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

RICHARD L. HARDING, Plaintiff, v. CAREERBUILDER, LLC, Defendant.	: : : : : : :	CIVIL ACTION NO. 04-0188

Memorandum and Order

YOHN, J. February ___, 2005

Plaintiff Richard L. Harding brings this action against defendant CareerBuilder, LLC, alleging that defendant violated the Age Discrimination in Employment Act ("ADEA") and the Pennsylvania Human Relations Act ("PHRA") when it fired him on the basis of his age. In addition, plaintiff alleges that defendant breached his employment contract and violated the Pennsylvania Wage Payment and Collection Law ("WPCL") when it failed to pay him a bonus or for unused vacation time upon the termination of his employment.

Currently pending before the court is defendant's motion for summary judgment pursuant to Fed. R. Civ. P. 56(c). In support of the motion, defendant argues that: (1) plaintiff's age discrimination claims are meritless because he admittedly failed to meet objectives set out by the company and because there is no evidence that defendant acted with a discriminatory animus; and (2) plaintiff's claims for breach of contract and violation of the WPCL fail because defendant had no contractual obligation to pay any bonus or for any unused vacation time.

Defendant's motion will be granted as to plaintiff's claim under the ADEA. Additionally, because no federal claim will remain, and because plaintiff failed to allege jurisdiction based on diversity, his claims under the PHRA and WPCL, and his breach of contract claim, will be dismissed without prejudice.

FACTUAL BACKGROUND[1]

Plaintiff was hired by Headhunter, Inc. ("Headhunter") on May 19, 2001 and was named Vice President and General Manager, Northeast. Def. Stmt. Undisp. Facts ¶¶ 1-2; Pl. Resp. to Def. Undisp. Facts ¶¶ 1-2. Plaintiff was forty-four years old at the time of his hiring by Headhunter. Mary Delaney ("Delaney") was a manager at Headhunter when plaintiff worked for the company. Delaney Deposition Trans. at 12.

Defendant acquired Headhunter in November 2001, and during the acquisition, either Delaney (who was acting as a liaison between Headhunter and defendant) or defendant's corporate leaders recommended that plaintiff be retained as an employee. Harding Deposition Trans. at 96-97; Delaney Deposition Trans. at 14-15. On November 12, 2001, Bill Donnelly, vice president of defendant's account management group, wrote a letter to plaintiff, extending him an offer to become a vice president of national accounts. Donnelly Letter to Harding at 1-2. Plaintiff accepted the offer by signing the bottom of the letter. *Id.* at 2.

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[1] The account contained in this section is comprised of both undisputed facts and plaintiff's factual allegations. *See Skoczylas v. Atlantic Credit & Fin., Inc.*, No. CIV. A. 00-5412, 2002 WL 55298, at *2 (E.D. Pa. Jan. 15, 2002) ("When considering a motion for summary judgment, a court must view all facts and inferences in a light most favorable to the nonmoving party") (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)); *see also Brown v. Muhlenburg Township*, 269 F.3d 205, 208 (3d Cir. 2001) (citing *Beers-Capitol v. Whetzel*, 256 F.3d 120, 130 n.6 (3d Cir. 2001)).

After the acquisition, defendant began to struggle financially, so it hired former Headhunter president and CEO Robert Montgomery as its CEO, and Delaney as Chief Sales Officer. Delaney Deposition Trans. at 16; Montgomery Deposition Trans. at 7. With this new management in place, the decision was made to keep plaintiff as an employee, despite the fact that the other five senior managers of sales personnel, all of whom were over the age of forty, were terminated. Pl. Br. 2. In addition, over 100 members of the sales group were terminated at that time. Delaney Deposition Trans. at 22. Plaintiff was named Area Sales Vice President, Northeast, and as such reported to Delaney. Def. Stmt. Undisp. Facts ¶¶ 11-12; Pl. Resp. to Def. Undisp. Facts ¶ 12; Harding Deposition Trans. at 125-26.

As part of plaintiff's new position, he had certain management objectives relating to the generation of revenue for defendant, the hiring of account executives, and the recommendation to Delaney of candidates for area manager positions.[2] He in fact prepared such objectives for the second and third quarters of 2002. Harding Deposition Trans. at 239-41; Pl. Resp. to Def. Undisp. Facts ¶ 14. However, it is unclear whether those "objectives" were a "mandatory" condition of continued employment, or whether they were simply an agreed-upon set of goals that would be used as a method of calculating plaintiff's bonuses. Pl. Resp. to Def. Undisp. Facts ¶¶ 14, 19, 22; Def. Stmt. Undisp. Facts ¶¶ 12-14. What is clear is that plaintiff was aware that he was expected to meet objectives, and that he did not meet several of them. Harding Deposition Trans. at 126-27, 164-65, 241, 254-60.

[2] These hiring objectives are sometimes referred to as "headcount" objectives.

In early October 2002, Delaney terminated plaintiff's employment for failure to hire staff and meet revenue objectives. Harding Deposition Trans. at 135-38; Pl. Resp. to Def. Undisp. Facts ¶ 22. At that time, plaintiff was forty-five years old. *Id.* at ¶ 23; Def. Stmt. Undisp. Facts ¶ 23. During plaintiff's employment with defendant, he never heard Delaney or any other executive, or saw any document, adversely refer to his age. Def. Stmt. Undisp. Facts ¶¶ 24-26; Pl. Resp. to Def. Undisp. Facts ¶¶ 24-26. Delaney has fired two vice presidents younger than plaintiff, both in 2003 after plaintiff had filed his discrimination claims. Def. Stmt. Undisp. Facts ¶¶ 27-29; Pl. Resp. to Def. Undisp. Facts ¶ 27. However, Delaney did replace plaintiff with Brooks Hughes ("Hughes"), who at the time of his hiring was twenty-nine years old. Pl. Resp. to Def. Undisp. Facts ¶ 30; Delaney Deposition Trans. at 244. Although plaintiff admits that at his deposition, he could not "identify any similarly-situated, younger employee who performed like him and was not terminated," plaintiff now puts forth Hughes as such an employee, and cites "Exhibit G" to his response to defendant's statement of undisputed facts as proof that Hughes was underperforming. Def. Stmt. of Undisp. Facts ¶ 30; Pl. Resp. to Def. Undisp. Facts ¶ 30. Plaintiff alleges that defendant's Recruiter Business Unit ("RBU") had struggled under Hughes's leadership during the time plaintiff worked for defendant, and that it was not meeting its hiring goals. Pl. Resp. to Def. Undisp. Facts ¶ 30.

Defendant has responded that Exhibit G "does not reflect the headcount objectives that Delaney set for Hughes, and to which Delaney held him accountable," and that Hughes did in fact meet or exceed his headcount objectives. Def. Reply Br. 5 (citing Delaney Affidavit ¶¶ 3, 5). In addition, defendant has asserted that Hughes is not similarly-situated to plaintiff because Hughes's position as vice president of the RBU "involved substantially different responsibilities,

sales techniques, and marketing strategies than the position held by" plaintiff. Def. Reply Br. 4 (citing Delaney Affidavit ¶ 4).

PROCEDURAL BACKGROUND

On November 12, 2002, plaintiff filed a Charge of Discrimination with the United States Equal Employment Opportunity Commission (EEOC), alleging that defendant discriminated against him on the basis of his age. Plaintiff also requested that the Charge of Discrimination be jointly filed with the Pennsylvania Human Relations Commission ("PHRC"). On October 21, 2003, the EEOC sent plaintiff a Notice of Right to Sue, and on January 16, 2004, plaintiff filed suit in this court. The PHRC waived the opportunity to investigate plaintiff's charge and took no action on it. On September 23, 2004, defendant filed its motion for summary judgment. Plaintiff filed his response on October 7, 2004, and defendant filed its reply brief eleven days later.

SUMMARY JUDGMENT STANDARD

Either party to a lawsuit may file a motion for summary judgment, and it will be granted only "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 moving party bears the initial burden of showing that there is no genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has met its initial burden, the nonmoving party must present "specific facts showing that there is a genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of

proof on the disputed issue is correct." *Ideal Dairy Farms, Inc. v. John Lebatt, Ltd.*, 90 F.3d 737, 743 (3d Cir. 1996) (citation omitted). The non-movant must present concrete evidence supporting each essential element of its claim. *Celotex*, 477 U.S. at 322-23.

When a court evaluates a motion for summary judgment, "[t]he evidence of the non-movant is to be believed." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Furthermore, "[a]ll justifiable inferences are to be drawn in [the non-movant's] favor." *Id.* "Summary judgment may not be granted . . . if there is a disagreement over what inferences can be reasonably drawn from the facts even if the facts are undisputed." *Ideal Dairy Farms*, 90 F.3d at 744 (citation omitted). However, "an inference based upon a speculation or conjecture does not create a material factual dispute sufficient to defeat entry of summary judgment." *Robertson v. Allied Signal, Inc.*, 914 F.2d 360, 382 n.12 (3d Cir. 1990). The non-movant must show more than "[t]he mere existence of a scintilla of evidence" for elements on which he bears the burden of production. *Anderson*, 477 U.S. at 252. Thus, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita*, 475 U.S. at 587 (citations omitted).

DISCUSSION

Plaintiff contends that defendant violated the ADEA, 29 U.S.C. § 621, *et seq.*, and the PHRA, 43 Pa. Cons. Stat. § 951, *et seq.*, when it fired him because of his age. Plaintiff further alleges that defendant owes him bonus money and vacation pay on a breach of contract theory, and that he is entitled to statutory penalties under the WPCL, 43 Pa. Cons. Stat. § 260.1, *et seq.* Defendant contends that it is entitled to summary judgment on the ADEA and PHRA claims because plaintiff was actually fired for poor job performance. Defendant further asserts that summary judgment is warranted on the breach of contract and WPCL claims because defendant

was never entitled to any bonus or vacation pay. I will deal first with plaintiff's claim under the ADEA, and then I will discuss the viability of the remaining claims.

I. Plaintiff's ADEA Claim

Plaintiff claims that he became a victim of age discrimination when defendant terminated his employment, while defendant asserts that the termination was due to poor job performance. The ADEA "prohibits employers from discriminating against an individual in hiring, discharge, compensation, term, conditions, or privileges of employment on the basis of age."[3] *Connors v. Chrysler Fin. Corp.*, 160 F.3d 971, 972 (3d Cir. 1998) (citing 29 U.S.C. § 623(a)(1)). ADEA claims can be established by means of either direct evidence or circumstantial evidence that creates an inference of discrimination. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 527 (1993); *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253-54 (1981). The analytical framework applied to circumstantial evidence cases was set forth by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). First, plaintiff bears the burden of

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[3] The pertinent provision is as follows:

> **§ 623. Prohibition of age discrimination**
> **(a) Employer practices**
> It shall be unlawful for an employer –
> **(1)** to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, condition, or privileges of employment, because of such individual's age;
> **(2)** to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or
> **(3)** to reduce the wage rate of any employee in order to comply with this chapter.

29 U.S.C. § 623(a).

establishing a prima facie case of discrimination. *Stanziale v. Jargowsky*, 200 F.3d 101, 105 (3d Cir. 2000) (citations omitted). If 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). Once the defendant has produced a legitimate, nondiscriminatory reason, the plaintiff can defeat summary judgment by pointing to some direct or circumstantial evidence from which a factfinder could either reasonably: "(1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." *Simpson v. Kay Jewelers*, 142 F.3d 639, 644 (3d Cir. 1998) (quoting *Fuentes v. Perskie*, 32 F.3d 759, 764 (3d Cir. 1994)). Nevertheless, despite the shifting of intermediate evidentiary burdens, the ultimate burden of persuading the trier of fact that age was a determinative factor in a defendant's decision to take adverse employment action remains on the plaintiff. *Barber v. CSX Distrib. Serv.*, 68 F.3d 694, 698 (3d Cir. 1995).

A. Prima Facie Case

In order to establish a prima facie case of unlawful discrimination under the ADEA, a plaintiff whose employment was terminated must show four things: (1) that he was over forty years old when he was fired; (2) that he was qualified for the position; (3) that despite his qualifications, the employer did in fact fire him; and (4) he was replaced by a person sufficiently younger to create an inference of age discrimination. *Reeves v. Sanderson Plumbing Prod., Inc.*, 530 U.S. 133, 142 (2000); *Showalter v. Univ. of Pittsburgh Med. Ctr.*, 190 F.3d 231, 234 (3d Cir. 1999).

Defendant contends that plaintiff has failed to make out a prima facie case under the ADEA because he has failed to show that he was qualified for the job. Def. Br. 6. Defendant argues that plaintiff was not qualified because "he failed to meet his headcount and revenue objectives." *Id.* at 7. However, defendant fails to recognize that the prima facie case standard under the ADEA "is not intended to be onerous," and that the court "determine[s] a plaintiff's qualifications for purposes of proving a prima facie case by an objective standard." *Sempier v. Johnson & Higgins*, 45 F.3d 724, 728-29 (3d Cir. 1995). In *Sempier*, the Third Circuit found that "the district court misapplied this rule when it evaluated [the plaintiff's] qualification by reference to [the defendant's] subjective criticism that [the plaintiff] lacked 'management oriented' skills and leadership ability," instead of taking into account that "[the plaintiff] had the objective experience and education necessary to qualify as a viable candidate for the positions he held." *Id.* at 729.

Here, it would be error for this court to take into account the specific instances of job failures alleged by defendant when evaluating whether a prima facie case exists, especially when plaintiff held an executive position with Headhunter for six months, defendant's corporate leaders decided to name him vice president of national accounts after defendant's acquisition of Headhunter, and defendant decided to retain plaintiff as an employee after the March 2002 change of management. Even judging from this limited part of plaintiff's professional background, it would be error to conclude that he was not "qualified" for the position he held with defendant. Thus, this court concludes that plaintiff has made out a prima facie case of discrimination under the ADEA.

B. Defendant's Legitimate Reasons for the Firing

Once a plaintiff has established a prima facie case under the ADEA, a defendant may defeat the inference of discrimination by offering a legitimate, nondiscriminatory reason to explain the termination of the employment. *Fuentes*, 32 F.3d at 764. This relatively light burden is one of production and not of persuasion. *Reeves*, 530 U.S. at 142. The Third Circuit has held that failure to meet employment goals is a legitimate, non-discriminatory reason for terminating employment. *Keller*, 130 F.3d at 1109.

Defendant contends that its legitimate, non-discriminatory reason for terminating plaintiff's employment was that he failed to meet his headcount and revenue objectives. Def. Br. 8. Plaintiff responds that there is no evidence to support defendant's contention because: (1) as to the revenue objectives, plaintiff stated in his deposition that defendant's "revenue could not be measured until the end of the quarter," and defendant has offered no evidence as to the goals and expectations for plaintiff's revenues; and (2) as to the headcount objectives, plaintiff stated in his deposition that "he believed that he had met many of the goals," and again defendant failed to clearly show what plaintiff's headcount objectives were. Pl. Br. 5-6. Plaintiff contends that his deposition testimony was "not unqualified" as to the failure to meet certain objectives. *Id.* at 5.

I conclude that defendant has satisfied its burden of production by offering admissible evidence sufficient for a factfinder to conclude that plaintiff's employment was terminated because he failed to meet several headcount and revenue objectives. In fact, this admissible evidence is plaintiff's own deposition testimony, in which he admitted that he "absolutely" knew that he was expected to meet objectives, and that he "did not meet" several of them while Delaney was his supervisor. Harding Deposition Trans. at 126-27, 164-65. Plaintiff also

admitted that as to the second quarter 2002 management objectives that he himself prepared, he failed to make sufficient "strategic and tactical hires to maintain the agreed level of headcount," and that he ended the quarter under headcount by eight people. *Id.* at 239-41. In addition, plaintiff admitted that he failed to fulfill a "top recruiting objective" for defendant's New York/New Jersey office, and that he failed to meet his headcount for defendant's Washington, DC office. *Id.* at 254-60. Finally, as evidence of what plaintiff's objectives were, defendant has produced those that were prepared by the plaintiff himself for the second and third quarters of 2002, and that were dealt with in the deposition testimony. Harding Exhibit Nos. 2, 3. Therefore, the burden shifts back to plaintiff to demonstrate that defendant's proffered reasons for his firing are merely pretextual.

C. Pretext Analysis

Once a defendant has offered nondiscriminatory reasons for its action, a plaintiff may avoid summary judgment only if he produces some direct or circumstantial evidence that either: (1) discredits the defendant's proffered reasons for the termination of the employment; or (2) proves that the discrimination was more likely than not the determinative cause of the termination. *Fuentes*, 32 F.3d at 764. This evidence "must demonstrate such weaknesses, implausibilities, inconsistencies, incoherences, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder *could* rationally find them 'unworthy of credence,' and hence infer 'that the employer did not act for the asserted non-discriminatory reasons.'" *Id.* at 765 (citations omitted). "[F]ederal courts are not arbitral boards ruling on the strength of 'cause' for discharge. The question is not whether the employer made the best, or even a sound, business decision; it is whether the real reason is [discrimination]." *Keller*, 130 F.3d at 1109 (quoting *Carson v. Bethlehem Steel Corp.*, 82 F.3d 157, 159 (7th Cir. 1996)).

In an attempt to demonstrate weakness in defendant's explanation for his firing, plaintiff contends that he "was never informed that his job depended on his meeting either" the revenue or the headcount objectives, and that the revenue objectives were simply "related to calculation of his bonus for the third quarter of 2002." Pl. Br. 6-7. Plaintiff further contends that defendant has no records to show its financial performance for that time, and thus cannot show that plaintiff did not meet those goals. Pl. Br. 7-9. Finally, plaintiff argues that although he did have headcount goals that he did not meet, "Delaney controlled who got hired and effectively stymied his efforts to meet his goals by refusing to accept his proposed candidates." *Id.* at 11.

I conclude that plaintiff's contentions, and more importantly the evidence in the record, are insufficient for a reasonable factfinder to discredit defendant's proffered reasons for his termination, and that this conclusion relates directly to plaintiff's own deposition testimony. Despite plaintiff's assertion that the management objectives were not mandatory, plaintiff himself testified that he was "absolutely" aware that he was expected to meet them. Harding Deposition Trans. at 126-27. Despite plaintiff's argument that "there is no evidence to show that he did not meet" his revenue goals, plaintiff admitted that he did not meet them. Pl. Br. 8; Harding Deposition Trans. at 164-65. Furthermore, plaintiff has produced no evidence that he did meet them by the end of the third quarter of 2002. Finally, despite plaintiff's assertion that Delaney's rejection of several candidates for employment with defendant kept him from achieving his headcount goals, defendant points out that plaintiff missed those goals by more people than were rejected by Delaney. Def. Reply Br. 5. In addition, defendant points out that plaintiff himself admitted that one of his proposed candidates was not qualified for the proposed position. Def. Br. 5; Harding Deposition Trans. at 176-78.

Furthermore, plaintiff fails to recognize the irrelevance of whether or not defendant made clear that failure to achieve his objectives would result in termination. Nothing required defendant to warn plaintiff of an impending firing, and even if the management objectives were simply related to the calculation of plaintiff's bonus payments, defendant certainly had the option to fire plaintiff for failure to meet those objectives. As stated before, this court is not in the business of evaluating the wisdom of an employer's personnel decisions. At this stage, the court must only determine whether a reasonable factfinder could find that plaintiff has produced evidence casting sufficient doubt about whether defendant fired him because of poor job performance. I conclude that plaintiff has not done so, and in coming to this conclusion, the court is mindful of the Third Circuit's pronouncement that unsworn statements of counsel may not create a fact question when such statements contradict a party's own deposition testimony. *Schoch v. First Fidelity Bancorp.*, 912 F.2d 654, 657 (3d Cir. 1990).

As evidence that age was the determinative factor in the decision to fire him, plaintiff highlights the fact that in March 2002, when Delaney became defendant's Chief Sales Officer, six supervisors of sales managers were over the age of forty. Pl. Br. 12; Harding Decl. ¶¶ 2-4. However, by the end of March or shortly thereafter, all but plaintiff were terminated, and by October, plaintiff was terminated as well. Pl. Br. 12; Harding Decl. ¶ 5. In addition, plaintiff points out that at present, defendant's three area vice presidents are thirty-one, thirty-one, and thirty-five years old, respectively, and that two of defendant's three sales vice presidents are thirty-eight and thirty-eight years old, respectively. Pl. Br. 12. Plaintiff contends that he was "apparently the last sales supervisor at CareerBuilder who was over 40." *Id.* at 13.

However, defendant has correctly pointed out that plaintiff's case is entirely circumstantial, as he has admitted that neither Delaney, nor any of defendant's other executives, nor any of defendant's documents ever adversely referred to his age. Def. Br. 9; Harding Deposition Trans. at 305-08. In addition, although plaintiff is correct that he may introduce statistical, circumstantial evidence in attempting to show discrimination, "raw numerical comparisons" that "are not accompanied by any analysis of either the qualified applicant pool or the flow of qualified candidates over a relevant time period" are not probative of an employer's discriminatory motives. *Ezold v. Wolf, Block, Schorr & Solis-Cohen*, 983 F.2d 509, 543 (3d Cir. 1992). Here, plaintiff has asserted that several employees over the age of forty were terminated, and that they were replaced by people under forty. However, plaintiff says nothing about the job qualifications and relative abilities of the respective employees, and in fact, as defendant points out, plaintiff admitted that the company was doing "poorly" while the employees who were terminated were still there. Def. Reply Br. 7; Harding Deposition Trans. at 99-100. In addition, plaintiff fails to deal with the fact that over 100 other employees in defendant's sales group were fired at that time, and he fails to reference their respective ages and ability levels, even though plaintiff has not disputed that they were in fact terminated. Def. Stmt. Undisp. Facts ¶ 10; Pl. Resp. to Def. Undisp. Facts ¶ 10. Thus, the court concludes that plaintiff's statistical evidence is insufficient for a reasonable factfinder to find that discrimination was more likely than not the determinative cause of the termination, and this finding is again based, at least in part, on plaintiff's own deposition testimony.

Finally, the only similarly-situated, younger employee plaintiff claims was underperforming and was not fired is Hughes, and he bases this claim on a single document, identified as Exhibit G. This document is not only ambiguous, but it is also contradictory to

plaintiff's own deposition testimony, in which he stated that he could not identify any similarly-situated, younger employee who was underperforming and was not terminated. Harding Deposition Trans. at 358. In addition, plaintiff has not shown that he was similarly-situated to Hughes, for he has produced no evidence of Hughes's job responsibilities as vice president of the RBU, or how those responsibilities compared to his own. The court finds that this document (which does not show any of Hughes's specific objectives, and does not even mention him by name) is insufficient for a reasonable factfinder to find that age discrimination was more likely than not a determinative factor in plaintiff's termination, especially when it is coupled with the undisputed fact that defendant has fired two vice presidents younger than plaintiff for poor job performance. Delaney Affidavit ¶ 2; Pl. Resp. to Def. Undisp. Facts ¶ 27.

In light of all of the foregoing, defendant's motion for summary judgment on plaintiff's ADEA claim will be granted.

II. Plaintiff's Remaining Claims

In addition to the claim under the ADEA, plaintiff has asserted claims under Pennsylvania state law, alleging that defendant violated the PHRA by firing him on the basis of his age, breached his employment contract by failing to pay him bonus money and for unused vacation time, and violated the WPCL by withholding said pay. Under 28 U.S.C. § 1367(c),[4] and

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[4] The pertinent provision is as follows:

> **§ 1367. Supplemental Jurisdiction**
> **(c)** The district courts *may* decline to exercise supplemental jurisdiction over a claim under subsection (a) if -
> **(1)** the claim raises a novel or complex issue of State law,
> **(2)** the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
> **(3)** *the district court has dismissed all claims over which it*

applicable Third Circuit case law, a court may decline to exercise supplemental jurisdiction when it has disposed of all the claims over which it has original jurisdiction. *See Growth Horizons, Inc. v. Delaware County*, 983 F.2d 1277, 1284-85 (3d Cir. 1993) (embracing § 1367(c)'s discretionary language). Because I decline to exercise supplemental jurisdiction over plaintiff's remaining state law claims, and because plaintiff has failed to allege diversity jurisdiction under 28 U.S.C. § 1332, I will dismiss these claims without prejudice for lack of jurisdiction.

CONCLUSION

Summary judgment will be granted on plaintiff's claim under the ADEA because although plaintiff has made out a prima facie case of age discrimination, defendant has offered evidence of a legitimate, non-discriminatory reason for the termination of plaintiff's employment, and plaintiff has failed to offer sufficient evidence for a reasonable factfinder to either: (1) discredit defendant's proffered reason; or (2) find that discrimination was more likely than not the determinative cause of the termination.

In addition, because no federal question remains, and because plaintiff failed to allege diversity jurisdiction under 28 U.S.C. § 1332, the court will dismiss the state law claims without prejudice for lack of jurisdiction.

An appropriate order follows.

> *has original jurisdiction*, or
> **(4)** in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c) (italics added).

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

RICHARD L. HARDING, Plaintiff,	:	CIVIL ACTION
v.	:	NO. 04-188
CAREERBUILDER, LLC, Defendant.	:	

Order

And now, this _____ day of February 2005, upon consideration of defendant's motion for summary judgment, plaintiff's response, and defendant's reply to plaintiff's response, it is hereby ORDERED that the motion is GRANTED as to plaintiff's claim under the ADEA, and judgment is entered in favor of defendant and against plaintiff on Count I of plaintiff's complaint. The court declines to exercise supplemental jurisdiction over plaintiff's remaining state law claims, and Counts II, III, and IV of plaintiff's complaint are DISMISSED WITHOUT PREJUDICE.

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William H. Yohn, Jr., Judge