joppa made the decision to give more responsibility to Power. However, she still reported to Morris, not to Joppa, a critical fact in a similarly situated analysis. Plaintiff remained responsible for the management of his unit.

On the March 31, 1998 review, Joppa again found that Morris was struggling in managing his department. Morris also admitted in writing that as manager, he was aware he was being held accountable for a department which was not working as a team. Indeed, he testified that the department was “unbearable.” It was at around this time that Power was directed to report to Joppa instead of Morris. It was also at around this time that a group of employees from plaintiff’s division told Joppa that their initial reaction to Power was incorrect, and they now held Morris accountable for the problems in the department. Thus, when Joppa made the decision to terminate Morris, the only employee dissatisfied with Power, was the plaintiff. The rest of the employees appear to have been clashing with Morris. What appears to be a strong majority of the division was no longer discontented by Power. In addition, plaintiff does not produce any

evidence that employees left the division because Power asked them to spy on anyone. While Joppa testified that his review of Power was not “glowing,” and she was ultimately demoted, there is no evidence that Joppa’s negative review focused on Power’s management skills or lack thereof. In addition, the fact remains that Power was an assistant manager and Morris was a manager. It is not an act of discrimination for an employer to take into account the different positions of two individuals. See Grande v. State Farm Mut. Auto. Ins. Co., 83 F. Supp. 2d 559, 565 (E.D. Pa. 2000).

Based on this record, I conclude that Power and Morris are not similarly situated. More importantly, however, even if this analogy were successful, it would fail to carry the plaintiff’s burden. As the Supreme Court recently observed:

Certainly there will be instances where, although the plaintiff has established a prima facie case and set forth sufficient evidence to reject the defendant’s explanation, no rational factfinder could conclude that the action was discriminatory. For instance, an employer would be entitled to judgment as a matter of law if the record conclusively revealed some other, nondiscriminatory reason for the employer’s decision, or if the plaintiff created only a weak issue of fact as to whether the employer’s reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred.

Reeves, 530 U.S. at 148, 120 S.Ct. at 2109 (emphasis added). Even if this Court were to conclude that Joppa treated the two employees differently either because he gave Power additional responsibilities after receiving negative feedback with respect to her work, or because he did not terminate Power despite a less than “glowing” evaluation, Morris still, taking all inferences in his favor, cannot meet his ultimate burden of proving gender discrimination. The alleged less favorable treatment does not overcome the evidence and concession by plaintiff that the group was not acting cohesively and Morris suffered from weak management skills, that two

employees left the division because of Morris' management style, including, requests to spy on other employees, and that clients with the company were upset with the timeliness of the division's output. Morris claims that the department fell apart as a result of the division of labor that Joppa implemented between Power and Morris. (Morris Dep. at 358.) However, Morris had already received poor marks in his review before this decision was made. I therefore conclude that any hint of less favorable treatment would create only a weak issue of fact upon which no reasonable factfinder could conclude that the termination was discriminatory.

Second, Morris relies on his evaluations which he characterizes as showing that he was an above average employee. While Morris did receive positive reviews in certain areas of his work, the evaluations, as discussed above, clearly state that Morris was a weak manager.

"Pretext is not established by virtue of the fact that an employee has received some favorable comments in some categories or has, in the past, received some good evaluations." Ezold 983 F.2d at 528. See also Cohen v. Pitcairn Trust Co., No. Civ. A. 99-5441 2001 WL 873050, at *6 (E.D. Pa. June 20, 2001); Leung v. SHK Mgmt. Inc., No. Civ. A. 98-3337, 1999 WL 1240961, at *7 (E.D. Pa. Dec. 21, 1999).

Morris also argues that pretext is demonstrated by the fact that Joppa continually undermined plaintiff by overruling his decisions. Morris cites the "*de facto* promotion" of Power as one example of this alleged overriding of Morris' decisions. As just explained in detail, the treatment of Power does not satisfy plaintiff's burden of raising a triable issue that the stated reasons for his termination were pretext for discrimination. Morris also cites a situation with Lynette Ingram ("Ingram"). Morris appears to claim that upon the direction of Human Resources, Morris requested that Ingram be disciplined for excessive lateness, and despite his

recommendation Ingram was not disciplined. (Morris Dep. at 195.) It appears, however, that Morris made this request on the same day that he was terminated. (Id.) Thus, this incident fails to prove pretext because it clearly occurred after the decision to fire Morris had been made.

Related to this issue, Morris claims that Joppa further undermined him because Joppa favored Morris' female subordinates over plaintiff. Plaintiff stresses as important the fact that he was the only male in his division. This Court observes, however, that Morris himself hired or recommended the hiring of at least five of these women. Morris argues that Joppa listened to complaints by Wicks and another employee, Kathy Potak. This argument, however, supports defendant's claim that part of Morris' poor management was reflected in the criticisms of the employees who worked under him; it does not advance Morris' claim of pretext. The issue in a pretext analysis is not whether Joppa was remiss in relying on those criticisms or whether the criticisms could be substantiated or validated. See Fuentes, 32 F.2d at 766. Rather, the issue is whether Joppa "believed those criticisms to be accurate and actually relied upon them." Id. at 767. Morris must show that Joppa did not in fact rely on those criticisms. See id.

Plaintiff next contends that gender discrimination is evident by the fact that Joppa wanted to hire a woman for the position. In support, Morris turns to an affidavit of Georgianna Sweeton ("Sweeton"), Morris' predecessor. (Pl.'s Ex. 7.) Sweeton attests that "Glenn Joppa never wanted to hire Mr. Morris for the position. He wanted to hire a professional woman." (Id. at 3) (emphasis in original). Sweeton's deposition, however, paints a different picture:

- Q. What makes you think that Mr. Joppa a professional woman?
A. Well, we had a conversation . . . about Sue Wicks because . . . Sue Wicks wanted my job, which I thought she, someday, would get. . . . And he told me that Sue would never get my job. She was not professional enough. She did not dress appropriately, and she did not have the education or the

experience to take the job.

....

Q. Is there anything else, besides that, that causes you to say in your affidavit that Mr. Joppa wanted to hire a professional woman; Mr. Joppa was very big on professional [women].

A. No.

(Sweeton Dep. at 116, 119.) Thus, Sweeton never testified that Joppa told her he would not hire a woman. Rather, she testified that Joppa would not hire Wicks. Moreover, it is undisputed that Joppa did hire a man for the job.

Morris also takes the position that pretext is shown because Morris inherited a difficult division. Sweeton did testify in support of her affidavit in which she attests that “the individuals in [Morris’] department had basically run amuck prior to Mr. Morris coming on board.” (Id. at 113; Pl’s Ex. 7 at 2.) In the affidavit, she further attests that “My job was made infinitely more difficult and ultimately impossible by the failure of Glenn Joppa, my supervisor, to give me proper support.” (Pl’s Ex. 7 at 1.) The obvious problem with Morris’ argument is that it fails to show any evidence of discrimination against Morris. Sweeton is female and has alleged the same exact problems with Joppa that plaintiff brings forth. Whether or not these concerns by Sweeton and Morris are valid, they simply do not advance plaintiff’s reverse gender discrimination claim.

Finally, plaintiff presents arguments which he claims demonstrate inconsistencies and weaknesses in defendant’s proffered reason for the termination. These alleged inconsistencies, however, fail upon objective analysis. For instance, Morris argues that because Power does not recall having a meeting between herself, Morris, and Joppa, Joppa’s statement that such a meeting occurred is not believable. Power, however, did not deny that a meeting took place;

rather, she could not remember that one took place. (Power Dep. at 45.) Morris similarly contends that Joppa's statement that a recommendation was made by Human Resources to terminate Morris is not believable because Branca Hannon ("Hannon") testified that she never made a decision that Morris be fired. Hannon, however, testified that she could not recall whether Joppa asked for her input, not that she definitively gave no advice on the matter. (Hannon Dep. at 13.) Morris simply does not adduce any evidence of a contradiction which would raise a triable issue as to whether defendant's stated reasons for firing Morris were pretext for discrimination.

In summary, plaintiff's arguments that he was treated less favorably than Power, that his evaluations run counter to the decision to fire him, that Joppa constantly undermined his authority and favored the female staff, that Joppa wanted to hire a woman, that Morris came into a poorly managed group, and that certain testimony indicates inconsistencies in defendant's stated reasons for terminating Morris, fail to raise a triable issue with respect to plaintiff's burden of showing that he was discriminated against because he is a man. Morris' arguments are either unfounded in the record or do not evidence reverse gender discrimination as required by McDonnell Douglas and its progeny.⁷

IV. Conclusion

For the foregoing reasons, this Court concludes that no reasonable jury could, upon the evidence proffered by plaintiff, find that he was discriminated against by his employer because of his gender; thus, the motion of defendant for summary judgment will be granted. An appropriate order follows.

⁷ Plaintiff peppers his arguments with many other factual theories to support the notion that the reason he was terminated was because of his gender. This memorandum analyzes the viable factual materials and gives plaintiff the benefit of all inferences in his favor. The remaining arguments are rejected as legally fanciful.

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

TIMOTHY D. MORRIS	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 00-3849
	:	
G.E. FINANCIAL ASSURANCE HOLDINGS,	:	
et al.	:	
Defendants.	:	

ORDER

AND NOW on this 5th day of December, 2001, upon consideration of the motion of defendant Union Fidelity Life Insurance Company (“Union Fidelity”), filed on behalf of docketed defendants G.E. Financial Assurance Holdings, Inc., GEFA, and Union Fidelity, for summary judgment (Document No. 12), pursuant to Rule 56 of the Federal Rules of Civil Procedure, as well as the response, reply and sur-reply, and having concluded for the reasons set forth in the foregoing memorandum that there is no genuine issue as to any material fact and that defendants are entitled to judgment as a matter of law, it is hereby **ORDERED** that the motion is **GRANTED**.

JUDGEMENT is hereby **ENTERED** in favor of Union Fidelity Life Insurance Company, G.E. Financial Assurance Holdings, Inc., and GEFA, and against Timothy D. Morris.

This is a final order.

LOWELL A. REED, JR., S.J.