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

MARY LANGLEY	:	CIVIL ACTION
	:	
v.	:	
	:	
MERCK & CO., INC.	:	NO. 04-3796
	:	

MEMORANDUM AND ORDER

Juan R. Sánchez, J. **May 25, 2005**

Mary Langley, an African American, claims Merck & Co., Inc. demoted her in violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981 (section 1981).[1] Merck filed a Motion for Summary Judgment asserting Langley did not suffer an adverse employment action and her reassignment was based on Merck's company-wide reorganization. This Court agrees with Merck and grants its motion.

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[1]42 U.S.C. § 1981 states:
(a) Statement of equal rights
All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
(b) "Make and enforce contracts" defined
For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.
(c) Protection against impairment
The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

FACTS

Langley, an African American, began working for Merck in April 2000 as a Senior Associate in the Computer Validation Quality Assurance (CVQA) group. In November 2001 she was promoted to Acting Manager of the CVQA group and, in April 2003, to Manager. Langley's group had one other Manager, Warren Moore, and three reporting employees. In the Fall of 2003, Merck began a company-wide reorganization called Equinox. As part of Equinox, Merck's Human Resources department asked MaryAnne Everett, Director of Worldwide Non-Clinical Quality Assurance, to identify positions for elimination or consolidation.

Everett recommended consolidating the two CVQA Manager positions. Moore, a Caucasian, was selected over Langley for the position.[2] Langley, as a result, assumed the position of Program Coordinator and retained the same pay and grade level. In making her recommendation, Everett used an Employee Assessment Worksheet, solicited feedback from three stakeholders about Langley's and Moore's management potential,[3] and reviewed their personnel files. Merck ultimately recommended Moore because his assessment scores were higher,[4] all solicited feedback favored him and Moore, unlike Langley, had prior work experience in pharmaceutical safety assessment

[2]Both Moore and Langley began working for Merck in 2000 and were promoted to their Manager positions in 2003.

[3]In selecting stakeholders, Everett states she focused on individuals whom she believed could evaluate Langley and Moore regarding their people and project management skills and who were familiar with their interactions with internal customers.

[4]Everett rated Moore and Langley from one to five, five being the highest rating, on four areas: leadership, flexibility, results orientation, and functional excellence. Moore received an average score of 4.75 and Langley received 2.75.

laboratories.[5] Pl's Dep. at 113:6-115:15; *see also* Def's M.S.J. Memo., 3/28/05, p.7.

Langley complained to her supervisors on January 7, 2004 when she was reassigned to the Program Coordinator position. The supervisors asked Everett her rationale for not selecting Langley. After their investigation, the supervisors concluded Merck did not discriminate against Langley.

DISCUSSION

A Motion for Summary Judgment will only be granted if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). Rule 56(c) "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corporation v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552 (1986).

The moving party bears the burden of proving no genuine issue of material fact is in dispute and the court must review all of the evidence in the record and draw all reasonable inferences in favor of the nonmoving party. *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587, 106 S.Ct. 1348 (1986). Once the moving party has carried its initial burden, the nonmoving party must then "come forward with specific facts showing there is a genuine issue for trial." *Matsushita*, 475 U.S. at 587 (citing Fed.R.Civ.P. 56(e)). A Motion for Summary Judgment will not be denied because of the mere existence of some evidence in support of the nonmoving party. The nonmoving party must present sufficient evidence for a jury to reasonably find for them on that issue. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

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[5]Langley claims Merck failed to credit her prior work experience of managing other employees.

In cases where there is no direct evidence of discrimination, the burden of proof is governed by the framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Langley must first establish a *prima facie* case of discrimination. The burden then shifts to Merck to articulate a legitimate, non-discriminatory reason for the challenged action. Langley must then prove Merck's articulated reasons for the challenged action were a pretext for discrimination. *McDonnell Douglas Corp.*, 411 U.S. at 802-03. Even though all reasonable inferences are drawn in Langley's favor, this Court finds Langley did not establish a *prima facie* case of race discrimination and did not adduce evidence to support pretext.

Prima Facie Case

Langley claims she received disparate treatment because of her race. In disparate treatment cases, to establish a *prima facie* case a plaintiff must show: 1) she is a member of a protected class; 2) she satisfactorily performed the duties required by her position; 3) she suffered an adverse employment action; and 4) either similarly situated non-members of the protected class were treated more favorably or the adverse job action occurred under circumstances that give rise to an inference of discrimination. *McDonnell Douglas Corp.*, 411 U.S. at 802; *see also Jones v. School Dist. of Phila.*, 198 F.3d 403, 410 (3d Cir. 1999). Langley failed to establish a *prima facie* case because she did not suffer an adverse employment action.

An adverse employment action must be a "significant change in employment status, such as hiring, firing, failing to promote, reassignment, or a decision causing a significant change of benefits." *Burlington Indus. Inc. v. Ellerth*, 524 U.S. 742, 761 (1998). The adverse action must be material and must "alter[] the employee's compensation, terms, conditions or privileges of employment, deprive[] him or her of employment opportunities, or adversely affect[] his or her status

as an employee." *Robinson v. City of Pittsburgh*, 120 F.3d 1286, 1300 (3d Cir. 1997) (internal quotations omitted). "[M]inor or trivial actions that merely make an employee 'unhappy' are not sufficient" to establish a *prima facie* case, "for otherwise every action that an irritable, chip-on-the-shoulder employee did not like would form the basis of a discrimination suit." *Mondzelewski v. Pathmark Stores, Inc.*, 162 F.3d 778, 787 (3d Cir. 1998) (holding trivial actions insufficient to show discrimination in Americans with Disabilities Act context).

Langley argues she suffered an adverse employment action because her title changed, she no longer supervises employees, she now reports to the position she previously held, her duties have changed, her office was moved, there is no opportunity of advancement, and there is less opportunity for financial reward. Pl's Dep. at 119:2-24; 131:20-132:22; *see also* Pl's Opposition Memo., 4/18/05, p.14. Langley's gripes do not constitute an adverse employment action. Although Langley's title and duties have changed, she does not present sufficiently material adverse changes.[6]

Langley concedes her pay and grade level did not change as a result of her reassignment. Pl's Dep. at 59:3-9, 166:10-15. Langley was earning $95,424 annually in her prior position and now earns $98,520, after receiving an increase in 2004. Pl's Dep. at 164:2-5. Merck also continues to fully pay for Langley's Executive MBA at the University of Pennsylvania.

Langley presents no evidence to prove her new title is a dead-end position or that she is eligible for fewer bonuses. Contrary to Langley's bald assertions, her supervisors testified Langley's prospects for advancement remained the same. Linda Hostelley stated "[Langley] has the

[6]A change in title and a new reporting relationship is insufficient to constitute an adverse employment action. *Flaherty v. Gas Research Inst*, 31 F.3d 451, 456 (7th Cir. 1994); *see also Crady v. Liberty Nat'l Bank & Trust Co.*, 993 F.2d 132, 135-36 (7th Cir. 1993) (holding change in title and job responsibilities not adverse employment action where plaintiff maintained same grade level, salary, and benefits).

opportunity to develop herself to any level that she wants . . . . [T]here are going to be tremendous opportunities as the organization overall moves forward." Hostelley's Dep. at 92:22-93:23. Warran Ditzler testified Langley would remain in the same grade level and "the potential for growth within the group was still there." Ditzler's Dep. at 22:15-23:18. Everett also testified Langley's reassignment did not negatively impact her career and her opportunities within Merck. Everett's Dep. at 169:12-17.

Despite Langley's contention that Program Coordinators are not promoted, Everett did promote a Program Coordinator to an Associate Director position, a position higher than Langley's prior title. Everett Dep. at 82:4-24 (supporting Langley was laterally transferred and not demoted). Langley also admits no one has indicated her reputation is tarnished or that they hold her in less regard because of her reassignment. Pl's Dep. At 119:8-17, 122:8-14, 123:20-124:1. Langley may feel her reassignment is inconvenient, however, an adverse employment action "must be more disruptive than a mere inconvenience or an alteration of job responsibilities." *Crady v. Liberty Nat'l Bank & Trust Co.*, 993 F.2d 132, 136 (7th Cir. 1993); *see also Spears v. Missouri Dept. of Corrections and Human Resources*, 210 F.3d 850 (8th Cir. 2000). Consequently, Langley did not suffer an adverse employment action.

Pretext For Discrimination

Once Merck has demonstrated a legitimate business reason for its decision, here a company-wide reorganization, the burden shifts to Langley. Langley must then prove by a preponderance of the evidence the proffered reason was pretextual and intentional discrimination was the true reason for the decision. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 143 (2000). In addition to not establishing a *prima facie* case, Langley fails to show Merck's reason for reassigning her was

pretextual.

A plaintiff may show pretext and defeat a Motion for Summary Judgment by pointing "to some evidence, direct or circumstantial, from which a factfinder would reasonably either: (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." *Fuentes v. Perskie*, 32 F.3d 759, 764 (3d Cir. 1994). "The question is not whether the employer made the best, or even a sound, business decision; it is whether the real reason is [discriminatory]." *Simpson v. Kay Jewelers*, 142 F.3d 639, 647 (3d Cir. 1998). This Court must therefore search for discriminatory animus, not whether the employer is wise, shrewd, prudent or competent. *Jones v. School Dist. of Philadelphia*, 198 F.3d 403, 413 (3d Cir. 1999).

Langley must demonstrate "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in [Merck's] proffered legitimate reasons for its actions that a reasonable factfinder could rationally find them unworthy of credence." *Id.* Langley may satisfy this standard by demonstrating Merck's articulated reason was "so plainly wrong that it cannot have been the employer's real reason." *Id.* (quoting *Keller v. Orix Credit Alliance, Inc.* 130 F.3d 1101, 1109 (3d Cir. 1997)).

Langley fails to show how Merck's legitimate reason for reassigning her was pretextual. Langley argues Merck's decision was discriminatory primarily for three reasons: 1) she was more qualified than Moore; 2) the assessment process was flawed; and 3) Everett has a history of favoring white employees. Pl's Opposition Memo., 4/18/05, p.16-17 (consolidating similar arguments). Langley's evidence is insufficient to show pretext.

This Court must determine if Langley's reassignment was racially motivated and not second-

guess the soundness of Merck's business decisions. *Simpson*, 142 F.3d at 647. Langley claims her prior work experience included managing other employees, while Moore's did not. Merck, however, preferred Moore's prior experience because he had worked in pharmaceutical safety assessment laboratories, while Langley had not. This experience, in Merck's opinion, was most relevant for a CVQA Manager. Langley's own assessment of her qualifications is insufficient to show pretextual conduct. What matters is the perception of the decision maker. *Billett v. CIGNA* Corp., 940 F.2d 812, 825 (3d Cir. 1991), *overruled in part on other grounds, St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502 (1993); *see also Smith v. Flax*, 618 F.2d 1062, 1067 (4th Cir.1980). An employee's disagreement with an employer's evaluation of him does not prove pretext. *Billett*, 940 F.2d at 825 (citing *McDonald v. Union Camp Corp.*, 898 F.2d 1155, 1160 (6th Cir.1990)).

Langley also claims the assessment process used was flawed and discriminatory. Langley states Merck should have solicited feedback from her prior supervisor and those who worked under her.[7] Everett instead selected feedback from individuals who were familiar with Langley's and Moore's people management skills, and who were familiar with their respective interactions with CVQA's primary internal customer.

Langley criticizes Merck's methodology but does not make any plausible arguments as to the "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions" in Merck's final analysis that would give a reasonable factfinder a basis to find Merck's decision "unworthy of credence." *Fuentes*, 32 F.3d at 764. Merck used an assessment process that made business-sense to its decision-makers. Langley's sentiments as to who should have been questioned is irrelevant in determining if Merck's actions were pretextual. *Simpson*, 142 F.3d at 647 (dismissing plaintiff's

[7]Langley claims if this was done, she would have received more favorable reviews.

argument that employer should have used different criteria for its decision).

Langley also argues Everett has a history of not promoting black employees. The record does not support this bald assertion. Everett testified that during her tenure at Merck, she recommended hiring and promoting several black employees. Everett Dep. at 15:7-26:19. Langley provides no evidence to discredit Everett's testimony. Accusations devoid of substance are insufficient to show pretextual conduct. Accordingly, this Court enters the following:

ORDER

And now, this 25th day of May, 2005, Defendant's Motion for Summary Judgment (docket #9) is GRANTED and judgment is entered in favor of Defendant. Plaintiff's Motion to Compel and Produce (docket #8) is DENIED as moot. The Clerk shall mark this case CLOSED.

BY THE COURT:

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Juan R. Sánchez, J.