

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

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|--------------------------------------|---|---------------------|
| JOANNE SKOWRONSKI JAMES, | : | CIVIL ACTION |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| TELEFLEX, INC., RONALD BOLDT, | : | |
| and RICHARD WOODFIELD, | : | |
| | : | |
| Defendants. | : | NO. 97-1206 |

MEMORANDUM

Reed, J.

December 22, 1998

Before the Court is the motion of defendants Teleflex, Inc. (“Teleflex”), Ronald Boldt (“Boldt”), and Richard Woodfield (“Woodfield”) for summary judgment on the claims of plaintiff Joanne Skowronski James (“James”). James filed a complaint in this Court asserting claims against Teleflex under the Age Discrimination in Employment Act (“ADEA”) as her First Cause of Action, against Teleflex under Title VII for sex discrimination as her Second Cause of Action, against Teleflex under the Americans with Disabilities Act (“ADA”) as her Third Cause of Action, against Teleflex for retaliation under the ADEA, Title VII, and the ADA as her Fourth Cause of Action, and against all of the defendants under the Pennsylvania Human Relations Act (“PHRA”) for retaliation and age, sex, and disability discrimination as her Fifth Cause of Action. Because I find that James has established the existence of genuine issues of material fact on all of her claims and that the defendants are not entitled to judgment as a matter of law except on the requests for punitive damages on all of her claims and on the claim for retaliation based on

events that occurred after her lay off on May 2, 1994, the motion of the defendants will be granted in part and denied in part.

I. BACKGROUND

The following facts are gleaned from the record and taken in the light most favorable to James, the nonmoving party. Immaterial facts and factual averments not properly supported by the record are omitted.

James is a former employee of The Pilling Company (“Pilling”), which manufactured and distributed medical and surgical instruments. (Defs.’ Ex. D, Stipulation of Facts of Teleflex). James worked in the human resources department of Pilling from 1983 until 1994.

During James’ tenure at The Pilling Company, it was bought and sold several times. Teleflex acquired Pilling in 1991, and Pilling retained its company name. (Defs.’ Ex. D). In December of 1993, Teleflex purchased the assets of the Edward Weck Company (“Weck”). Pilling and Weck merged their operations on or about December 22, 1993 to operate under the name of Pilling Weck, Inc. (Defs.’ Ex. D, Stipulation of Facts of Teleflex). Weck’s former headquarters in North Carolina was chosen as the site of the new company, and Ervin F. Portman, Jr. was selected to be the general manager of Pilling Weck. Due to redundancies in positions after the merger, Teleflex conducted a reduction in force in which a number of employees from Pilling Weck were laid off in late 1993 and early 1994.

In 1993 and 1994, David Boyer was the CEO and President of Teleflex. (Defs.’ Ex. G, Boldt dep. at 35-36). Defendant Woodfield was the president and CEO of the medical group at Teleflex, and defendant Boldt was the director of human resources of Teleflex. (Defs.’ Ex. E,

Woodfield dep. at 10; Defs.' Ex. G, Boldt dep. at 35-36). James was promoted to vice president of human resources in 1993, and as such, she was the only woman member of the executive team, which included employees who directly reported to the president of Teleflex. (Pl.'s Ex. 3, James Aff. ¶ 6).

James claims that despite excellent performance evaluations in 1992 and 1993 (Pl.'s Ex. 1 and 2), she was not permitted to participate in a training program for employees being groomed for the position of general manager, known as the Line Management Development Program. (Pl.'s Ex. 3; James Aff. ¶ 76). The Line Management Development Program, also known as the "Leadership Program," was designed by Boldt, and James claims that it explicitly limited participation to those employees "26 to 34 years of age." (Pl.'s Ex. 4; Pl.'s Ex. 5, James dep. at 123-25). In a memorandum to the senior management team, Woodfield wrote that the purpose of the Program was to "identify a cadre of young managers for future development," although he mentioned that he was interested in "development of key managers above the 34 year old level." (Pl.'s Ex. 4).

James asserts that of the twenty-eight employees who were permitted to participate in the Line Management Development Program, all were under the age of 40, and all but five were men. (Pl.'s Ex. 6). Of the five women in this program, three were in their twenties. (Pl.'s Ex. 6). James claims that the president of Pilling, John Chester, told her that she was too old to participate in the program according to the guidelines set by Boldt and Woodfield. (Pl.'s Ex. 5, James dep. at 123-25).

James also alleges that she was excluded from a training program named the "Seed and Feed" program. David Boyer, the president and CEO of Teleflex, testified in his deposition that

Boldt was primarily responsible for the program, and that the goal of the program was to hire graduates with M.B.A.'s to "seed the corporation with young executives" that Teleflex could train. (Pl.'s Ex. 15, Boyer dep. at 30-34). The participants in this program were all under the age of 40, and three of the twelve selected were women, all in their twenties. (Pl.'s Ex. 3, James Aff. ¶ 79; Ex. 6).

Teleflex required its employees to take a personality test called the Individual Activity Vector Analysis ("AVA"). James claims that Boldt referred to the results of her AVA in a way which humiliated and embarrassed her. (Pl.'s Ex. 3, James Aff. ¶¶ 80- 81). At a meeting on October 20 and 21, 1993 with numerous Teleflex executives present, Boldt discussed the fact that the AVA could change for employees undergoing major life changes, which happened to an unnamed employee. Boldt mentioned this again at a meeting in 1994 and stated that one employee's divorce had caused her AVA to change. James claims that it was apparent that Boldt was referring to her because five people who attended the meeting informed her of what happened at the meeting and that they knew Boldt was referring to her. (James dep. 132-44).

In November of 1993, James Yonchek, a Teleflex employee, informed James that her position would be eliminated as a result of the merger between Weck and Pilling and that she would be offered a six month severance package. (Pl.'s Ex. 3, James Aff. ¶ 8 and ¶ 10). Yonchek delivered this message to James on direction from Woodfield. (Pl.'s Ex. 7, Yonchek dep. at 63-64). At the time, the merger had not yet been announced or finalized. (Pl.'s Ex. 3, James Aff. ¶ 8). When Teleflex and Pilling issued formal announcements of the merger with Weck in November of 1993, it indicated that David Williams would serve as the director of human resources. (Pl.'s Ex. 8).

After being notified of her termination by Yonchek, James met with Boldt to discuss why she had not been considered for another position, given her twenty-one years in human resources. (Pl.'s Ex. 3, James Aff. ¶¶ 11-13). Boldt said that Woodfield made the decision and that it was related to her personal financial situation related to the divorce. (Id.) Boldt informed her she would only receive eleven weeks severance pay. (Pl.'s Ex. 3, James Aff. ¶ 14).

James then talked to Woodfield, who denied having made the decision to terminate her. (Pl.'s Ex. 3, James Aff. ¶ 15). Woodfield told James that he would look into the matter and she should not worry because he wanted her to help with the consolidation of the merging companies and that she would “land on her feet.” (Pl.'s Ex. 3, James Aff. ¶¶ 15-17).

After James' conversation with Woodfield, Erv Portman, general manager of Teleflex, called James and apologized that her situation had not been handled properly. (Pl.'s Ex. 3, James Aff. ¶ 18). In December of 1993, James and Portman met and James challenged the decision to eliminate her position. (Pl.'s Ex. 3, James Aff. ¶ 19). Portman agreed not to lay off James and presented her with four options: (1) take a human resources position in North Carolina,¹ (2) interview for a position that might be available in Troy, Michigan, (3) take the position of Director of Compensation- Employee Relations in Limerick, Pennsylvania, or (4) leave the company with a severance package. (Pl.'s Ex. 3, James Aff. ¶ 19).

The defendants claim that James was offered the position in North Carolina as the top human resources position in Pilling Weck over her counterpart from Weck, David Williams. This offer was confirmed in a letter to James from Boldt dated December 22, 1993. (Defs.' Ex.

¹ This is purportedly the same position that was filled by David Williams according to the November 1993 press release about the merger. (Pl.'s Ex. 8).

I). The defendants claims that James accepted the offer, and then after some delay, she rejected the offer on December 30, 1993. In addition, Boldt claims that he helped plaintiff to get an interview for the position in Troy, Michigan, but that plaintiff decided she could not relocate to Troy. (Defs.' Ex. G, Boldt dep. at 414-416).

James claims that Boldt was aware in mid-December that James would be unable to accept the positions in Troy or North Carolina, as evidenced by a memorandum he sent to Woodfield dated December 14, 1993 which stated that “[James’] personal life may affect her ability to relocate if her husband doesn’t agree to sell the house.” (Pl.’s Ex. 9; Pl.’s Ex. 3, James Aff. ¶ 20). While she was considering the offers, James asked Boldt to confirm the offer of the position in Limerick, Pennsylvania in writing, which he did in a letter dated December 29, 1993. (Pl.’s Ex. 3, James Aff. ¶ 21; Pl.’s Ex. 10). James claims that because she was assured of the position in Limerick and because her estranged husband would not agree to allow her to relocate, she turned down the position in North Carolina and accepted the position in Limerick. (Pl.’s Ex. 3, James Aff. ¶ 23). James’ original position at Pilling Weck was temporarily extended so that she could handle the reduction in force before moving to the Limerick position. (Pl.’s Ex. 3, James Aff. ¶ 24).

In late 1993, as James was processing the salary increases for January 1, 1994, she noticed that she was the only vice president that was not receiving a salary increase. (Pl.’s Ex. 3, James Aff. ¶ 26). Boldt told James that she was not eligible for a raise because she was over the salary maximum for the position in Limerick. (Pl.’s Ex. 3, James Aff. ¶ 27). James contends that this criteria had never been applied before to merit increases. (Pl.’s Ex. 3, James Aff. ¶ 27).

Through conversations with other Teleflex employees, James began to suspect that there

was no position for her in Limerick. (Pl.'s Ex. 3, James Aff. ¶ 29-33). At a meeting on March 17, 1994, Boldt told James that he was not sure she could fit in with the corporate culture in Limerick as she was "aggressive," "assertive," and had a "high energy level." (Pl.'s Ex. 3, James Aff. ¶ 35). Boldt questioned if James would be right for the position in light of her AVA and the fact that she was used to having a secretary. (Pl.'s Ex. 3, James Aff. ¶¶ 35-36). Boldt informed James that if Kathy Lavarty did not move out of her position at Limerick, there would be no position for James at Limerick. (Pl.'s Ex. 3, James Aff. ¶ 34). James discussed her options with Boldt at that meeting including her need to secure continued medical benefits to cover the treatment of Von Willebrand's disease. (Id.)

In late March, James learned that Lavarty was offered another position, and James told Boldt that she was confident she could handle the position in Limerick. (Pl.'s Ex. 3, James Aff. ¶¶ 40-41). Boldt informed James for the first time that she would not be eligible for an automobile allowance, that she would not be eligible for salary increases for approximately six years, and that her benefits level would decrease in the new position. (Pl.'s Ex. 3, James Aff. ¶ 42). Immediately after this meeting with Boldt, James began to experience heart palpitations and an inability to move her right hand and shoulder. (Pl.'s Ex. 3, James Aff. ¶ 44). She consulted with Dr. Hyatt, the company doctor, who placed her on a heart monitor on April 13 and 14, 1994. (Pl.'s Ex. 3, James Aff. ¶ 45).

On April 13, 1994, James informed Boldt that she was under the care of Dr. Hyatt, the company doctor, and that on the doctor's advice, she was going to take time off work while waiting for results of tests on her heart. (Pl.'s Ex. 3, James Aff. ¶ 47). Boldt told her to take the time off and not to count those days as vacation days. (Pl.'s Ex. 3, James Aff. ¶ 47). James saw

Dr. Hyatt on April 25, 1994, and he advised her that she was unable to work due to stress. (Pl.'s Ex. 3, James Aff. ¶ 51). James reported this to Yonchek at Pilling. (Id.)

Because James was concerned that Boldt was going to terminate her employment at Limerick, James met with Woodfield on April 26, 1994, while she was out on medical leave. (Pl.'s Ex. 3, James Aff. ¶ 52). Woodfield assured James that if Boldt tried to “manage her out,” she would still be eligible for a severance package. (Pl.'s Ex. 3, James Aff. ¶ 53). Woodfield suggested that James ask Boldt to call Woodfield, and that they would write a confirmation letter to James. (Pl.'s Ex. 3, James Aff. ¶ 54). James relayed this message to Boldt on April 27 or 28, 1994 and advised him of her current medical condition. (Pl.'s Ex. 3, James Aff. ¶ 55).

James was told by Boldt's secretary to meet with him on May 2, 1994. James believed she would be receiving a letter setting forth the terms of the severance package if the Limerick position did not work out. (Pl.'s Ex. 3, James Aff. ¶ 56). Instead, Boldt informed James that she was being laid off. (Pl.'s Ex. 3, James Aff. ¶ 58). Boldt offered James a termination package if James would sign a release at that time, but James refused to sign the release. (Pl.'s Ex. 3, James Aff. ¶ 60). James, born on August 8, 1949, was 44 years old at the time.

James claims that she had already accepted the position at Limerick on May 2, 1994, when Boldt terminated her. (Defs.' Ex. C, James dep. at 112). The defendants argue that James had not accepted the offer, and Boldt rescinded the offer on May 2, 1994. James claims that she was replaced by a younger woman, named Sandy Shook, aged 40, in that Shook assumed some of the employee relations and compensation duties James had performed. (Pl.'s Ex. 11, Maureen Platt Aff. ¶ 2-9). In addition, James asserts that Boldt hired a male, Douglas Forde, to fill her position in Limerick, Pennsylvania. The defendants claim that Forde was almost two years older

than James. (Defs.' Ex. G, Boldt dep. at 308; Defs.' Ex. K).

The severance package James ultimately received was eleven weeks pay, which was less than that offered to other younger male employees, whom James' lists in her affidavit. (Pl.'s Ex. 3, James Aff. ¶ 85, 86-97). James asserts that these employees were given severance pay of longer than one week for each year of service at the company, which is what her package represented. (Defs.' Ex. C, James dep. at 185-188). The defendants claim that only two other men received salary continuances that were equal to the six months offered to James, and that these individuals did not receive automobile allowances or outplacement support which were offered to James. The defendants explain that some employees were offered enhanced severance packages in exchange for executing a severance agreement and release. Because James refused to execute such a release, she did not receive an enhanced package. (Defs.' Ex. K, Verified Statement of Sandra Shook ¶ 3).

James made a claim for disability benefits with Teleflex in the summer after her layoff based on complications from Von Willebrand's disease, clinical depression, and Lyme disease. Several weeks after her layoff, James gave her former secretary notes from Dr. Hyatt dated April 25, 1994, May 10, 1994, and May 18, 1994 and asked her to give them to James Yoncheck, who was then the controller for Pilling. (Defs.' Ex. C, James dep. at 163-64, 230).

After her layoff, James retained counsel who sent a letter dated June 2, 1994 to Teleflex on behalf of James complaining of discrimination based on age, sex, and disability. (Pl.'s Ex. 20). After she was laid off and her counsel had sent the letter complaining of discrimination, James claims that the defendants retaliated against her by incorrectly calculating her severance pay, miscalculating her vacation pay, mishandling her disability claim, mishandling her loan

from her 401(k) plan, failing to notify her of benefit plan changes, and failing to pay plaintiff for sick days. (Pl.'s Ex. 3, James Aff. ¶¶ 65-74).

As for the mishandling of James' disability claim, Boldt denied receiving the medical information that James submitted to the company. (Pl.'s Ex. 3, James Aff. ¶ 66). Boldt initially told James that she could not go on disability leave because she gave notice to the wrong people and had not asked to be put on disability. (Pl.'s Ex. 3, James Aff. ¶ 67). James claims she had to obtain a disability claim form directly from the insurance company because she could not obtain one from the defendants. (Pl.'s Ex. 3, James Aff. ¶ 68).

The defendants claim that the problems with the loan from James' 401(k) plan spring from the difficulty James had in obtaining spousal consent and the fact that the bank which was the plan trustee imposed a black out period from October 1, 1994 until December 31, 1994 on all loans. (Defs.' Ex. R, Statement of Lori Fluck at ¶¶ 2-3, 4-6, 13). The defendants claim that James' account was fully credited and James was made whole, as reflected in a statement of her account from September 17, 1995. (Statement of Lori Fluck ¶¶ 14-15).

II. STANDARD

Rule 56(c) of the Federal Rules of Civil Procedure provides that "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" then a motion for summary judgment may be granted.

The moving party has the initial burden of illustrating for the court the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Adickes

v. S.H. Kress & Co., 398 U.S. 144, 159-161 (1970). The movant can satisfy this burden by “pointing out to the district court that there is an absence of evidence to support the nonmoving party’s case;” the movant is not required to produce affidavits or other evidence to establish that there are no genuine issues of material fact. Celotex, 477 U.S. at 323-25.

Once the moving party has made a proper motion for summary judgment, the burden switches to the nonmoving party. Under Rule 56(e),

[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

The court is to take all of the evidence of the nonmoving party as true and to draw all reasonable inferences in her favor in determining if there is a genuine issue of material fact. See Adickes, 398 U.S. at 158-59. In order to establish that an issue is genuine, the nonmoving party must proffer evidence such that a reasonable jury could return a verdict in her favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). A proper motion for summary judgment will not be defeated by merely colorable or insignificantly probative evidence. See id. at 249-50.

III. ANALYSIS

Courts have uniformly interpreted the PHRA consistent with Title VII, the ADA, and the ADEA. See Kelly v. Drexel University, 94 F.3d 102, 105 (3d Cir. 1996) (claims for discrimination under the PHRA are subject to the standards for claims under the ADA and the ADEA); Clark v. Commonwealth of Pennsylvania, 885 F. Supp. 694, 714 (E.D. Pa. 1995)

(noting the courts have uniformly held that the PHRA is interpreted consistently with Title VII). Thus, I will analyze James' claims only under the ADEA, Title VII, and the ADA; however, my analysis and conclusions as to each type of claim are equally applicable to James' claims under both the federal statutes and the PHRA.

A. Claim for Age Discrimination under the ADEA

Under the ADEA, a plaintiff can sustain an age discrimination claim by either presenting direct or circumstantial evidence. A direct evidence case of age discrimination exists when "the evidence the plaintiff produces is so revealing of discriminatory animus that it not necessary to rely on any presumption from the prima facie case to shift the burden of production."

Armbruster v. Unisys Corp., 32 F.3d 768, 778 (3d Cir.1994). See also Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 121 (1985) (holding that a policy that allows captains who become disqualified for any reason other than age to "bump" less senior flight engineers was discriminatory on its face and thus, direct evidence of age discrimination).

In an oft-quoted passage, Justice O'Connor provided guidance on what constitutes direct evidence of discrimination in her concurrence in Price Waterhouse v. Hopkins:

[S]tray remarks in the workplace, while perhaps probative of [a discriminatory animus], cannot justify requiring the employer to prove that its [employment] decisions were based on legitimate criteria. Nor can statements by nondecisionmakers, or statements by decisionmakers unrelated to the decisional process itself, suffice to satisfy the plaintiff's burden in this regard. . . . What is required is . . . direct evidence that decisionmakers placed substantial negative reliance on an illegitimate criterion in reaching their decision.

490 U.S. 228, 277 (1989) (O'Connor, J., concurring). See also Schiwall v. American Packaging Corp., No. 95-7190, 1997 WL 36971, at *4-5 (E.D. Pa. Jan. 30, 1997) (finding comments made

by supervisor months before termination of the plaintiff and unrelated to the decision to terminate the plaintiff were insufficient to constitute direct evidence of age discrimination); Sosky v. International Mill Service, Inc., No. 94-2833, 1996 WL 32139, at *3-4 (E.D. Pa. Jan. 25, 1996) (holding that comments that did not relate to age on their face, were temporally remote from plaintiff's termination, and were not related to the decision to eliminate plaintiff's position were not direct evidence of age discrimination), aff'd, 103 F.3d 114 (3d Cir. 1996).

James contends that she has direct evidence of discrimination on her age discrimination claims in that the Line Management Development Program developed by Boldt and Woodfield was designed to weed out older executives and replace them with younger managers. Boldt testified at his deposition that a candidate's age was a factor because of younger candidates' flexibility to move to all regions of the world on a moment's notice. (Pl.'s Ex. 13, Boldt dep. at 46-47).² Boldt testified that there is no similarly structured program for the advancement of employees of Teleflex over the age of 34. (Pl.'s Ex. 13, Boldt dep. at 496-97). Boldt also testified that Teleflex continues to classify its employees as "junior people" and "senior people." (Pl.'s Ex. 13, Boldt dep. at 497-99). Dennis Kogod, an employee who was selected for the program, testified that he had been referred to around the office as "a member of the under-40 club." (Pl.'s Ex. 14, Kogod dep. at 50). James testified that John Chester told her that she did not qualify for the program because she did not fall within a specific age category. (Pl.'s Ex. 5, James dep. at 123-24).

In addition, James argues that the Seed & Feed program at Teleflex is direct evidence of

² James quotes this portion of Boldt's deposition testimony in her brief, but she does not attach a copy of these pages of the transcript in Ex. 13.

age discrimination. The Seed & Feed program was conceived by Boldt, and James contends that it officially favored younger and male employees over older females. Of the twelve participants selected, all were under the age of 40.

Taken in the light most favorable to James, although this evidence is direct evidence that the defendants took age into account in the Line Management Development Program and the Seed and Feed Program,³ it is not direct evidence that the defendants took age into account in the decision to terminate James. The development of these programs took place years before the decision by Boldt to terminate James. I conclude that the evidence of the Line Management Development Program and the Seed and Feed program submitted by James is not direct evidence of age discrimination.

Alternatively, James argues that she has produced sufficient evidence to establish a prima facie case and to establish that Teleflex's reasons for her termination were pretextual. Where there is no direct evidence of age discrimination, a plaintiff may still prevail by presenting circumstantial evidence under the burden shifting analysis of McDonnell Douglas. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Under a McDonnell Douglas framework, a plaintiff must first present a prima facie case by establishing, by a preponderance of the evidence, that (1) she belongs to the protected class, i.e., that she is over 40 years old, (2) she was qualified for the position in question, (3) the job she occupied was eliminated or she suffered

³ Any claim for age discrimination James may have had based on her exclusion from these programs is time barred because she did not file an administrative charge within 300 days of the event. See 42 U.S.C. § 2000e-5(e). However, James may use these programs as circumstantial evidence of age animus on her claim that she was terminated in violation of the ADEA. See Sempier v. Johnson & Higgins, 45 F.3d 724, 730 (3d Cir. 1995) (“The statute of limitations for filing a charge of discrimination may have barred our consideration of [an event falling outside of 300 days] if that was [the plaintiff’s] cause of action, but it does not prevent us from considering that event in order to determine whether [the plaintiff] has raised an inference of [discrimination as a part of his prima facie case.”)

from an adverse employment decision, and (4) other similarly situated workers not in the protected class were retained and the duties of the plaintiff were subsumed by persons not in the protected class. See Lawrence v. National Westminster Bank N.J., 98 F.3d 61, 65-66 (3d Cir.1996) (citing Sempier v. Johnson & Higgins, 45 F.3d 724, 728 (3d Cir.1995)); Torre v. Casio, Inc., 42 F.3d 825, 830-31 (3d Cir. 1994). In the context of a reduction in force case, a plaintiff need not show that she was actually replaced by someone outside the protected class; rather, a plaintiff must show that others not in the protected class were treated more favorably. See Massarsky v. General Motors Corp., 706 F.2d 111, 118 (3d Cir. 1983).

There is no dispute that James satisfies the first two prongs of her prima facie case. As for the third prong, James claims that she was terminated because of her age and that she received a lower severance package than other younger employees. The defendants argue that James has no evidence to support the fourth prong of her prima facie case of age discrimination. The defendants argue that James was offered the top human resources position, and after she rejected it for personal reasons, the position was given to David Williams, who was older than James. The position in Limerick that James claims she accepted in December 1993 was later filled by Douglas Forde, who was older than James. Finally, the defendants contend that Sandra Shook cannot be considered to be James' replacement because her position was not similarly situated to James' former position.

I conclude that James has produced sufficient evidence to create a genuine issue of material fact on the fourth prong of her prima facie case. Genuine issues of material fact exist at least as to whether younger males received better severance packages than James, the ages of the employees who James contends replaced her, and whether some of James' duties were assumed

by Sandra Shook, who was under the age of 40. I conclude that this evidence, along with the evidence of the Line Management Development Program and the Seed and Feed Program developed by Boldt and Woodfield, when viewed in the light most favorable to James, permit a reasonable inference of age discrimination.

The defendants argue that even if James can sustain a prima facie case of age discrimination, she does not have evidence to establish that the reasons proffered by them for her termination were pretext for discrimination. This issue is addressed below.

B. Claim for Sex and Sex-plus Age Discrimination under Title VII

James asserts claims under Title VII for sex and sex-plus age discrimination in her response to the motion for summary judgment. The Supreme Court first recognized a cause of action for “sex-plus” discrimination in Phillips v. Martin Marietta Corp., 400 U.S. 542 (1971). Claims for sex-plus age discrimination have been recognized as viable claims under Title VII in this district. See McGrenaghan v. St. Denis School, 979 F. Supp. 323, 327 (E.D. Pa. 1997); Arnett v. Aspin, 846 F. Supp. 1234, 1239-40 (E.D. Pa. 1994). Although James does not specifically designate one of the counts of her complaint as “sex-plus age discrimination,” she does allege violations of both Title VII and the ADEA, and she did make allegations in her charge to the PHRC that younger women and males were given preferential treatment and that she was discriminated against because she was an “older woman.” (Defs.’ Ex. B at 11). Thus, I find that James has exhausted her administrative remedies and sufficiently pled a cause of action for sex-plus age discrimination.

James claims that the Line Management Development Program is direct evidence of sex

and sex-plus age discrimination in that only four of the participants were female, and none of the participants in the Line Management Development Program were females over 40 years old. James also argues that the Feed & Seed program is direct evidence of sex and sex plus age discrimination. Of the twelve participants in the program, only three were women and all three were in their twenties. For the reasons given in the discussion of James' claims under the ADEA, supra, section III.A, I conclude that James did not produce direct evidence of sex or sex-plus age discrimination in relation to her termination.

Alternatively, James contends she has evidence to support prima facie claims for sex and sex-plus age discrimination. To establish a claim for sex or sex-plus age discrimination under Title VII, a plaintiff must show that: (1) she is a member of a protected class; (2) she was qualified for the position; (3) she was discharged from or denied the position, or suffered an adverse employment consequence; and (4) that non-members of the protected class were treated more favorably. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973); Robinson v. City of Pittsburgh, 120 F.3d 1286, 1300 (3d Cir. 1997). To support a finding that other employees were treated more favorably, a plaintiff must present evidence such that a jury could reasonably infer that her discharge, or adverse employment action, was the result of discrimination. See Phillips v. Dalton, 1997 WL 24846, *3 (E.D. Pa.) (noting that "plaintiff must show that [s]he was terminated 'under circumstances which give rise to an inference of unlawful discrimination'") (quoting Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981)), aff'd, 151 F.3d 1026 (3d Cir. 1998).

There is no dispute that James satisfies the first two prongs of her prima facie case. As for the third prong of her claim of sex discrimination, James claims that she was terminated, that

she received a smaller severance package than men who were terminated at that time, and that she did not receive a salary increase in 1994 while men did. To satisfy the fourth prong of her claim for sex discrimination, James alleges that she was the only female on the executive team who was laid off as a result of the merger. James claims that a male was ultimately hired for the position in Limerick, Pennsylvania. James also points out that at least thirteen other men were given more generous severance packages than the eleven weeks of severance offered to James.

The defendants argue that James does not have evidence to raise an inference of sex or sex-plus age discrimination because although David Williams, a male, eventually filled the top human resources position after the merger, it was only after James was offered the position and she rejected it. In response to James' claim that she was paid less than men in comparable positions, the defendants contend that none of the other members of the staff were similarly situated to James because they had different levels of experience and education. The defendants argue that James did not receive a merit increase in 1994 because she was no longer an employee of Pilling Weck as of December of 1993, and the position that she purportedly accepted at that time was with Teleflex Corporate Human Services. Thus, the defendants argue that James cannot compare herself with employees of Pilling Weck.

I conclude that there are genuine issues of material fact precluding summary judgment on James' claim of sex discrimination. Genuine issues of material fact remain at least as to whether James rejected the offer for the position in North Carolina before it was given to David Williams, whether the males who received higher salaries or higher severance packages than James were similarly situated to her, and whether James had accepted the position at Limerick which would have entitled her to a merit salary increase in January of 1994. Viewing the evidence presented

on these issues in the light most favorable to James, I conclude that she was satisfied her burden to produce evidence to permit an inference of sex discrimination.

As for the fourth prong of her prima facie case of sex plus age discrimination, James produced evidence that her duties were assumed by a younger female and a male employee and that of the executive team, she was the only female over 40 selected for layoff. In addition, she produced evidence that only males and younger females were selected for the Line Management Development Program and the Seed and Feed program. As noted above, genuine issues of material fact exist regarding whether James accepted any of the positions offered by the defendants and whether any of James' duties were assumed by a man or a younger woman. Taking all reasonable inferences in favor of James, I conclude that she has produced sufficient evidence on her sex-plus age discrimination claims such that a reasonable jury could draw an inference of unlawful discrimination.

The issue of whether James has produced evidence sufficient to establish pretext on her sex and sex-plus age discrimination claims will be discussed below.

C. Claim for Disability Discrimination under the ADA

To make out a prima facie case under the ADA, the plaintiff must prove that (1) she is disabled within the meaning of the ADA; (2) she is qualified, with or without reasonable accommodation, to perform the job she held or sought; and (3) she was terminated and replaced by a person outside the protected class or that she suffered an adverse employment action. See McGrenaghan v. St. Denis School, 979 F. Supp. 323, 325 (E.D. Pa. 1997) (citing Olson v. G.E. Astropace, 101 F.3d 947, 951 (3d Cir.1996)). To show disability to satisfy the first prong of the

prima facie case, a plaintiff must show that she has (1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual, (2) a record of such impairment, or (3) been regarded as having such an impairment. See 42 U.S.C. § 12102(2).

“Where a hiring decision is based largely or entirely on a recommendation or evaluation made by an employee who perceived the applicant as disabled, the employer can be held liable in a perception case.” Olson, 101 F.3d at 955.

An individual is substantially limited in a major life activity if she is “unable to perform an activity that the average person in the general population can perform” or is “significantly restricted as to the condition, manner, or duration under which she can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform the same major life activity.” Kelly v. Drexel University, 94 F.3d 102, 105 (3d Cir. 1996) (quoting 29 C.F.R. § 1630.2(j)).

Under the burden shifting framework, once a plaintiff has made out a prima facie case of disability discrimination, the burden shifts to the defendant to articulate a legitimate nondiscriminatory reason for the employment action. Then a plaintiff must establish that the defendant’s proffered reason is a pretext for discrimination. The issue of pretext will be discussed below.

The defendants argue that James has submitted no evidence to establish that she was disabled at the time of her layoff on May 2, 1994 in that she did not have a physical or mental impairment that substantially limited one or more major life activities. The defendants claim that James has suffered from Von Willebrand’s disease all of her life and that she suffered no problems from her Von Willebrand’s disease in 1994. (Defs.’ Ex. O, Hyatt dep. at 35-36). The

defendants contend that James did not suffer from the symptoms of Lyme disease until early June 1994 (Defs.' Ex. P), and that her depression was temporary and episodic and did not affect her at the time of her layoff. (Defs.' Ex. O). In addition, the defendants claim that they did not know that James was suffering from depression and Lyme's disease until after her layoff when she applied for disability benefits.

James attests in her affidavit to the way that her medical conditions affected her ability to perform daily activities at the time of her layoff. James was ultimately deemed disabled by her insurer, and received disability benefits. (Pl.'s Ex. 3, James Aff. ¶¶ 100-10). James also submits medical records indicating her treatment for depression in April and May of 1994. (Pl.'s Ex. 22).

James claims she asserted her right to a reasonable accommodation in April of 1994 when she took days off for her medical condition and then kept Boldt informed of the condition. James discussed her Von Willebrand's disease with Boldt as early as March of 1994. Boldt testified that he called a doctor to inquire about James' Von Willebrand's disease the week before he terminated her. (Pl.'s Ex. 13, Boldt dep. at 436-37). Boldt also contacted Independence Blue Cross to request medical information on James in June of 1994. (Pl.'s Ex. 28). Boldt testified that he observed James wearing a heart monitor in April of 1994. (Pl.'s Ex. 13, Boldt dep. at 436-37).

I conclude that there is a genuine issue of material fact as to whether James was disabled or perceived to be disabled by the defendants at the time of her layoff in that James produced evidence of the affect of her medical condition on her daily life and that Boldt knew of at least some of her conditions at the time he made the decision to terminate her.

James claims that she satisfied the second prong of her prima facie case because she was

a qualified individual with a disability because she could perform her job with the accommodation that she be given some time off to recuperate. The defendants do not contend otherwise.

The defendants argue that even if James has evidence to show that she was disabled, she has no evidence to support the third prong of her prima facie case, that she was terminated or suffered an adverse employment consequence because of her disability. James argues that she was replaced with a person outside the protected class, which raises an inference of discrimination. James argues that there is a issue of fact as to when she was terminated because Teleflex had a policy in place that employees who were laid off due to the reduction in force were eligible for recall for six months, after which time they would be terminated. (Pl.'s Ex. 25). James argues that under this policy, her date of termination was not until November 2, 1994. Douglas Forde assumed what would have been James' duties in Limerick and Shook assumed some of James' regular job duties before November 2, 1994.

I conclude there is a genuine issue of material fact as to whether any of James' duties were assumed by persons outside the protected class and whether the decision to terminate James was affected by the fact that she was disabled or perceived to be disabled by the defendants. Thus, James has established a prima facie case of disability discrimination.

D. Claim for Retaliation

Title VII prohibits employers from retaliating against employees who have "opposed any practice made unlawful employment practice by [Title VII], or because [the employee] has made a charge, testified, assisted, or participated in any manner in an investigation, proceedings or

hearing under [Title VII].” 42 U.S.C. § 2000e-3(a). Under the applicable McDonnell Douglas model, to establish a prima facie case of retaliation, an employee must show (1) she engaged in activity protected under Title VII, (2) that the employer took an adverse employment action against her, and (3) a causal connection between her protected activity and the adverse employment action. See Nelson v. Upsala College, 51 F.3d 383, 386 (3d Cir. 1995). Once the plaintiff has met this burden, the defendant has the burden to produce a legitimate, nondiscriminatory reason for the employment action. See Quiroga v. Hasbro, Inc., 934 F.2d 497, 501 (3d Cir.), cert. denied, 502 U.S. 940 (1991). Then the plaintiff must demonstrate that the defendant’s reason is a pretext for retaliation. See Waddell v. Small Tube Prods., Inc., 799 F.2d 69, 73 (3d Cir. 1986). The issue of pretext will be discussed below.

The Court of Appeals for the Third Circuit has held that informal protests of discrimination, such as complaints to management, rise to the level of protected activity. See Barber v. CSX Distribution Services, 68 F.3d 694, 702 (3d Cir. 1995) (citing Sumner v. United States Postal Service, 899 F.2d 203, 209 (2d Cir. 1990)).

As for the first prong of the prima facie case, the defendants argue that James did not file her charge of discrimination until August 12, 1994, and Teleflex did not receive notice of the charge until November of 1994. However, the defendants note that it received a letter from James’ counsel dated June 2, 1994 alleging claims for age, gender, and disability discrimination. (Defs.’ Mem. at 53 n.27). In addition, James discussed her Von Willebrand’s disease with Boldt as early as March of 1994 and claims she kept him informed of her condition throughout April of 1994. I conclude that James has satisfied her burden to show that she engaged in protected activity at least by March of 1994.

As for the second prong, James claims that her termination, as well as the mishandling of her benefits and disability claim constitute adverse employment actions. The defendants counter that each allegation of retaliatory conduct by James was rectified by the defendants and thus, James did not suffer an adverse employment decision. The defendants' argue that the alleged miscalculation of James' severance pay was raised to defendants' counsel by James' counsel and ultimately resolved by the parties' counsel, so there is no suggestion that Boldt or Teleflex were retaliating against James. (Defs.' Ex. Q). The defendants claim that the miscalculations of her benefits were due to James' failure to submit a short term disability claim until after her layoff. The defendants' contend that all these issues were ultimately resolved to James' satisfaction. (Defs.' Ex. C, James dep. at 238).

As to the third prong, James argues that a causal connection can be shown between her protected activity and the adverse employment actions because of the close temporal proximity between her notifying Boldt of her disability and her termination and between notifying the defendants, through her counsel, of her claims of discrimination and the acts of the defendants in processing her severance, vacation, and sick pay and her disability claim. The defendants argue that there is no causal connection between James' protected activity and these acts of alleged retaliation because all were administrative errors.

I conclude that there are genuine issues of material fact on the second and third prongs of James' prima facie case. Genuine issues of material fact remain as to whether James was fully paid her various benefits, as to why the various benefits and loan from her 401(k) were delayed, as to whether James was partly responsible for the delay or miscalculation of her benefits in that she failed to notify Teleflex that she was applying for disability benefits, as to whether James'

informing Boldt of her disability affected his decision to terminate her, and as to whether James' assertion of her claims against the defendants affected the defendants handling of her benefits or disability claim. Taken in the light most favorable to James, this evidence is such that a reasonable jury could conclude that James had presented a prima facie case of retaliation.

E. Pretext

The defendants claim that even if James can produce evidence to support prima facie cases on her claims of retaliation and age, sex, sex-plus age, and disability discrimination, she cannot show that the defendants proffered reasons for their actions were pretext for discrimination. The defendants have offered several reasons for James' discharge: (1) that she was being laid off because of the merger, (2) that she was manipulating Boldt in order to get a better deal behind his back, and (3) that she was laid off because she failed to accept the positions in North Carolina and Limerick that were held open for her for several months. (Pl.'s Exs. 17, 18, and 19). In addition, Boldt contends that he terminated James because "red flags" had appeared to him in months leading up to James' termination. Boldt believed that James had misled him as to why she remained at the Ft. Washington location of Pilling Weck after the position in Limerick became available, that James had misled him into thinking that she had called George Hofman about the Troy, Michigan position, and that James had misled him into thinking that John Dinofrio, the director of finance at Pilling Weck, had advised Portman to fire David Williams. James denied all three of these allegations in her deposition testimony. (Pl.'s Ex. 5, James dep. at 179-80, 98, 178-79). The defendants also assert other reasons for James' termination in their brief, including that James went to Woodfield for severance guarantees

behind Boldt's back and that she told Woodfield that she did not trust Boldt anymore. James contends that Boldt himself denied in his deposition testimony that he asked Woodfield whether James had discussed Boldt during her discussion with Woodfield. (Pl.'s Ex. 13, Boldt dep. at 240, 247).

James counters that she has produced evidence sufficient to discredit Teleflex's proffered reasons for her discharge and other adverse employment decisions. James claims that the defendants are manufacturing multiple reasons for her termination, all of which are pretext for discrimination. Boldt testified that he consulted with Woodfield before terminating James. (Pl.'s Ex. 13, Boldt dep. at 240-45, 247-48). Woodfield, however, testified that he was not consulted by Boldt before James' termination. (Pl.'s Ex. 12, Woodfield dep. 140). James argues that Boldt's purported reasons for her termination are undocumented and constantly changing.

I conclude that James has satisfied her burden to show pretext sufficient to survive summary judgment on her claims of age, sex, sex-plus-age, and disability discrimination, as well as her claim that her termination was in retaliation for protected activity. I find that there are genuine issues of material fact regarding why plaintiff was laid off which go to whether Teleflex's reason for laying off James was pretextual for discrimination. Specifically, there are genuine issues of material fact regarding the reasons proffered by Boldt for his mistrust of James, not as to whether these were sound business reasons, but whether there are inconsistencies in these reasons indicating that they are not the real motivation for James' termination. There is a genuine issue of fact as to whether the defendants offered positions to James in North Carolina and Limerick that were open and available for her to accept, and whether James had accepted the position in Limerick before she was terminated. Viewed in the light most favorable to plaintiff,

the various reasons proffered by the defendants for James' termination at the time of her termination and throughout this litigation, while not necessarily inconsistent, create "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions" in defendant's proffered legitimate, non-discriminatory reason such that a reasonable jury could conclude that the proffered reasons are not worthy of credence. Fuentes v. Perskie, 32 F.3d 759, 764 and n. 7 (3d Cir. 1994) (noting that if a plaintiff can produce evidence that casts substantial doubt on some of the proffered reasons of the employer, such evidence may sufficiently undermine the employer's other proffered reasons).

Finally, the defendants argue that James did not produce evidence such that a reasonable jury could find that its reason for the actions that James alleges were retaliatory after her termination was a pretext for retaliation. The proffered nondiscriminatory reason of the defendants for the mishandling of James' benefits and disability claim is that they were all honest mistakes that were quickly rectified. James offered no evidence or argument that this proffered reason was a pretext for retaliation. Thus, I conclude that she has not satisfied her burden to sustain her claim for retaliation as to the events that occurred after her layoff on May 2, 1994, and summary judgment will be granted to the defendants on this aspect of her claim of retaliation.

E. Claims against Woodfield

The defendants argue the James' claims against Woodfield must fail to the extent they relate to conduct after November 10, 1993 because she admitted in her deposition that she did not believe that Woodfield engaged in conduct after this date to deprive her of a position after the

merger. (Defs.' Ex. C, James dep. at 148-49).

There is some confusion in the deposition testimony of James as to whether counsel for the defendants was questioning her about November 10, 1993 or about the date of the merger. Nonetheless, this excerpt from James' deposition aside, I conclude that James produced evidence sufficient to create a genuine issue of material fact as to whether Woodfield was involved in the decision to terminate James after November 10, 1993 and as to his ongoing involvement in the Line Management Development Program, actions which may subject him to liability under the PHRA as an aider and abettor. Thus, Woodfield is not entitled to summary judgment on James' claims against him under the PHRA.

F. Punitive Damages

The defendants argue that they are entitled to summary judgment on all of the claims of James for punitive damages in each count of her amended complaint because even accepting plaintiff's allegations as true, she cannot establish that the defendants acted with malice or with reckless indifference to her federally protected rights under 42 U.S.C. § 1981a. The Supreme Court of Pennsylvania held in Hoy v. Angelone, --- A.2d ---, 1998 WL 808634, *5 (Pa. Nov. 24, 1998) that punitive damages are not available under the PHRA; thus, summary judgment will be granted to the defendants on James' claim for punitive damages under the PHRA.

To sustain a claim for punitive damages under the ADA or Title VII, a plaintiff must show that the defendants acted with malice or reckless indifference toward her. See 42 U.S.C. § 1981a(a)(1), (a)(2), and (b)(1) (providing that a plaintiff may recover punitive damages in a Title VII or ADA claim against an employer if the plaintiff demonstrates that the employer "engaged

in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual”). To sustain a claim for punitive damages, or double liquidated damages, under the ADEA in a disparate treatment case, a plaintiff must show that the violation of her rights was willful in that the employer knew or showed reckless disregard for whether its conduct violated her rights as well as some additional evidence of outrageous conduct. See U.S.C. § 626(b); Kelly v. Matlack, Inc., 903 F.2d 978, 981-984 (3d Cir. 1990).

I conclude that James has not established that a genuine issue of material fact remains on the issue of punitive damages on her claims under the ADA , Title VII, or the ADEA in that she did not produce evidence sufficient to show that the defendants acted intentional or recklessly in regard to her federal rights, nor did she produce any evidence of outrageous conduct on the part of the defendants. Thus, the defendants are entitled to summary judgment on those claims for punitive damages.

IV. Conclusion

Based on the foregoing analysis, the motion of the defendants will be granted as to the requests for punitive damages under all of James’ claims and as to James’ claim of retaliation based on events that occurred after her lay off on May 2, 1994. The motion will be denied on all of the other claims asserted by James.

An appropriate Order follows.

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

| | | |
|--------------------------------------|---|---------------------|
| JOANNE SKOWRONSKI JAMES, | : | CIVIL ACTION |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| TELEFLEX, INC., RONALD BOLDT, | : | |
| and RICHARD WOODFIELD, | : | |
| | : | |
| Defendants. | : | NO. 97-1206 |

ORDER

AND NOW, this 22st day of December, 1998, upon consideration of the motion of defendants Teleflex, Inc., Ronald Boldt, and Richard Woodfield for summary judgment (Document Nos. 20 and 21), the response of plaintiff Joanne Skowronski James (Document Nos. 23 and 24), the reply of the defendants (Document No. 32), and the surreply of James (Document No. 33), as well as the depositions, exhibits, affidavits, and other evidence of record, having found that genuine issues of material fact remain and the defendants are not entitled to judgment as a matter of law on all claims, and for the reasons given in the foregoing memorandum, it is hereby **ORDERED** that the motion is **GRANTED** as to the requests of James for punitive damages on all of her claims and as to the claim of retaliation by James based on events that occurred after her lay off on May 2, 1994 and **DENIED** as to all other claims of James against all of the defendants.

IT IS FURTHER ORDERED that the parties shall submit a joint report to the Court no later than **January 25, 1999** as to the status of settlement. If the parties need the assistance of the Court in facilitating settlement negotiations, the report should so indicate.

LOWELL A. REED, JR., J.