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

JOHN L. TWYMAN	:	CIVIL ACTION
	:	
vs.	:	
	:	NO. 04-CV-3473
ADP, INC.	:	

MEMORANDUM AND ORDER

JOYNER, J. **August 24, 2006**

This employment discrimination suit is presently before the Court for disposition of the defendant's motion for summary judgment and the plaintiff's cross and amended motion to deny the defendant's motion for summary judgment. For the reasons set forth below, the defendant's summary judgment motion shall be granted and the plaintiff's motion(s) shall be denied.

Factual Background

Plaintiff John Twyman alleges in his First Amended Complaint that he was employed by Defendant ADP, Inc. as a conversion coordinator from August 27, 2000 until April 17, 2003 when the company unlawfully terminated him on the basis of his race (African-American) and in retaliation for opposing unlawful discrimination in the workplace. Plaintiff further alleges that in July, 2001, some two years prior to his termination, he had registered a complaint of race discrimination with ADP's Legal and Ethics Department and that in retaliation for that act he was

denied a promotion in July, 2002. When he complained about that, Plaintiff avers that he was again unlawfully denied a promotion in August, 2002 and eventually terminated in April, 2003. After receiving a right-to-sue notice from the Pennsylvania Human Relations Commission ("PHRC") on April 27, 2004, Plaintiff commenced this action on July 21, 2004 alleging violations of Title VII of the Civil Rights Act of 1964 *as amended*, 42 U.S.C. §2000e, *et. seq.* and the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. §951, *et. seq.*

By its summary judgment motion, ADP now contends that it is entitled to the entry of judgment in its favor as a matter of law on all of Plaintiff's retaliation and race discrimination claims because, *inter alia*, his non-promotion claims are time-barred and he cannot make out a *prima facie* case. Alternatively, Defendant submits that Plaintiff has no evidence that the legitimate business reasons which Defendant gave for Plaintiff's termination are a pretext for discrimination.

Standards Governing Summary Judgment Motions

It is recognized that the underlying purpose of summary judgment is to avoid a pointless trial in cases where it is unnecessary and would only cause delay and expense. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976), *cert. denied*, 429 U.S. 1038, 50 L. Ed. 2d 748, 97 S. Ct. 732 (1977). Under Fed.R.Civ.P. 56(c), summary judgment is properly rendered:

> "...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 a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Stated more succinctly, summary judgment is appropriate only when it is demonstrated that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322-32, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986).

In deciding a motion for summary judgment, all facts must be viewed and all reasonable inferences must be drawn in favor of the non-moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986); Oritani Savings & Loan Association v. Fidelity & Deposit Company of Maryland, 989 F.2d 635, 638 (3rd Cir. 1993); Troy Chemical Corp. v. Teamsters Union Local No. 408, 37 F.3d 123, 125-126 (3rd Cir. 1994); Arnold Pontiac-GMC, Inc. v. General Motors Corp., 700 F. Supp. 838, 840 (W.D. Pa. 1988). An issue of material fact is said to be genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986).

In Celotex Corp. v. Catrett, supra, the Supreme Court articulated the allocation of burdens between a moving and

nonmoving party in a motion for summary judgment. Specifically the Court in that case held that the movant had the initial burden of showing the court the absence of a genuine issue of material fact, but that this did not require the movant to support the motion with affidavits or other materials that negated the opponent's claim. Celotex, 477 U.S. at 323. The Court also held that Rule 56(e) requires the nonmoving party to "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions, on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Id. at 324 (quoting Fed.R.Civ.P. 56(e)). This does not mean that the nonmoving party must produce evidence in a form that would be admissible at trial in order to avoid summary judgment. Obviously, Rule 56 does not require the nonmoving party to depose its own witnesses. Rather, Rule 56(e) permits a proper summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings themselves, and it is from this list that one would normally expect the nonmoving party to make the required showing that a genuine issue of material fact exists. Id. See Also, Morgan v. Havir Manufacturing Co., 887 F.Supp. 759 (E.D.Pa. 1994); McGrath v. City of Philadelphia, 864 F.Supp. 466, 472-473 (E.D.Pa. 1994).

Discussion

Plaintiff's amended complaint contains two counts seeking relief under Title VII and the PHRA against his former employer. As a general rule, Title VII, Section 703, 42 U.S.C. §2000e-2(a) provides:

> It shall be an unlawful employment practice for an employer-
>
> > (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
> >
> > (2) to limit, segregate, or classify his employees or applicants for employment 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 race, color, religion, sex, or national origin.

Under §704, 42 U.S.C. §2000e-3(a),

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

The objective of Congress in the enactment of Title VII was plain by the language of the statute: to achieve equality of employment opportunities and to remove barriers that had operated in the past to favor an identifiable group of white employees

over other employees. Griggs v. Duke Power Company, 401 U.S. 424, 429-430, 91 S.Ct. 849, 853, 28 L.Ed.2d 158 (1971). Although the statute mentions specific employment decisions with immediate consequences, the scope of the prohibition is not limited to economic or tangible discrimination; indeed, it covers more than "terms and conditions" in the narrow, contractual sense. Farragher v. City of Boca Raton, 524 U.S. 775, 786, 118 S.Ct. 2275, 2283, 141 L.Ed.2d 662 (1998).

The purpose and provisions of the PHRA are similar. Indeed, it is the public policy of the Commonwealth of Pennsylvania to:

> "foster the employment of all individuals in accordance with their fullest capacities regardless of their race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, and to safeguard their right to obtain and hold employment without such discrimination, to assure equal opportunities to all individuals and to safeguard their rights to public accommodation and to secure housing accommodation and commercial property regardless of race, color, familial status, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of blindness or deafness of the user or because the user is a handler or trainer of guide or support animals."

43 P.S. §952(b). And, under 43 P.S. §955,

> It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or in the case of a fraternal corporation or association, unless based upon membership in such association or corporation, or except where based upon applicable security regulations established by the United States or the Commonwealth of Pennsylvania:
>
> (a) For any employer because of the race, color,

> religious creed, ancestry, age, sex, national origin or non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of any individual or independent contractor, to refuse to hire or employ or contract with, or to bar or to discharge from employment such individual or independent contractor, or to otherwise discriminate against such individual or independent contractor with respect to compensation, hire, tenure, terms, conditions or privileges of employment or contract, if the individual or independent contractor is the best able and most competent to perform the services required...
>
> .....
>
> (d) For any person, employer, employment agency or labor organization to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act... or because such individual has made a charge, testified or assisted, in any manner, in any investigation, proceeding or hearing under this act.

Given the similarity between the federal and the state acts, PHRA claims are generally treated identically and co-extensively with claims raised under Title VII. See, e.g., Fogelman v. Mercy Hospital, 283 F.3d 561, 567 (3d Cir. 2002)(holding "that PHRA is to be interpreted as identical to federal anti-discrimination laws except where there is something specifically different in its language requiring that it be treated differently"); Kelly v. Drexel University, 94 F.3d 102, 105 (3d Cir. 1996)(same).

Of course, the framework for establishing liability under Title VII is well established. The complainant must carry the initial burden of establishing a prima facie case of racial discrimination and this may be done by showing by a preponderance

of the evidence that: (1) he/she belongs to a protected class; (2) he/she was qualified for the position; (3) he/she suffered an adverse employment action despite being qualified; (4) under circumstances that raise an inference of discriminatory action, such as where the employer continued to seek out individuals with qualifications similar to the plaintiff's or treated other, similarly situated non-class members more favorably. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253, 101 S.Ct. 1089, 1093, 67 L.Ed.2d 207 (1981); McDonnell Douglas Corporation v. Green, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973); Blue v. Defense Logistics Agency, No. 05-3585 2006 U.S. App. LEXIS 12903 at *5 (3d Cir. May 24, 2006); Sarullo v. United States Postal Service, 352 F.3d 789, 797 (3d Cir. 2003).

The burden then shifts to the employer to articulate some legitimate, nondiscriminatory reason for the employee's rejection and then, should the defendant carry this burden, the plaintiff must have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination. O'Connor v. Consolidated Coin Caterers Corp., 517 U.S. 308, 310-311, 116 S.Ct. 1307, 1309, 134 L.Ed.2d 433 (1996); McDonnell Douglas and Burdine, both *supra*; Storey v. Burns International Security Services, 390 F.3d 760, 763-764 (3d Cir. 2004). The

ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff. Burdine, 450 U.S. at 253, 101 S.Ct. at 1093. Thus, to defeat summary judgment when the defendant answers the plaintiff's prima facie case with legitimate, non-discriminatory reasons for its actions, the plaintiff must point to some evidence, direct or circumstantial, from which a fact finder 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. Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994). This burden is met through a demonstration that "weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in the employer's proffered legitimate reason are such that a reasonable factfinder could rationally find them unworthy of credence." Valdes v. Union City Board of Education, No. 05-2554, 2006 U.S. App. LEXIS 18667 at *8-*9 (3d Cir. July 24, 2006). It is not enough for a plaintiff to show that the employer's decision was wrong or mistaken because the issue is whether the employer acted with discriminatory animus. Id., at *9, citing Abramson v. William Patterson College of N.J., 260 F.3d 265, 283 (3d Cir. 2001); Fuentes, 32 F.3d at 765. See Also: St. Mary's Honor Center v. Hicks, 509 U.S. 502, 113 S.Ct. 2742,

125 L.Ed.2d 407 (1993) and Langley v. Merck & Co., No. 05-3205, 2006 U.S. App. LEXIS 14958 at *10(3d Cir. June 15, 2006).

As was Congress' goal in enacting §703, the anti-retaliation provision set forth in §704 seeks to prevent employer interference with "unfettered access" to Title VII's remedial mechanisms. Burlington Northern & Santa Fe Railway Co. v. White, ___U.S.___, 126 S.Ct. 2405, 2415 (June 22, 2006), citing Robinson v. Shell Oil Co., 519 U.S. 337, 346, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997). It does so by prohibiting employer actions that are likely to deter victims of discrimination from complaining to the EEOC, the courts, and their employers. Id. The allocation of the burden of proof for both the federal and state retaliation claims follows the same familiar Title VII standards, although these standards will vary depending on whether the suit is characterized as a "pretext" suit or a "mixed motives" suit. Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997). [1] In "pretext" cases such as the one which Plaintiff endeavors to advance here, to establish a prima facie case, the plaintiff must show that (1) he was engaged in protected activity; (2) he was

[1] "Mixed motives" discrimination cases are cases not only where the record would support a conclusion that both legitimate and illegitimate factors played a role in the employer's decision, but where the plaintiff's evidence of discrimination is sufficiently "direct" to shift the burden of proof to the employer on the issue of whether the same decision would have been made in the absence of the discriminatory animus. The term of art "mixed motives" is thus misleading because it describes only a small subset of all employment discrimination cases in which the employer may have had more than one motive. Miller v. Cigna Corp., 47 F.3d 586, 597, n.9 (3d Cir. 1995). See Also, 42 U.S.C. §2000e-2(m); Price Waterhouse v. Hopkins, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989).

discharged subsequent to or contemporaneously with such activity; and (3) there is a causal link between the protected activity and the discharge. Id., citing Quiroga v. Hasbro, Inc., 934 F.2d 497, 501 (3d Cir. 1991) and Jalil v. Avdel Corp., 873 F.2d 701, 708 (3d Cir. 1989). If the plaintiff succeeds, the burden of production shifts to the defendant to articulate a legitimate, non-discriminatory reason for the adverse action. Valdes, supra., at *11.

It should be noted that employees engage in protected activity under Title VII and the PHRA when they (1) oppose an unlawful employment practice, (2) file a charge of discrimination, or (3) participate in a charge brought by another. Zappan v. Pennsylvania Board of Probation and Parole, No. 04-3866, 2005 U.S. App. LEXIS 23202 at *17, 152 Fed. Appx. 211, 217 (3d Cir. Oct. 26, 2005). "Acceptable forms of protected activity under Title VII ... include formal charges of discrimination, as well as informal protests of discriminatory employment practices, including making complaints to management, writing critical letters to customers, protesting against discrimination by industry or society in general, and expressing support of co-workers who have filed formal charges." Abramson, 260 F.3d at 287-288, quoting Sumner v. United States Postal Service, 899 F.2d 203, 209 (2d Cir. 1995).

Title VII does not set forth "a general civility code for

the American workplace." Burlington Northern, 126 S.Ct. at 2415, quoting Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 80, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998). "Not everything that makes an employee unhappy qualifies as retaliation for otherwise, minor and even trivial employment actions that an irritable, chip-on-the-shoulder employee did not like would form the basis of a discrimination suit." Robinson v. City of Pittsburgh, 120 F.3d 1286, 1300 (3d Cir. 1997), quoting Smart v. Ball State University, 89 F.3d 437, 441 (7th Cir. 1996). This fact notwithstanding, however, the Supreme Court very recently concluded "that the anti-retaliation provision does not confine the actions and harms it forbids to those that are related to employment or occur at the workplace. ...[T]he provision covers those (and only those) employer actions that would have been materially adverse to a reasonable employee or job applicant." Burlington Northern, 126 S.Ct. at 2409. "In the present context, that means that the employer's actions must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination." Id. In this manner, the scope of the anti-retaliation provision extends beyond workplace-related or employment-related retaliatory acts or harm. Id., at 2414. See Also, Stephenson v. City of Philadelphia, Civ. A. No. 05-1550, 2006 U.S. Dist. LEXIS 43998 at *17 (E.D.Pa. June 28, 2006).

In determining whether conduct was retaliatory, the cases have tended to focus on two factors: (1) the "temporal proximity" between the protected activity and the alleged discrimination and (2) the existence of "a pattern of antagonism in the intervening period." Jensen v. Potter, 435 F.3d 444, 450 (3d Cir. 2006), citing Abramson, 260 F.3d at 288 and Woodson, 109 F.3d at 920-921. Indeed, it has been held that the causal link may be established by the temporal proximity between the protected activity and the termination or by proof that the employer engaged in a pattern of antagonism in the intervening period. Valdes, 2006 U.S. App. LEXIS at *11; Woodson, supra. Despite this focus, "these are not the exclusive ways to show causation, as the proffered evidence, looked at as a whole, may suffice to raise the inference." Jensen, 435 F.3d at 450, quoting Farrell v. Planters Lifesavers Co., 206 F.3d 271, 280 (3d Cir. 2000).

We thus must first evaluate whether Plaintiff can make out a prima facie case of racial discrimination. In so doing, we note at the outset that Mr. Twyman is African-American and that he therefore qualifies as a member of a protected class. In addition, the record shows that Plaintiff held the position of conversion coordinator at ADP for approximately one and a half years until the position was re-organized into two separate functions. ADP is a payroll service company and in the conversion coordinator position in the Emerging Business Division

in which he worked, the plaintiff would communicate with a client company to obtain its payroll information and convert it to the ADP system by inputting this information into the ADP computer and setting up the payroll for that account. (Deposition of Angela Andrews, at p. 9; Certification of Angela Andrews, at ¶2). After the re-organization of the conversion coordinator position and because there had been numerous escalated calls from his clients complaining about their payrolls, Mr. Twyman became a new account coordinator, which primarily entailed inputting payroll information into the computer system. He continued to receive the same rate of pay. Subsequently however, in December, 2002, Mr. Twyman was promoted to the position of implementation specialist, with the responsibilities for communicating with clients to obtain the payroll information and setting up the client accounts. When evaluating whether a plaintiff is "qualified" for the purposes of a prima facie case, courts must rely upon "objective" factors. Williams-McCoy v. Starz Encore Group, Civ. A. No. 02-5125, 2004 U.S. Dist. LEXIS 2600 at *16 (E.D.Pa. Feb. 5, 2004), citing Sempier v. Johnson and Higgins, Inc., 45 F.3d 724, 729 (3d Cir. 1995). "Subjective qualities, conversely, such as 'leadership or management skill' are "better left to the later stage of the McDonnell Douglas analysis." Id., quoting Weldon v. Kraft, 896 F.2d 793, 798 (3d Cir. 1990). Although Plaintiff was ostensibly given the implementation

specialist position in the hope that he would dedicate more effort and be more successful at it than he was in his previous positions because it was a job he wanted, we find that he was nevertheless promoted to it less than one year before his termination and despite the fact that he had had problems performing those same job duties in his previous position. (Declaration of Angela Andrews, at ¶s 6-10; Declaration of Althea Abbott, ¶3). We thus find that Plaintiff was sufficiently qualified for that position and, given that ADP separated Mr. Twyman from this position on or about April 17, 2003, we hold that he has adequately established the second and third elements of the prima facie case, *to wit*, job qualification and adverse employment action. (Deposition of Angela Andrews, at p. 35; Exhibit "N" to Plaintiff's Motion to Deny Motion for Summary Judgment).

In reviewing the record for evidence as to the fourth element, we find there is very little evidence to support a prima facie cause of action. Indeed, in reviewing the plaintiff's submissions, we find from the implementation survey results that Plaintiff's scores were sometimes better than those registered for other conversion coordinators/implementation specialists who were not terminated. Accordingly, although scant, we shall give Plaintiff the benefit of the doubt that he may have been treated differently from similarly situated, non-members of his protected

class and find that he has sufficiently made out a prima facie case of discrimination.

The burden then shifts to ADP to articulate a valid, non-discriminatory reason for its decision to terminate Plaintiff. This it does with ease as the record here is replete with copies of evaluations and written warnings issued over the course of Plaintiff's three-year tenure regarding his job performance. The record also includes affidavits and deposition testimony from two of Plaintiff's supervisors that he was separated because: he had an inordinate number of escalated client complaints requiring management intervention for mistakes in payrolls, he had failed to satisfy the performance objectives and plans set for him, he failed to seek help and guidance before a problem arose, and because of his general performance inefficiencies and failure to timely complete work assignments. (Exhibits "B" -"G," "I" -"K" to Defendant's Motion for Summary Judgment). From this evidence, we conclude that the defendant has sufficiently rebutted Plaintiff's prima facie case to shift the burden back to Plaintiff to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.

On this point, Plaintiff falls short. As noted, the gravamen of Plaintiff's race discrimination claim is that the defendant employer treated other, similarly situated employees

who were not members of his protected class differently than he. Although Plaintiff himself has testified to deficiencies in other ADP employees, there is no evidence on this record that the job performance of those other employees was as poor as or worse than his own. Furthermore, while Plaintiff has produced evidence that on a number of occasions he received service excellence awards from ADP and letters of appreciation from clients, he has also acknowledged that he made numerous errors, including one "king (sic) error"[2] involving a direct deposit that led to a bonus check going to another account, was the subject of numerous client complaints, and was counseled and received several verbal and written warnings concerning his job performance before his final separation from employment. In so far as the only evidence that his supervisors spent more time training and/or assisting the other conversion coordinators and implementation specialists differently is Plaintiff's own deposition testimony and there is absolutely no evidence on this record of racial animus against Plaintiff, we cannot find that he has succeeded in demonstrating that his employer's proffered legitimate reasons for terminating him are unworthy of credence.[3]

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[2] We presume that Plaintiff was referring to a "keying" error whereby he mistakenly typed in the wrong account number. (See Excerpts from Plaintiff's Deposition of December 29, 2004 appended as Exhibit "A" to Defendant's Motion for Summary Judgment, at pp.351-353).

[3] A plaintiff's own assertion of racial animus does not give rise to an inference of unlawful discrimination. Where a plaintiff relies upon his own beliefs and testimony as to his own beliefs from his deposition-–and fails

We reach the same conclusion with respect to Plaintiff's claim that he was terminated in retaliation for his having sent a letter to what is apparently ADP's home office in Roseland, NJ reporting what he believed to be "several incidents of managerial misconduct" at the Fort Washington, PA office and requesting "an Ethics Committee Investigation" in July, 2001. Although less than clear from the aforesaid letter, it appears that the plaintiff was complaining/reporting what he believed to be unfair criticism and treatment by his supervisors, Dayle Witanek and Angela Andrews directed against himself and unidentified others. Although the plaintiff does not specifically allege race, gender or other discrimination in this letter, he does allege that he and other employees received what he believed to be unequal and unfair treatment because of his supervisors' personal preferences or biases against them and/or in favor of others. These allegations are, we find, sufficient to allege that he engaged in protected conduct for purposes of this analysis. However, there is no evidence that his termination occurred as the result of, subsequent to, in proximity or contemporaneously with such activity nor is there any evidence whatsoever of any causal link between this protected activity and his discharge. Rather, the

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to present any factual evidence linking his termination to his membership in a protected class--he has failed to make out a prima facie case of discrimination. Williams-McCoy, 2004 U.S. Dist. LEXIS at *26, citing Bullock v. Children's Hospital of Philadelphia, 71 F.Supp.2d 482, 490-491 (E.D.Pa. 1999).

record reflects that shortly after Mr. Twyman sent this letter, Ms. Witanek ceased to be one of his supervisors and that Ms. Andrews, in conjunction with Ms. Abbott, continued to work with Plaintiff in an effort to improve his job performance. Given that nearly two years elapsed from the time that Plaintiff sent his letter and the time that he was separated from his employment, we can discern no causal connection between the two events. For these reasons, summary judgment shall be granted in favor of Defendant as to Plaintiff's claims that his termination was the result of racial discrimination and in retaliation for his having engaged in protected activity in violation of the PHRA and Title VII.

We next consider the vitality of Plaintiff's claim that Defendant's failure to make him an implementation specialist at the time it re-organized the conversion coordinator position was in retaliation for his making the letter request for an ethics committee investigation on July 2, 2001.

Defendant asserts that this claim is time-barred and we must agree. To be sure, the law is clear that a pre-requisite for filing suit under Title VII and/or the PHRA is the unsuccessful pursuit of the available avenues of potential administrative relief. See Generally, Love v. Pullman Co., 404 U.S. 522, 523, 92 S.Ct. 616, 617, 30 L.Ed.2d 679, 682 (1972); Johnson v. Gober, No. 03-1423, 83 Fed. Appx. 455, 460, 2003 U.S. App. LEXIS 25732

(3d Cir. Dec. 18, 2003); Robinson v. Dalton, 107 F.3d 1018, 1020 (3d Cir. 1997). Because Pennsylvania is considered a "deferral state," due to the existence of a cooperating state agency, the Pennsylvania Human Relations Commission ("PHRC"), the EEOC charge must be filed within 300 days of the date of the last act of alleged discrimination. National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 104-105, 122 S.Ct. 2061, 2067-2068, 153 L.Ed.2d 106 (2002); Drake v. Steamfitters Local Union No. 420, Civ. A. No. 0106968, 2005 U.S. Dist. LEXIS 1454 at *17 (E.D.Pa. Jan. 27, 2005); 42 U.S.C. §2000e-5(e)(1).

Here, Plaintiff was apprised that he was being made a new account coordinator as opposed to an implementation specialist in a meeting with Angela Andrews on May 21, 2002. (Exhibit "K" to Defendant's Motion for Summary Judgment). However, he did not file any complaint with the EEOC or the PHRC until he was terminated on April 17, 2003. As that date is more than thirty days past the 300 day deadline, we find that Plaintiff's retaliation claim on that event is out of time.

Plaintiff also complains that he was denied a promotion in August, 2002 in retaliation for his having filed a complaint with the defendant's general manager and vice president regarding the company's failure to promote him to the implementation specialist position in July, 2002. Given that this action took place within the 300-day time period preceding the filing of his PHRC

complaint, Plaintiff submits that this claim was timely. While we would agree with Plaintiff that this claim would not be time-barred, we simply cannot find from the record evidence before us that anyone else was promoted at that time nor can we discern the identity or race of that individual(s). Likewise, we can find no evidence of any pattern of antagonism or other negative conduct toward Mr. Twyman on the part of his supervisors or other ADP representatives at all following his complaint about his July 2002 non-promotion. We thus cannot find that Mr. Twyman has made the requisite evidentiary showing to sustain his claim that he was not promoted in August, 2002 in retaliation for his having engaged in protected activity and judgment as a matter of law shall therefore be entered on both counts of Plaintiff's complaint.

An appropriate order follows.

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

JOHN L. TWYMAN	:	CIVIL ACTION
	:	
vs.	:	
	:	NO. 04-CV-3473
ADP, INC.	:	

ORDER

AND NOW, this 24th day of August, 2006, upon consideration of Defendant's Motion for Summary Judgment and Plaintiff's Motion to Deny Motion for Summary Judgment filed in response thereto, it is hereby ORDERED that the Defendant's Motion is GRANTED, the Plaintiff's Motion is DENIED and Judgment as a matter of law is entered in favor of the Defendant and against the Plaintiff in no amount on all counts of the Plaintiff's Amended Complaint.

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.