

Id. After reviewing the evidence, the court makes all reasonable inferences from the evidence in the light most favorable to the non-movant. In re Flat Glass Antitrust Litig., 385 F.3d 350, 357 (3d Cir. 2004).

II.

The following facts are either undisputed or viewed in the light most favorable to the plaintiff.

In 1968, Sperry Corporation and Burroughs Corporation merged to form the defendant, Unisys, an information technology giant employing 120,000 employees. The plaintiff was initially hired by Burroughs Corporation in October, 1968 and continued as a Unisys employee after the merger with Sperry Corporation.

Unisys, among other things, manufactures and sells mainframe computers run, in some instances, by Unisys proprietary software.¹ Prior to April, 2006, the plaintiff worked in the "Core MCP" group of Unisys, which consists of software engineers responsible for designing and developing the ClearPath master control program ("MCP"). Although their primary function is the design and development of software for Unisys ClearPath computers, these engineers also provide some support to customers having problems with their ClearPath systems. As a software engineer within Core MCP, the plaintiff was expected to devote

1. Originally, Unisys computers were run solely by Unisys proprietary software. However, beginning in 2003, Unisys began to transition from the exclusive use of its proprietary software to the use of non-Unisys applications designed to run with the Unisys software.

approximately 60% of her time to design and development. Preferring the software support work, plaintiff instead spent approximately 75% of her time performing that function. Support work involved identification and elimination of software problems. The plaintiff often worked on customer questions or complaints in excess of the time limits set by Unisys.

On April 24, 2006, the plaintiff transferred from Core MCP to "Software Support & Service Planning," a group within "Client Management & Support" ("CM&S"). CM&S is the first line of response for customer questions and complaints. During the relevant time frame, questions and complaints that CM&S was unable to resolve were sent to Core MCP for more detailed research and resolution.

Throughout her tenure in Core MCP, the plaintiff does not recall ever receiving poor ratings on her yearly Performance Plan and Reviews. However, these Reviews reveal she received a rating of "4 - Needs Improvement" in 2002, 2004 and 2005. Her managers noted in her Reviews her failure to meet the performance expectations of an engineer of her level as well as her failure to resolve the customer complaints or questions within the appropriate time frame.² Despite her poor performance ratings,

2. For instance, the plaintiff's manager wrote in her 2003 Performance Plan and Review that there were "times that I feel I must remind Fran of the pending resolution dates for her UCF's." A "UCF" is the communication informing the engineer of the customer complaint or question regarding the MCP. In 2004, her manager wrote in her Review that she frequently needed to remind Ms. Laukagalys about approaching UCF deadlines. The manager's
(continued...)

the plaintiff was consistently and highly praised for her contributions to Unisys as a mentor to new engineers.³

Financial difficulties plagued Unisys in 2005, a year in which the company lost a total of \$1.73 billion. This financial hemorrhaging, which continued through early 2006, prompted the company to implement a "turn-around strategy" designed to focus company resources on high-growth and high-return market segments in conjunction with a reduction in costs. The strategy consisted primarily of employee reductions. In November, 2005, Unisys announced its plan to decrease its global workforce by ten percent in 2006.

At this point, the plaintiff was working, along with nine other software engineers, in the Core MCP group under manager, Sharon Mauer.⁴ When Ms. Mauer learned that her department would be subject to the reduction-in-force, she

2.(...continued)

overall comments advised that the plaintiff's level of accomplishment did not meet that expected of an engineer at her level.

3. Her supervisor praised the plaintiff in her 2002 review for her "experience, patience, ability to communicate and teach," which "contributed to lead a new hire product support engineer to a greater understanding and appreciation, not to mention productivity gain in her support work on MCP component." Her 2003 review reports that "Fran is extremely patient with new people, and takes time to explain the background and the logic behind what she is doing." Similarly, her 2004 review states that "Fran has many years of experience and is a valued mentor for our new employees."

4. Among this group, only one person was older than the plaintiff.

evaluated every employee in Core MCP pursuant to corporate human resources policies and procedures. As a result, Ms. Mauer identified plaintiff as the first person for the Core MCP department's required reduction.⁵ Ms. Mauer made the selection after a "Unisys Layoff Assessment Matrix" was completed in which each employee within Core MCP was evaluated in terms of their contribution, key accomplishments and performance deficiencies. This Matrix is subject to two levels of management review and approval in addition to review by human resources and the human resources legal department.

While Ms. Mauer was evaluating her employees in connection with the required layoffs, a position opened up in the Software Support & Service Planning subgroup of CM&S under vice president James Stevenson and manager Ernest Radvany. This group focused solely on software support, which the plaintiff preferred to the design and development work primarily expected of her in Core MCP. After learning that the plaintiff was selected for layoff and believing that she possessed the skills for the open position, Mr. Stevenson suggested to Mr. Radvany that the

5. Unisys policy and procedure for its layoff practices in the United States is set forth in a four page document detailing the guidelines that managers must follow in making an individual layoff selection. Pursuant to these policies and procedures, Unisys managers are required to consider many factors when evaluating their employees for layoff. Specifically, managers consider the employee's (1) competencies, including skills, knowledge, and abilities; (2) demonstrated performance; and (3) relative contribution of their assignments. Based on these factors, the manager must select the employee whose loss "will have the least impact on Unisys ability to accomplish its near term business objectives."

plaintiff replace a retiring employee. Mr. Radvany also believed the plaintiff would be a good fit for the open position and accepted her after a brief interview.⁶ In April, 2006, the plaintiff began working in the Software Support & Service Planning subgroup of CM&S.

Soon thereafter, however, additional lay-offs became necessary. Following the model of another Unisys group, Mr. Stevenson decided to reduce his staff by transferring the entire responsibility for customer support work to Core MCP. Thus, the Software Support & Service Planning subgroup of CM&S, which was lead by Mr. Radvany and to which the plaintiff had just transferred, was eliminated.

Mr. Radvany completed a Unisys Layoff Assessment Matrix as required by Unisys policies and procedures. However, given plaintiff's recent transfer to Mr. Radvany's group, he requested Ms. Mauer's input in connection with several of the categories on the Matrix. He asked Ms. Mauer to rate the plaintiff on her (1) productivity/results; (2) analysis/problem solving; (3) learning agility; (4) initiative and tenacity; and (5) fast cycle. Mr. Radvany did not ask Ms. Mauer for her input as to the plaintiff's networking experience.

6. Ms. Mauer agreed that the plaintiff would perform well in CM&S and accordingly encouraged her to apply for the position. A member of the CM&S group was responsible for responding to customer complaints and questions regarding the MCP. Unlike Core MCP, the CM&S group was not responsible for design and development of software.

Mr. Radvany selected the plaintiff, along with four other employees in his group, as an employee whose loss would have the least impact on the ability of Unisys to accomplish its near term business objectives. Five software engineers in Mr. Stevenson's group and under Mr. Radvany's management were laid off, including the plaintiff.⁷ William Kammerle, a 43-year old software engineer and sixth member of the group, was retained as a networking specialist responsible for serving as the liaison between CM&S and Core MCP. According to the Unisys Layoff Assessment Matrix completed for this layoff, Mr. Kammerle was "clearly the strongest Networking Support Specialist on the team." His "deep experience with the MCP Networking product set" made him "the easy choice to retain for the intended networking support business objectives going forward within Client Management and Support." Additionally, Mr. Kammerle maintained a good working relationship with the Networking development organizations, external clients, and internal clients. Mr. Radvany believed that Mr. Kammerle's good relations would serve to minimize any disruption to client satisfaction during the layoffs. Thus, along with the four other members of her group, the plaintiff was laid off as part of the Unisys reduction in force. She was 63 years old at the time.

7. The four other employees laid off with the plaintiff were all younger than she. In fact, two were under the age of 30.

III.

Unisys maintains that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law on both plaintiff's ADEA and PHRA claims for age discrimination. The analysis of plaintiff's claims under these two statutes is coextensive. Jones v. Sch. Dist. of Philadelphia, 198 F.3d 403, 409 (3d Cir. 1999). We also note that plaintiff has clarified in her response to the motion of defendant for summary judgment that she is not arguing that her initial selection for layoff in April, 2006 and contemporaneous transfer from Core MCP to CM&S was discriminatory. Accordingly, we need only decide whether Unisys is entitled to summary judgment with respect to plaintiff's claims of discriminatory discharge in June, 2006.

In the absence of direct evidence of age discrimination, the "slightly modified" version of the Supreme Court's McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) burden shifting analysis adopted by our Court of Appeals provides the controlling legal framework in this age discrimination in employment case. Connors v. Chrysler Fin. Corp., 160 F.3d 971, 973 (3d Cir. 1998); Anderson v. Consol. Rail Corp., 297 F.3d 242, 249 (3d Cir. 2002). The burden shifting analysis consists of three, distinct steps.

First, the plaintiff must prove her prima facie case by producing evidence that demonstrates:

- (1) she was a member of a protected class, i.e., that she was over 40 years old;
- (2) she was qualified for the position at issue;
- (3) she suffered an adverse employment action, i.e., she was discharged; and
- (4) she was replaced by a sufficiently younger person to create an inference of age discrimination.

Keller v. Orix Credit Alliance, Inc., 130 F.3d 1101, 1108 (3d Cir. 1997). Here, Unisys assumes, for purposes of its motion for summary judgment, that the plaintiff could produce evidence that would be sufficient to convince a reasonable factfinder to find all the elements of her prima facie case in connection with her termination. Thus, step one is not in issue.

Under step two of the analysis, the burden of production shifts from the plaintiff to the defendant. Unisys must come forward with evidence that is sufficient, if believed, to support a finding that it had a legitimate, nondiscriminatory reason for the plaintiff's discharge. Id. If Unisys fails to satisfy this burden, then judgment will be entered for the plaintiff. If Unisys meets this burden of going forward, then the plaintiff must produce evidence from which a factfinder could either: (1) disbelieve the employer's articulated legitimate reason; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action. Id. The non-moving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies,

incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could find them "unworthy of credence," thereby, permitting the inference that the employer acted with a discriminatory purpose. Fuentes v. Perskie, 32 F.3d 759, 765 (3d Cir. 1994).

Unisys contends that the plaintiff was selected for discharge in connection with a necessary reduction-in-force. Unisys relies on a decision of this court, which holds that the termination of an employee in conjunction with a financially necessary reduction-in-force constitutes a legitimate, non-discriminatory reason for the termination. Smith v. Thomas Jefferson Univ., No. 05-2834, 2006 WL 1887984, *4 (E.D. Pa. June 29, 2006).⁸

In Smith, the plaintiff worked as an administrative secretary for a Division of Surgery at Thomas Jefferson University. Her position was eliminated when two of the four doctors in the Division announced their departure. Given the expected loss in revenue, the Administrator of the Department concluded that the elimination of a position within the Department was financially necessary. The plaintiff's position

8. Unisys also relies on Williams v. Rumsfeld, 44 Fed. Appx. 592, 594 (3d Cir. 2002). We note that this is a non-precedential decision. Under the Court of Appeals' Internal Operating Procedures, judges are discouraged from relying on unpublished opinions. Third Circuit I.O.P. 5.7 states that the "Court by tradition does not cite to its not precedential opinions as authority. Such opinions are not regarded as precedents that bind the court because they do not circulate to the full court before filing."

was chosen for elimination because other staff members could reasonably assume her responsibilities and the plaintiff's departure would minimize disruption to patient care given that the plaintiff did not have patient contact. The court concluded that the employer met its "intermediate burden of articulating a facially legitimate, nondiscriminatory reason for Plaintiff's termination, namely that economics compelled it to make a RIF [reduction-in-force] and Plaintiff's position was least necessary to the ongoing operations of the Division." Id. at *4.

Here, Unisys submitted the affidavit of James Stevenson, the Vice President of Client Management & Support, in support of its motion for summary judgment. In his affidavit, Mr. Stevenson declares that Unisys lost a total of \$1.73 billion in the year 2005 and announced its intent, in November of that year, to reduce its workforce by ten percent over the next year. Unisys also submitted the "Unisys Layoff Assessment Matrix," which required Mr. Radvany to identify for layoff those employees whose selection would have the least impact on the business based on their skills, knowledge, abilities, demonstrated performance, and/or the relative contribution of their assignments. Pursuant to the Matrix, five of the six engineers in Software Support & Service Planning were selected for layoff, including the plaintiff. The only engineer retained, William Kammerle, possessed unique skills necessary for the business going forward. According to Mr. Radvany's assessment, none of the five "individuals selected for layoff possess[ed] the required

Networking domain knowledge and Networking support skill set required for the Networking Product Support position."

The plaintiff argues that inconsistencies and incoherencies exist which would allow a factfinder to disbelieve that she was terminated as part of the 2006 reduction-in-force or believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action.

First, the plaintiff contends that James Stevenson and Ernest Radvany gave inconsistent testimony as to who determined the criteria to be used for the 2006 layoff. According to the plaintiff, Mr. Stevenson and Mr. Radvany testified inconsistently at their depositions in that each asserted that the other person was responsible for determining the criteria to be used to make the layoff decision.

Unisys replies that a review of the deposition transcripts of Mr. Stevenson and Mr. Radvany as a whole reveals that both testified consistently. Mr. Stevenson stated at pages 52 and 62 of his deposition that he was responsible for deciding to eliminate Mr. Radvany's group in its entirety because the support work they performed could be assumed by Core MCP. Mr. Radvany confirms this account at page 30 of his deposition where he explained that Mr. Stevenson advised him that the responsibilities of his group would be assumed by Core MCP.

Both similarly testified that Mr. Radvany, the manager of the department, identified Mr. Kammerle as an employee with

essential and necessary specialist networking knowledge. Mr. Radvany made the decision that Mr. Kammerle should be spared from the reduction-in-force because of his superior networking skills.⁹

We conclude that the deposition testimony of Mr. Stevenson and Mr. Radvany on the subject of who was responsible for setting the criteria for the 2006 layoff reveals no inconsistency or incoherency which would allow a factfinder to disbelieve that the plaintiff was terminated in connection with the 2006 reduction-in-force.

Plaintiff also asserts that Mr. Radvany failed to seek information on her networking skills when he sought Ms. Mauer's input for the Layoff Assessment Matrix. According to the Layoff Assessment Matrix, Kammerle was retained because of his superior networking domain knowledge and networking support skills and, plaintiff argues that the record is devoid of evidence that she lacked networking skills.

However, as noted by Unisys, Mr. Radvany did not seek this information about plaintiff from other sources because he

9. Plaintiff summarily concludes that the alleged contradictions in Mr. Stevenson's and Mr. Radvany's testimony concerning who set the criteria for the layoff is evidence that the decision to keep Mr. Kammerle was made prior to the evaluation of plaintiff and her co-workers. First, the cited testimony does not demonstrate that Mr. Radvany had already made up his mind to identify Mr. Kammerle as the employee that should be retained. Second, even if Mr. Radvany had already made his decision regarding Mr. Kammerle's superior skills and, therefore, his importance to the company moving forward, this does not give rise to an inference of discriminatory motive.

already knew that she lacked networking strength. Furthermore, as noted by the Court of Appeals in Fuentes, a 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." Fuentes, 32 F.3d at 765. The Court does "not sit as a super-personnel department that reexamines an entity's business decisions." Smith, 2006 WL 1887984 at *5 (citing McCoy v. WGN Cont'l Broad. Co., 957 F.2d 368, 373 (7th Cir. 1992)). Plaintiff is essentially asking this court to second-guess Mr. Radvany's decision to retain Mr. Kammerle rather than her.

Furthermore, even had the plaintiff possessed the necessary skills for the position retained by Mr. Kammerle, Unisys would still retain the discretion to terminate her as part of the reduction-in-force. As the Court of Appeals explained, the "essence of a [reduction-in-force] is that competent employees who in more prosperous times would continue and flourish at a company may nevertheless have to be fired." Healy v. New York Life Ins. Co., 860 F.2d 1209, 1220 (3d Cir. 1988).

We conclude that Mr. Radvany's failure to seek input as to the plaintiff's networking skills is not evidence that would allow a factfinder to disbelieve that the plaintiff was terminated as part of the 2006 reduction-in-force or believe that her age was more likely than not a motivating or determinative cause of her termination.

In sum, the record is undisputed that the plaintiff's termination came about as a result of the troubling financial performance of Unisys. Plaintiff's age was not a determinative factor. Consequently, we will grant defendant's motion for summary judgment.

