


FARNAN, District Judge

Pending before the Court is the Motion For Summary Judgment (D.I. 36) filed by Defendants Shoe Show of Rocky Mount, Inc. and Shoe Show of Virginia, Inc. (collectively, "Shoe Show"). For the reasons discussed, the Motion will be granted.

BACKGROUND

This is a wrongful discharge lawsuit arising from allegations of age discrimination. Plaintiff Julie Adkins alleges that she was wrongfully terminated from her employment as a store manager at Defendants' shoe store in Georgetown, Delaware.

On May 20, 2002, Ms. Adkins filed an EEOC charge against Defendants. After receiving a Right To Sue letter from the EEOC, Ms. Adkins filed a Complaint with the Court on April 21, 2003, alleging age discrimination in violation of the Age Discrimination in Employment Act ("ADEA") (D.I. 1.) In her Complaint, Ms. Adkins set forth mixed motive and pretext theories of discrimination. (D.I. 1.) In Ms. Adkins' Answering Brief in opposition to Defendants' Motion For Summary Judgment, Ms. Adkins drops her mixed motive theory. (D.I. 41 at 3.)

Ms. Adkins' claims relate to her employment at a retail shoe store operated by Shoe Show. Ms. Adkins was employed as a store manager from July 3, 2000, until December 21, 2001. In that capacity, Ms. Adkins reported to Gary Austin. Ms. Adkins was 40 years old on December 21, 2001. Mr. Austin was 44 years old at that time.

In late November or early December, Ms. Adkins submitted a work schedule to Mr. Austin that showed she would work on December 22, 2001, with two other employees, Laurie van Sciver and Chrissie Davis. Ms. van Sciver was 35 years old at that time.

On December 21, 2001, Ms. Adkins' family informed her that her niece, who was serving in the military, would be in Virginia the next day on the way to an assignment in Afghanistan. Ms. Adkins decided to take December 22 off in order to visit her niece.

Snow Shoe's vacation policy required Ms. Adkins to submit a written vacation request to Mr. Austin at least six weeks before the date of vacation. The policy also precluded store managers from taking vacations during the weeks between Thanksgiving and January 1 of each year. Ms. Adkins was aware of Shoe Show's vacation policy on December 21, 2001, and was aware that she would risk her employment if she took vacation on December 22.

Ms. Austin did not work at the store on December 22.

The timekeeping procedure in effect at the store required employees to initial a time sheet indicating that they had worked certain hours on a particular date and required the manager or assistant manager on duty at the end of the day to make a computer entry showing the hours worked and any vacation time taken by personnel.

When Ms. Adkins returned to work on December 24, 2001, she saw that Ms. van Sciver had initialed the time sheet and made a computer entry showing that Ms. Adkins had worked and not taken

vacation on December 22. Ms. Adkins did not correct Ms. van Sciver's entries on the time sheet or in the computer.

After learning of Ms. Adkins' absence, Mr. Austin conducted an investigation, which lead him to believe that an assistant manager, Ms. Merced, told Ms. van Sciver that Ms. Adkins wanted Ms. van Sciver to record Ms. Adkins as having worked on December 22. Ms. Merced was 28 years old at that time.

On December 27, 2001, Mr. Austin met with Ms. Adkins and confronted her about taking a vacation day without approval and falsifying time entries. Mr. Austin terminated Ms. Adkins' employment at that meeting.

Subsequent to Ms. Adkins' termination, Ms. Merced was promoted to store manager, and Ms. van Sciver was promoted to assistant manager.

STANDARDS OF LAW

I. Summary Judgment

In pertinent part, Rule 56(c) of the Federal Rules of Civil Procedure provides that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences

in the light most favorable to the non-moving party. Valhal Corp. v. Sullivan Assocs., Inc., 44 F.3d 195, 200 (3d Cir. 1995).

However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). To properly consider all of the evidence without making credibility determinations or weighing the evidence, a "court should give credence to the evidence favoring the [non-movant] as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 151 (2000).

To defeat a motion for summary judgment, the non-moving party must:

do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). However, the mere existence of some evidence in support of the nonmovant will not be sufficient to support a denial of a motion for summary judgment; there must be enough evidence to enable a jury to reasonably find for the nonmovant on that issue. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Thus, if the evidence is "merely colorable, or is not

significantly probative," summary judgment may be granted. Id.

II. Actions Brought Pursuant to the ADEA

Ms. Adkins' age discrimination claims are grounded on pretext rather than on direct evidence. The Third Circuit has adopted the McDonnell Douglas burden shifting analysis for age discrimination cases brought under a pretext theory. See Sempier v. Johnson & Higgins, 45 F.3d 724 (3d Cir. 1995); McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Texas Dep't of Comm. Affairs v. Burdine, 450 U.S. 248, 252-56 (1981). Under the McDonnell Douglas framework, a plaintiff must first present a prima facie case by establishing that (1) she is over 40 years old, (2) she is qualified for the position in question, (3) she suffered from an adverse employment decision, and (4) her replacement was sufficiently younger to permit a reasonable inference of age discrimination. Sempier, 45 F.3d at 728.

Once a plaintiff has satisfied the prima facie standard, the burden shifts to the defendants to articulate a "legitimate nondiscriminatory" reason for the adverse employment decision. Id. Should the defendant successfully carry its burden, the plaintiff then "has the opportunity to demonstrate that the employer's stated reasons were not its true reasons but were a pretext for discrimination." Sempier, 45 F.3d at 728. At this stage, the plaintiff may defeat a summary judgment motion either: (1) by discrediting the proffered reasons for termination, directly or circumstantially, or (2) by adducing evidence that discrimination

was more likely than not a motivating or determinative cause of the adverse action. Sempier, 45 F.3d at 731; see also Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994) ("We hold that, to [defeat a motion for summary judgment], the plaintiff generally must submit evidence which: 1) casts sufficient doubt upon each of the legitimate reasons proffered by the defendant so that a factfinder could reasonably conclude that each reason was a fabrication; or 2) allows the factfinder to infer that discrimination was more likely than not a motivating or determinative cause of the adverse employment action.").

PARTIES' CONTENTIONS

By its motion, Shoe Show contends that it is entitled to summary judgment for several reasons. First, Shoe Show contends that no reasonable juror could find that Ms. Adkins has proven a prima facie case of age discrimination. Specifically, Shoe Show contends that Ms. Adkins fails to prove that any of the managers who participated in the decision to terminate Ms. Adkins knew that she was at least 40 years old when discharged, that Shoe Show treated her in a disparate manner, and that the circumstances surrounding her termination give rise to an inference of age discrimination. Second, Shoe Show contends that even if Ms. Adkins could prove a prima facie case, Shoe Show articulates a legitimate, nondiscriminatory reason for terminating her. Specifically, Shoe Show alleges that it determined that Ms. Adkins had violated the company's vacation policy and falsified company records that showed

that she had worked on December 22. Finally, Shoe Show contends that Ms. Adkins fails to produce evidence that would enable a reasonable juror to find that Shoe Show's conclusion that Ms. Adkins had falsified company records was so plainly wrong that it could not have been the real reason for her termination.

In response, Ms. Adkins contends that she provides sufficient evidence to make out a prima facie case of unlawful discharge based on age discrimination. Ms. Adkins further contends that she shows sufficient weaknesses, implausibilities, inconsistencies, and contradictions in Shoe Show's allegation that Ms. Adkins falsified company records to allow a reasonable factfinder to conclude that Ms. Adkins' termination was motivated by age animus.

DISCUSSION

A. Whether Ms. Adkins Has Made Out a Prima Facie Case of Discrimination Pursuant to the ADEA

To make out a prima facie case of age discrimination, Ms. Adkins must show that 1) she was at least 40 years old; 2) she was discharged from her employment; 3) she was qualified for the job; and 4) she was replaced by a sufficiently younger person to give rise to an inference of age discrimination. Sempier, 45 F.3d at 728. The Court concludes that Ms. Adkins has satisfied her burden in establishing a prima facie case of age discrimination.

First, the parties do not dispute that Ms. Adkins was 40 years old when she was terminated. With regard to Shoe Show's argument that Ms. Adkins has not proven that the managers who terminated her

knew that she was a member of the protected class, the Court finds that knowledge of Ms. Adkins' status is not one of the factors enunciated in the McDonnell Douglas test. See Geraci v. Moody-Tottrup, Intern., Inc., 82 F.3d 578, 581 (3d Cir. 1996). Further, Ms. Adkins' age was likely documented in her personnel record. See id. Second, Ms. Adkins suffered an adverse employment action when she was terminated. Third, Ms. Adkins' qualifications are not in dispute. Thus, the Court concludes that Ms. Adkins has proven the first three prongs of the prima facie case.

The central focus of the prima facie case is whether Shoe Show treated some people less favorably than others. See Pivirotto v. Innovative Sys., Inc., 191 F.3d 344, 348 n. 1, 352, 356 (3d Cir. 1999). Ms. Adkins' contends that the fourth prong of the prima facie case is established by the fact that she was replaced by a 28-year-old, Ms. Merced. Ms. Adkins further contends that both Ms. van Sciver and Ms. Merced, who are younger than she, were promoted rather than disciplined for their roles in the alleged falsification of records.

Although Shoe Show contends that Ms. van Sciver and Ms. Merced were not disciplined because Shoe Show concluded that they were simply following instructions given by their supervisor, the Court construes all inferences in the light most favorable to the non-moving party, Ms. Adkins. Thus, the Court finds that Ms. Adkins has satisfied the fourth prong of the prima facie case.

Accordingly, the Court concludes that Ms. Adkins has made out

a prima facie case of age discrimination pursuant to the ADEA.

B. Whether Shoe Show Has Articulated A "Legitimate Nondiscriminatory" Reason For The Adverse Employment Decision

The burden now shifts to Shoe Show to articulate a "legitimate nondiscriminatory" reason for terminating Ms. Adkins. Consistent with its initial burden on summary judgment, Defendants have identified evidence that Mr. Austen and his superiors concluded that Ms. Adkins (1) had violated Shoe Show's vacation policy by failing to work on December 22 without Mr. Austin's prior approval; and (2) had falsified a company record either by instructing Ms. van Sciver to initial the time sheet and make a computer entry showing that Ms. Adkins had worked that day, or by failing to correct that incorrect information after Ms. Adkins returned from her absence. (D.I. 36 at 5.)

Thus, the Court concludes that Shoe Show has satisfied its burden under the McDonnell Douglas framework to articulate a legitimate, nondiscriminatory reason for the adverse employment decision.

C. Whether Ms. Adkins Has Cast Sufficient Doubt On Shoe Show's Reasons To Defeat Summary Judgment

[T]o defeat summary judgment when the defendant answers the plaintiff's prima facie case with legitimate, non-discriminatory reasons for its action, the plaintiff must point to some evidence, direct or circumstantial, from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory

reason was more likely than not a motivating or determinative cause of the employer's action.

Jones v. Sch. Dist. of Phila., 198 F.3d 403, 413 (3d Cir. 1999) (quoting Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994); Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1067 (3d Cir. 1996)).

Ms. Adkins can accomplish this by showing that Shoe Show's proffered reasons are weak, incoherent, implausible, or so inconsistent that "a reasonable factfinder could rationally find them unworthy of credence." Keller v. Orix Credit Alliance, Inc., 130 F.3d 1101, 1108-09 (3d Cir. 1997). She can also meet this burden with evidence that "the employer's articulated reason was not merely wrong, but that it was 'so plainly wrong that it could not have been the employer's real reason.'" Jones, 198 F.3d at 413 (quoting Keller, 130 F.3d at 1109).

The Court concludes that Ms. Adkins has not produced sufficient evidence to refute Show Shoe's explanation of why she was terminated. Ms. Adkins offers the following evidence in support of her pretext claim: (1) Ms. Merced and Ms. van Sciver's testimony that they never told Mr. Austin that Ms. Adkins told them to make changes to the time sheet and/or register printout (D.I. 41 at 12); (2) Mr. Austin's testimony that Ms. van Sciver and Ms. Merced violated at least two company policies that could lead to termination, but did not receive any discipline (Id.); (3) Mr. Austin's testimony that Ms. Adkins had until the end of the day on

Thursday, December 27, 2001, to change the time sheet and register printout (Id.); (4) Testimony that Ms. Adkins did not write anything false on any employment records (Id. at 13); and (5) Ms. Adkins' testimony that Mr. Austin never returned any of Ms. Atkins' calls throughout the Christmas week (Id.).

The Court finds that Ms. Adkins has not satisfied her burden of showing that Shoe Show's proffered reasons are weak, incoherent, implausible, or so inconsistent that "a reasonable factfinder could rationally find them unworthy of credence," Keller, 130 F.3d at 1108-09, or that "the employer's articulated reason was not merely wrong, but that it was 'so plainly wrong that it could not have been the employer's real reason.'" Jones, 198 F.3d at 413. Thus, the Court concludes that Ms. Adkins has not produced evidence sufficient to avoid summary judgment by casting doubt on Shoe Show's reasons for her termination.

CONCLUSION

In sum, the Court concludes that Ms. Adkins has failed to satisfy her burden under the McDonnell Douglas burden shifting framework for age discrimination cases brought under a pretext theory. Thus, the Court will grant the Motion For Summary Judgment (D.I. 36) filed by Defendants Shoe Show.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JULIE ADKINS,

Plaintiff,

v.

SHOE SHOW OF ROCKY MOUNT, INC. AND
SHOE SHOW OF VIRGINIA, INC.,

Defendants.

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: Civil Action No. 03-406 JJF
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FINAL JUDGMENT IN A CIVIL CASE

At Wilmington, this 16 day of March 2005, for the reasons set forth in the Opinion and Order issued this date;

IT IS HEREBY ORDERED that judgment is entered in favor of Defendants Shoe Show of Rocky Mount, Inc. and Shoe Show of Virginia, Inc., and against Plaintiff Julie Adkins, with regard to Count I of the Complaint.


UNITED STATES DISTRICT JUDGE


(By) Deputy Clerk