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

ROBERT CREELY	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	NO. 04-CV-0679
	:	
GENESIS HEALTH VENTURES, INC.	:	

SURRICK, J. **MAY 26, 2005**

MEMORANDUM & ORDER

Presently before the Court is Defendant Genesis Health Ventures, Inc.'s Motion for Summary Judgment (Doc. No. 29) and Plaintiff Robert Creely's Response (Doc. No. 30). For the following reasons, Defendant's Motion will be granted.

I. FACTUAL BACKGROUND

This case arises out of a job interview. Plaintiff, a Caucasian, contends that he was subjected to race discrimination in the interview process. (Doc. No. 1.) Plaintiff asserts that on May 15, 2003, he submitted an employment application to Defendant's Crestview facility. (*Id.* ¶ 17.) Marvin Kirkland ("Kirkland"), the African-American Director of Nursing, conducted the interview. (*Id.* ¶ 19.) Plaintiff claims that Kirkland told him that he was on a "do not hire" list. (*Id.* ¶ 20.) After the interview, Plaintiff contacted Defendant's corporate headquarters. (*Id.* ¶ 24.) Plaintiff had previously worked at three of Defendant's facilities between 1997 and 2003. (*Id.* ¶¶ 11-17). Defendant's Regional Human Resources Manager Scott Burk responded by letter that Plaintiff was, in fact, eligible for rehire. (Doc. No. 29 Ex. H.) Plaintiff contends that by

telling him that he was not eligible for rehire, Kirkland discriminated against him in violation of 42 U.S.C. § 1981.[1] (*Id.* at 6).

Defendant contends that because of past problems with Plaintiff and the unprofessional manner in which Plaintiff resigned from his employment with Defendant, Carol McQuillan ("McQuillan"), a Caucasian and Kirkland's supervisor, told Kirkland not to hire Plaintiff.[2] (Doc. No. 29 Ex. I at 77.) Another employee, Tara Amarhanov, saw Plaintiff's employment application when she was cleaning out a filing cabinet and saw the words "do not rehire per-Carol" written on the top of the application. (*Id.* Ex. J ¶ 8.) At the conclusion of Plaintiff's interview with Kirkland, Kirkland told Plaintiff that he would check on Plaintiff's status and get back to him. Two weeks after the interview, Kirkland called Plaintiff and told him "as far as Carol McQuillan was concerned, [you are] considered a 'do not hire.'" (Doc. No. 29 Ex. F.) Defendant contends that it did not discriminate against Plaintiff because of his race.

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to

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[1]This is the second lawsuit that Plaintiff's counsel has filed against Defendant. On May 2, 2003, Counsel filed a complaint in the matter entitled *Waters v. Genesis Health Ventures, Inc.*, No. 03-CV-2909. (Doc. No. 1, *Waters v. Genesis Health Ventures Inc*., No. 03-CV-2909.) The complaint alleged that Jill Waters, a Caucasian employee at Defendant's Crestview facility, had been subjected to discrimination in violation of the Age Discrimination in Employment Act ("ADEA") and the Americans with Disabilities Act ("ADA"). On February 13, 2004, four days before the filing of the instant Complaint, Counsel requested and was granted leave to file an amended complaint. Thereafter, Counsel added a claim of reverse discrimination under 42 U.S.C. § 1981 and abandoned the ADEA claim. We granted summary judgment in favor of Defendant on Waters's ADA claim. (Doc. No. 95, *Waters v. Genesis Health Ventures, Inc*., No. 03-CV-2909.)

[2]McQuillan is uncertain whether she told Kirkland not to rehire Plaintiff before or after the job interview. (*Id.* at 93.)

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 a judgment as a matter of law." Fed. R. Civ. P. 56(c). In considering a motion for summary judgment, "a court does not resolve factual disputes or make credibility determinations, and must view facts and inferences in the light most favorable to the party opposing the motion." *Siegel Transfer, Inc. v. Carrier Express, Inc.*, 54 F.3d 1125, 1127 (3d Cir. 1995). The moving party bears the burden of proving that no genuine issue of material fact is in dispute. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970). Once the moving party has carried its initial burden, to prevent summary judgment, the non-moving party "may not rest upon the mere allegations or denials of his pleading, but his response . . . must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

A genuine issue is established only if a reasonable jury could return a verdict for the non-moving party based on the evidence presented. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* (citation omitted). A "mere scintilla of evidence" presented by the non-movant will not defeat summary judgment. *Williams v. Borough of West Chester*, 891 F.2d 458, 460 (3d Cir. 1989) (citations omitted); *see also Tavakoli-Nouri*, No. 99-3470, 2000 WL 1449850, at *2 (E.D. Pa. Sept. 26, 2000) (indicating that a non-moving party cannot simply rely on bare assertions, conclusory allegations, or suspicions to support its claim).

III. DISCUSSION

Plaintiff alleges race discrimination in violation of 42 U.S.C. § 1981.[3] Claims alleging discriminatory treatment under § 1981 are evaluated under the legal standard applicable to claims under Title VII. *See Jones v. Sch. Dist. of Philadelphia*, 198 F.3d 403, 410 (3d Cir. 1999) (applying same analysis to disparate treatment race discrimination claims brought under Title VII and § 1981); *Oaks v. City of Philadelphia*, No. 99-CV-854, 2002 WL 32373708, at *2 (E.D. Pa. Apr. 30, 2002) ("Claims alleging discriminatory termination in violation of § 1981 are evaluated under the legal standard applicable to claims under Title VII."); *Townes v. City of Philadelphia*, No. 00-CV-138, 2001 WL 503400, at *3 (E.D. Pa. May 11, 2001) ("Title VII analysis is also appropriate for evaluating claims under § 1981 and § 1983.").

Claims of disparate treatment under § 1981 are evaluated under a test developed in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). In *Jones v. School District of Philadelphia*, the Third Circuit stated:

> [T]he *McDonnell Douglas* analysis proceeds in three stages. First, the plaintiff must establish a prima facie case of discrimination. If the plaintiff succeeds in establishing a prima facie case, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the employee's termination. Finally, should the defendant carry this burden, the plaintiff then must have an opportunity to prove by a preponderance of the evidence that the legitimate

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[3]Section 1981 provides, in pertinent part:

> 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.

42 U.S.C. § 1981(a) (2000).

> reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.

Jones, 198 F.3d at 410 (citing *McDonnell Douglas*, 411 U.S. at 802) (quotations omitted). The Third Circuit has also indicated that in cases of reverse discrimination, to establish a prima facie case, a plaintiff must "present sufficient evidence to allow a fact finder to conclude that the employer is treating some people less favorably than others based upon a trait that is protected under Title VII." *Iadimarco v. Runyon*, 190 F.3d 151, 161 (3d Cir. 1999). "The prima facie case method established in *McDonnell Douglas* was never intended to be rigid, mechanized, or ritualistic. Rather, it is merely a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination." *Id.* (citing *United States Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 715 (1983)). "The substance of the burden-shifting analysis applies with equal force to claims of 'reverse discrimination.'" *Iadimarco*, 190 F.3d at 158.

A. Plaintiff's Prima Facie Case

To establish a prima facie case of reverse race discrimination under § 1981, Plaintiff must "present sufficient evidence to allow a fact finder to conclude that the employer is treating some people less favorably than others based upon a trait that is protected under Title VII." *Iadimarco*, 190 F.3d at 161. Plaintiff must also establish that the discrimination was intentional. *Gen. Bldg. Contractors Ass'n v. Pennsylvania*, 458 U.S. 375, 391 (1982). The burden of proof always rests on the Plaintiff. *Fuentes v. Perskie*, 32 F.3d 759, 764 (3d Cir. 1995) (quoting *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981)).

Plaintiff asserts that he has established a prima facie case because Kirkland told him he

was on a do-not-hire list that did not exist "despite glowing recommendations from previous facilities."[4] Plaintiff argues that this, along with circumstantial evidence of Kirkland's discriminatory treatment of other employees and McQuillan's "attempts to take the blame. . . as a Caucasian" for the refusal to rehire, establishes a prima facie case of race discrimination. (Doc. No. 30 at 25-26.)

Plaintiff's contact with Kirkland was minimal. Kirkland conducted the job interview and then called Plaintiff after the interview. Plaintiff provides no evidence that Kirkland discriminated against him, other than telling him that he was on a do-not-hire list that did not exist. During his deposition, Plaintiff also testified that he had no personal knowledge that Kirkland had discriminated against other Caucasian employees at Defendant's Crestview facility. (Doc. No. 29 Ex. B at 87-96.) Moreover, Plaintiff never complained to Defendant that he believed Kirkland had discriminated against him. (*Id*. at 74-75; Ex. F.) Thus, the interview process itself is Plaintiff's only personal experience with employment discrimination by Defendant.

Plaintiff next offers circumstantial evidence of discrimination. Plaintiff states that "there are at least six (6) past and present employees (mostly managers) who specifically formed the opinion that Mr. Kirkland was racist because of the way [sic] interacted with employees, terminated employees, and hired employees." (Doc. No. 30 at 26.) To support this assertion, Plaintiff offers the testimony of Margaret Rodolico ("Rodolico"), Edith Leonardo ("Leonardo"),

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[4]Plaintiff's evidence of his "glowing recommendations" consist of two recommendations from March 19, 1999 and March 22, 1999 by supervisors at the Willow Ridge facility. (Doc. No. 30 Exs. L, M.) Not only are these reports from over three years before Plaintiff's interview, Plaintiff presents no evidence that Kirkland or McQuillan were aware of these recommendations.

Cindy Wilcox ("Wilcox"), Dana Kruvczuk ("Kruvczuk"), Dolores Breslin ("Breslin") and Jill Waters ("Waters").[5]

The Third Circuit has recognized that "discriminatory comments by nondecision makers, or statements temporally remote from the decision at issue, may properly be used to build a circumstantial case of discrimination." *Abrams v. Lightolier, Inc*., 50 F.3d 1204, 1214 (3d Cir. 1995); *see also Walden v. Georgia-Pacific Corp.*, 126 F.3d 506, 521 (3d Cir. 1997) ("Stray remarks by nondecisionmakers may be properly used by litigants as circumstantial evidence of discrimination."); *Brewer v. Quaker State Oil Refining Corp*., 72 F.3d 326, 333 (3d Cir. 1995) ("[A] supervisor's statement about an employer's employment practices or managerial policy is relevant to show the corporate culture in which a company makes its employment decisions, and may be used to build a circumstantial case of discrimination."); *Lockhart v. Westinghouse Credit Corp*., 879 F.2d 43, 54 (3d Cir. 1989) (holding stray remark by major company executive admissible). However, "[e]vidence introduced to defeat or support a motion for summary judgment . . . must be capable of being admissible at trial." *King v. Sch. Dist. of Phila.*, No. 00-CV-2503, 2001 U.S. Dist. LEXIS 10710, at *4 (E.D. Pa. Jul. 26, 2001) (citing *Callahan v. AEV, Inc*., 182 F.3d 237, 252 n.11 (3d Cir. 1999)).

The Supreme Court has stated that "[a]ll courts have recognized that the question facing the triers of fact in discrimination cases is both sensitive and difficult. . . . There will seldom be 'eyewitness' testimony as to the employer's mental processes." *Aikens*, 460 U.S. at 716. "It is

[5]Counsel offered these same witnesses in the *Waters* case. After considering several motions in limine in that case, we concluded that most of the testimony that Counsel wished to elicit from these witnesses was not admissible under the Federal Rules of Evidence. (Doc. Nos. 120, 121, *Waters v. Genesis Health Ventures, Inc*., No. 03-CV-2909.) We will discuss here only that evidence which would be admissible.

the rare situation when direct evidence of discrimination is readily available, thus victims of employment discrimination are permitted to establish their cases through inferential and circumstantial proof." *Kline v. Tenn. Valley Auth.*, 128 F.3d 337, 348 (6th Cir. 1997).

Plaintiff offers the testimony of Wilcox and Kruvczuk to support his assertion that Kirkland treated African-American employees differently than he treated Caucasian employees. Plaintiff and Defendant also dispute the circumstances under which Kirkland left Defendant's employment. The testimony of Wilcox and Kruvczuk is offered to cast doubt on the reasons offered by Kirkland and Defendant for the termination of Kirkland's employment at Defendant.

Nurses at Defendant's facilities are required to file skin integrity reports documenting wounds that they have observed on the patients. (Doc. No. 120, *Waters v. Genesis Health Ventures*, No. 03-CV-2909, at 2.) Wilcox and Kruvczuk testified that Kirkland falsified a skin integrity report in order to protect an African-American nurse who had failed to properly document the wound on a particular patient. (*Id*. at 4.) Their testimony details how Kirkland and the African-American nurses removed the original report from the files and replaced it with a report that covered up the fact that the nurse had not properly done her job. (*Id*.) Plaintiff suggests that, contrary to the reasons offered by Defendant and Kirkland, the falsifying of this report was the real reason for the termination of Kirkland's employment at Defendant.

Plaintiff also offers the testimony of Leonardo, a restorative nurse coordinator at Crestview. (Doc. No. 121, *Waters v. Genesis Health Ventures, Inc.,* No. 03-CV-2909, at 13.) Leonardo is Caucasian. (*Id.*) Plaintiff asserts that Kirkland terminated Leonardo's employment because she was Caucasian. (*Id*.) Leonardo has testified that Kirkland told her that her position as restorative nurse coordinator was terminated for budgetary reasons. (*Id*. at 14.) Leonardo was

replaced shortly after her discharge by an African-American nurse.[6] (*Id.*)

In addition, Plaintiff offers the testimony of Waters who, prior to the termination of Kirkland's employment, had been employed for ten years at Defendant's facilities. Waters is Caucasian and was replaced by an African-American. (Doc. No. 94, *Waters v. Genesis Health Ventures, Inc*., 03-CV-2909 at 1-2.) Defendant contends that Waters was discharged for performance reasons. Plaintiff argues that Waters had a good performance record during her tenure at Defendant and had been offered a promotion the year before Kirkland arrived.

Finally, Plaintiff argues that McQuillan's attempt to divert the blame for the Creely hiring decision from Kirkland to herself supports his assertion that he suffered discrimination at the hands of Kirkland. Plaintiff contends that McQuillan was simply attempting to conceal Kirkland's discriminatory conduct. McQuillan testified that when she saw Plaintiff in the lobby waiting to be interviewed by Kirkland, "I was very upset, because I really didn't want him hired." (Doc. No. 30 Ex. I at 92.) She told Kirkland not to hire him. (*Id.* at 93.)

> I said, Marvin, I don't think – he's not a good nurse. I was when [sic] he left here he was angry, he was not happy with the building. I don't even know why he came back . . . I said do not hire him. I said it's not going to work. I said we're trying to build a team here and if you have someone come back who had the feelings he had when he left here, it's not going to work, I don't want him. Do not hire him.

(*Id.* at 93.) McQuillan was uncertain as to whether she told Kirkland before or after the interview that she did not want to hire Plaintiff, stating:

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[6]The African-American nurse that replaced Leonardo is the same nurse, Rawls, that Kirkland allegedly protected by falsifying the skin integrity report. (Doc. No. 120, *Waters v. Genesis Health Ventures, Inc*., No. 03-CV-2909, at 4; Doc. No. 121, *id.,* at 15.)

> I'm not sure of the time frame but I know when I saw Bob in the lobby I tried to get hold of Marvin [Kirkland] and he wasn't in his office. I don't remember if someone told – I told someone if they see him to tell him to see me, so I don't remember which came first.

(*Id.* at 95.) McQuillan testified that she had the authority to tell Kirkland not to hire Plaintiff and that she was the only person who decided not to hire Plaintiff. (*Id.* at 94.) Two weeks after the interview, Kirkland contacted him by telephone and stated, "as far as Carol McQuillan was concerned, I was considered a 'do not hire'." (Doc. No. 30 Ex. B.)

Plaintiff points to the Burk letter and Burk's deposition testimony and asserts that it undermines McQuillan's testimony that the decision to not hire Plaintiff was hers. We are satisfied that the evidence and testimony offered by Plaintiff is sufficient to establish a prima facie case. Plaintiff has presented "sufficient evidence to allow a fact finder to conclude that the [Defendant treated] some people less favorably than others based upon a trait that is protected under Title VII." *Iadimarco*, 190 F.3d at 161.

B. Defendant's Articulated Nondiscriminatory Rationale

Because Plaintiff has presented a prima facie case, the burden of production shifts to the Defendant to "'articulate some legitimate nondiscriminatory reason for the employee's rejection.'" *Fuentes*, 32 F.3d at 763 (quoting *McDonnell Douglas*, 411 U.S. at 802). Defendant satisfies its burden of production by introducing evidence which, if taken as true, would permit the conclusion that there was a nondiscriminatory reason for the unfavorable employment decision. *Id*. (citing *Hicks*, 113 S. Ct. at 2748). "The employer need not prove that the tendered reason actually motivated its behavior, as throughout this burden-shifting paradigm the ultimate burden of proving intentional discrimination always rests with the plaintiff." *Id.* (citing *Burdine*,

450 U.S. at 253). Once the employer satisfies its relatively light burden by articulating a legitimate reason for the unfavorable employment decision, the burden of production rebounds to the plaintiff.

Defendant asserts that McQuillan told Kirkland not to hire Plaintiff because of Plaintiff's poor work at Defendant's other facilities and the unprofessional manner in which Plaintiff resigned. All of the evidence submitted by Defendant supports this explanation. Two months before Plaintiff resigned from the Crestview facility, he received a corrective action notice warning him that "the next similar infraction will result in another disciplinary action up to and including termination." (Doc. No. 28 Ex. E.) Plaintiff received this corrective action notice because he failed to perform a proper resident assessment. (*Id.*) Pat Heck ("Heck"), the Director of Nursing during Plaintiff's employment at Crestview, was monitoring his performance. (*Id.* Ex. D at 53.) Current Director of Nursing at Crestview, and former Unit Manager, Morton Ginhart ("Ginhart") pointed out that Plaintiff "did the bare minimum that was required of a nurse in the building." (*Id.* at 37.) Among other things, Plaintiff failed to initial medication sheets that were administered to patients as required by Crestview's policy. (*Id.* at 43-44.) Initialing medication sheets was an essential element of Plaintiff's position so that subsequent medical staff would be able to ascertain who administered the medication. (*Id.* at 43.) Ginhart was also not surprised that Plaintiff was not rehired

> [b]ased on the sentiment of the building from his previous employment and basically . . . I had seen some of the lazy things, you know, the breaks and such. I did not in my own professional opinion feel as though he was up to standard, you know, as a nurse based on what I would consider . . . good standing, that if I was a director of nursing at that time I probably wouldn't have hired him either back (sic).

(*Id.* at 61-62.) Ginhart had commented to Heck that "[Plaintiff] was slow in everything he did. He was off the unit . . . more than his allowable 15-minute break and his allowable 30-minute lunches. He didn't report off when he was going to lunch. . . if a resident had a complaint, he would just come out to the desk and tell us at the desk . . . that a resident had a complaint, and he wouldn't follow up on it any further. He felt like . . . he was just an L.P.N. and he was telling the R.N. now and he didn't have to worry about that situation any longer . . . ." (*Id.* at 62-63.) McQuillan knew that Heck was "closely watching what [Plaintiff] was doing" and that Heck had disciplined Plaintiff. (*Id.* Ex. I at 84.) As soon as McQuillan saw Plaintiff in the lobby on the date of the interview, she became "upset, because I really didn't want him hired." (Doc. No. 29 Ex. I at 92.) McQuillan unequivocally told Kirkland that she did not want him hired under any circumstances. (*Id.* at 93.) McQuillan told Kirkland:

> Marvin, I don't think, he's not a good nurse. I was when (sic) he left here he was angry, he was not happy with the building. I don't even know why he came back . . . I said do not hire him. I said it's not going to work. I said we're trying to build a team here and if you have someone come back who had the feelings he had when he left here, it's not going to work, I don't want him. Do not hire him.

(*Id.*) While neither McQuillan nor Kirkland are certain whether they spoke before or after the interview, they both agree that they spoke on the day of the interview. Of course, the final decision not to hire Plaintiff was relayed to Plaintiff by Kirkland two weeks after his interview. Plaintiff himself acknowledged that Kirkland called him two weeks after the interview stating, "as far as Carol McQuillan was concerned, I was considered a 'do not hire.'" (Doc. No. 30 Ex. B.) Finally, Amarhanov has testified that she saw Plaintiff's employment application with the handwritten words, "do not hire - per Carol" on the right corner. Under the circumstances, Defendant has met its relatively light burden by articulating a legitimate reason for the

unfavorable employment decision.

C. Pretext

Because Defendant has demonstrated a legitimate, non-discriminatory reason for failing to hire Plaintiff, Plaintiff must "now show by a preponderance of the evidence that the employer's explanation is pretextual (thus meeting the plaintiff's burden of persuasion)." *Fuentes*, 32 F.3d at 763. "[T]o defeat summary judgment when the defendant answers the plaintiff's prima facie case with a legitimate, non-discriminatory reason for its action, the plaintiff must point to some evidence, direct or circumstantial, from which a factfinder could 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." *Id.* at 764 (citing *Hicks*, 113 S. Ct. at 2479); *see also Ezold v. Wolf, Block, Schorr & Solis-Cohen*, 983 F.2d 509, 523 (3d Cir. 1992). Plaintiff has failed to raise material issue of fact on either of these issues.

As the court in *Fuentes* observed:

> To discredit the employer's proffered reason, however, the 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. Rather, the non-moving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its actions 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).

Defendant has provided legitimate reasons for its decision to not hire Plaintiff. Plaintiff argues that these reasons are pretextual are not worthy of belief. Plaintiff points to the letter he

received from Scott Burk explaining that he was, in fact, eligible to reapply. Plaintiff also points to the testimony of Burk concerning his conversations with McQuillan and argues that these circumstances cast serious doubt on McQuillan's testimony. Plaintiff argues that when Burk questioned McQuillan as to why Kirkland would have told Plaintiff he was not eligible for rehire, she responded that she did not know.

We find it entirely reasonable that McQuillan would not know why Kirkland would have referred to Plaintiff's eligibility for rehire rather than his past performance. However, McQuillan took the opportunity to emphasize to Burk that he would have been a "he was a poor performer and we didn't really want him back anyway." (Doc. No. 29 Ex K at 19.) McQuillan told Burk, "he's not a good nurse, he's jumped around, he was at Willow Ridge, came here, left here, went to Mayo, then from Mayo to Willow Ridge, now I said he wanted to come back. And I said he was very vocal about not being happy when he left here, I said I don't want him back, I really didn't want him back." (Doc. No. 29 Ex I at 90.)

As for Plaintiff's circumstantial evidence of discriminatory animus in Kirkland's dealings with other employees, while that evidence helps Plaintiff establish a prima facie case, the evidence does not cast serious doubt on Defendant's legitimate, non-discriminatory employment decision in this case. In *Massey v. United States Customs and Border Protection*, No. 03-CV-6590, 2004 U.S. Dist. LEXIS 26059, at *21 (E.D. Pa. Dec. 28, 2004), the court found that while the plaintiff presented a prima facie case of race discrimination and "set forth some, but very few, purported contradictions and inconsistencies that cast doubt upon the credibility of the defendant's legitimate, non-discriminatory explanation," ultimately the circumstantial evidence she presented could not defeat summary judgment. *Id.* The court quoted the Supreme Court in

Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 147 (2000):

> "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 evidence that no discrimination had occurred."

Massey, 2004 U.S. Dist. LEXIS 26059, at *23 (quoting *Reeves*, 530 U.S. at 147.)[7] The *Massey* court found that "the alleged implausibilities and inconsistencies present little more than a "weak issue of fact" as to the credibility of defendant's stated legitimate non-discriminatory explanation of why plaintiff was promoted." *Id.* at *24. In addition, the court stated, "[p]laintiff concedes that there is no direct evidence of discriminatory intent on the part of defendant. Plaintiff also has no evidence that discrimination was more likely than not the motivating factor driving its decision to deny plaintiff's application for promotion." *Id.* at *29.

Although the Plaintiff in the instant case has presented some circumstantial evidence of discriminatory animus, Plaintiff concedes throughout his deposition that he has no personal knowledge of discriminatory animus, other than the fact that he was not hired. Moreover, the circumstantial evidence that Plaintiff has offered is not sufficient to permit the fact finder to conclude that discriminatory intent was more likely than not the motivating factor behind the decision to not hire. Defendant has presented overwhelming evidence that Plaintiff was not hired because McQuillan felt Plaintiff would not be a good fit for Defendant. Plaintiff's weak circumstantial evidence does not undermine the credibility of Defendant's stated legitimate, non-

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[7]*Reeves* considered the appropriateness of a Rule 50 motion for judgment as a matter of law. However, its analysis is applicable to summary judgment motions because "the standard for granting summary judgment 'mirrors' the standard for judgment as a matter of law, such that 'the inquiry under each is the same.'" *Reeves,* 530 U.S. at 150 (citing *Anderson*, 477 U.S. at 242).

discriminatory explanation. Under all of the circumstances, we are compelled to conclude that summary judgment in favor of Defendant is appropriate.[8]

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment will be granted.

An appropriate Order follows.

[8]We need not address Defendant's argument regarding Plaintiff's claim for punitive damages or Defendant's argument that Genesis played no role in the decision not to rehire Plaintiff.

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

ROBERT CREELY	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	NO. 04-CV-0679
	:	
GENESIS HEALTH VENTURES, INC.	:	
	:	

ORDER

AND NOW, this 26th day of May, 2005, upon consideration of Defendant Genesis Health Ventures, Inc.'s Motion for Summary Judgment (Doc. No. 29, 04-CV-0679) and Plaintiff's response thereto, it is ORDERED that Defendant's Motion is GRANTED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge