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

KAMAL ADENI,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO. 06-686
v.	:	
	:	
VERTEX, INC.,	:	
	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, S. J. September 18, 2007

Presently before the Court are Defendant's Motion for Summary Judgment (Docket No. 8) and Plaintiff's Response thereto (Docket No. 14). For the reasons stated below, Defendant's Motion for Summary Judgment is **GRANTED**.

I. INTRODUCTION

Plaintiff, Kamal Adeni ("Adeni"), an Indian-American male, alleges in this cause of action that Defendant, Vertex, Inc. ("Vertex"), discriminated against him on the basis of race and/or national origin in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), et seq., and its amendments, as well as the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 951, et seq. Specifically, Plaintiff claims that his termination from his employment with Defendant on January 31, 2005 was discriminatory in nature.

II. BACKGROUND

The following is a summary of the facts: Defendant is a corporation in the business of providing tax software and services. (Compl. ¶ 4.) Plaintiff began working for Defendant in February of 2000 as Manager of the Sales Tax Research ("STR") Group, at which time he reported to Vertex Manager John Minassian ("Minassian"). (Compl. ¶ 5; Pl.'s Mem. Opp. Summ. J. 1.) The STR Group was responsible for maintaining and updating sales and use tax publications and software that Vertex produced and marketed for state and local jurisdictions within the United States. (Def.'s Mem. Supp. Summ. J., Ex. A, Adeni Dep. 50-52.) The STR Group was unsuccessful in reaching its goals, leading Defendant to eventually dissolve the group and shelve the project. At that time, Defendant did not indicate any responsibility on Plaintiff's part. (Pl.'s Mem. Opp. Summ. J. 2.) Plaintiff was thereafter reassigned to a newly created department, the Internal Tax Consulting Group ("ITCG"), in February 2001. Plaintiff received an increase in salary at this time in addition to having received a bonus the previous December for his work with the STR Group. (Pl.'s Mem. Opp. Summ. J., Ex. C, Vertex Salary Change Form dated May 14, 2001.) The ITCG was "intended to be a group that would consult internally to [Defendant] employees in order to streamline the production of Vertex products by facilitating communication between multiple departments—including non-tax researchers—involved in that production." (Def.'s Mem. Supp. Summ. J., Ex. B, Minassian Dep. 53-54.) In January 2003, the ITCG was disbanded and Plaintiff was reassigned to the STR Group, but this time as a contributor rather than a manager as before. (Id. at 74.) Plaintiff now served as a tax resource expert to internal and external Vertex customers and was responsible for ensuring the accuracy of tax information in support of Defendant's products. (Def.'s Mem. Supp. Summ. J. 4.). Plaintiff

remained with Defendant in this capacity until he was terminated from employment in January 2005.

Plaintiff received mixed performance reviews from February 2002 to February 2004, all of which noted Plaintiff's strengths while also stressing a number of areas where Plaintiff could improve. Plaintiff's February 2002 performance review concluded by indicating that "the results of this review contain a mixture of positives and negatives that point to a conclusion of acceptable performance along with a concern for a lack of communication." (Pl.'s Mem. Opp. Summ. J., Ex. E, Employee Performance Review dated February 21, 2002.) Plaintiff's May 2003 review specifically noted that "[a]lthough [Plaintiff's] decomposition of tax legislation has shown marked improvement, [Plaintiff's] attainment of additional skills in decomposing of these technical documents would benefit the Research group." (Pl.'s Mem. Opp. Summ. J., Ex. E, Employee Performance Review dated May 7, 2003.) As for Plaintiff's February 2004 review, again Defendant noted Plaintiff's many accomplishments while also suggesting Plaintiff "[g]ain additional knowledge about TPS system and related software products" and "[a]ttend Advanced Grammar course . . . offered by [Vertex.]" (Pl.'s Mem. Opp. Summ. J., Ex. E, Performance Review dated February 24, 2004.) Thomas Concitis ("Concitis"), a manager of Plaintiff's throughout Plaintiff's employment with Vertex, classified Plaintiff's 2002, 2003, and 2004 reviews as being "neutral." (Pl.'s Mem. Opp. Summ. J., Ex. F, Concitis Dep. 76-78.) Plaintiff received a merit based increase in salary in February 2002 and an annual increase in salary in February 2004. (Pl.'s Mem. Opp. Summ. J., Ex. G, Vertex Salary Change Form dated June 17, 2002; Ex. H, Employee Change Form dated February 24, 2004.)

Throughout Plaintiff's employment, a tense working relationship existed between Plaintiff and Minassian. An incident occurred in December 2000 when Minassian, looking for Plaintiff, asked another employee where "Patel" was.[1] (Pl's Mem. Opp. Summ. J., Ex. I, Amy Ellis Email dated December 20, 2006.) Plaintiff became visibly upset after Minassian's remarks were relayed to him by his coworker. (Id.) Another incident occurred in 2000 when Minassian referred to Plaintiff in an email as a "person living in a cave."[2] Plaintiff forwarded this email to Defendant's human resources department but has no knowledge as to whether further action was taken on Defendant's part. (Pl's Mem. Opp. Summ. J. 3.) Minassian later displayed an aggressive attitude towards Plaintiff in a meeting hosted by Debbie Wright of Human Resources in April of 2001. (Pl's Mem. Opp. Summ. J., Ex. B, Performance Review Mem. from Wright to File dated April 19, 2001.) This meeting was requested to address Plaintiff's concerns regarding a performance review. (Id.) At this meeting, Minassian berated Plaintiff, was "in Kamal's face," and acted consistently hostile towards Plaintiff throughout the entire meeting. (Id.)

Several other incidents occurred during Plaintiff's tenure, specifically when he was transferred from the STR Group to the ITCG in 2001. Plaintiff was assigned to an office that was isolated from the other members of his group in that the other offices were across the aisle and Plaintiff's was in a separate row. (Pl's Mem. Opp. Summ. J., Ex. A, Adeni Dep. 233.)

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1. Plaintiff alleges that Minassian's use of "Patel" rather than referring to Plaintiff by his proper name was an intentional mistake on Minassian's part and a derogatory comment based upon a stereotype for Plaintiff's race and/or national origin. (Pl's Mem. Opp. Summ. J., Ex. A, Adeni Dep. 257-261; Ex. I, Amy Ellis Email dated December 20, 2006.)

2. Plaintiff alleges that this remark was made by Minassian in an effort to reference Plaintiff's national origin and the fact that he comes from a third world country. (Pl's Mem. Opp. Summ. J., Ex. A, Adeni Dep. 262.)

Plaintiff also found that his office was smaller than the offices of the other members, and when anyone walked by, his computer would bounce up and down and create a frustrating work environment. (Id. at 232-233.) Plaintiff's office was moved and these issues corrected when he was reassigned to the STR Group. (Id. at 233.)

Plaintiff was also denied access to certain sales tax research data following his transition from the STR Group to the ITCG. (Id. at 227.) Unable to continue researching his projects, Plaintiff sent an email to human resources requesting his access be restored. (Id. at 227.) Defendant thereafter restored Plaintiff's access. (Id.) At another time during Plaintiff's employment, Plaintiff's request to participate in an education program under Defendant's reimbursement policy was denied.

In December of 2004, Defendant concluded that "the STR group had reached a point where the content of software products was satisfactory and no further research was needed." (Def.'s Mem. Supp. Summ. J., Ex. B, Minassian Dep. 23-24; Ex. D, Concitis Dep. 46-47, 43.) Defendant anticipated a reduced workload for the STR Group in the upcoming year and therefore determined that a reduction of the STR workforce was necessary. (Def.'s Mem. Supp. Summ. J., Ex. D, Concitis Dep 46-47.) To determine which employees were most valuable, Minassian and Concitis, as managers of the STR Group, analyzed all the STR Group employees based on the following criteria: (1) written and verbal communication skills; (2) taxability knowledge; (3) tax analysis; (4) ability to reduce tax concepts to lay language; (5) data gathering and maintenance; (6) knowledge of Vertex products; (7) timeliness of delivery; (8) ability to be self-directed; and (9) knowledge of service delivery. (Def.'s Mem. Supp. Summ. J., Ex. I, Staffing of the Sales Tax Research Group Mem. ("Staffing Analysis") dated December, 2004.)

Following their critique, Defendant determined Lionel Moses and Plaintiff to be the two poorest performing employees and selected them for termination of their positions. (Def.'s Mem. Supp. Summ. J., Ex. D, Concitis Dep. 51). Plaintiff was terminated from employment with Defendant on January 31, 2005, along with Lionel Moses, an African American and the only other minority in the STR Group.

Plaintiff filed a timely charge with the Equal Employment Opportunity Commission and thereafter filed this cause of action alleging Defendant discriminated against him on the basis of race or national origin. The Court is now presented with Defendant's Motion for Summary Judgment and Plaintiff's response thereto.

III. STANDARD

A motion for summary judgment will be granted where all of the evidence demonstrates "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). A dispute about a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Because a grant of summary judgment will deny a party its chance in court, all inferences must be drawn in the light most favorable to the party opposing the motion. U.S. v. Diebold, Inc., 369 U.S. 654, 655 (1962).

The ultimate question in determining whether a motion for summary judgment should be granted is "whether reasonable minds may differ as to the verdict." Schoonejongen v. Curtiss-Wright Corp., 143 F.3d 120, 129 (3d Cir. 1998). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson, 477 U.S. at 248.

After the moving party satisfies its burden, the nonmoving party "must present affirmative evidence to defeat a properly supported motion for summary judgment." Anderson, 477 U.S. at 256-57. Rule 56 of the Federal Rules of Civil Procedure requires the entry of summary judgment, after adequate time for discovery, where a party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex v. Catrett, 477 U.S. 317, 322 (1986). "The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." Id. at 323.

In a case of employment discrimination such as the present matter, the claim is governed by the three step burden-shifting framework developed in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Under the McDonnell Douglas model, the plaintiff is first required to set forth sufficient evidence to establish a prima facie case. To establish a prima facie case of employment discrimination, the plaintiff must show that (1) he belongs to a protected class; (2) he was qualified for the position; (3) he was subject to an adverse employment action despite being qualified; and (4) under circumstances that raise an inference of discriminatory action, the employer continued to seek out individuals with qualifications similar to the plaintiff's to fill the position." Sarullo v. U.S. Postal Service, 352 F.3d 789, 797 (3d Cir. 2003) (citing McDonnell Douglas, 411 U.S. at 802; Pivirotto v. Innovative Syst., Inc., 191 F.3d 344, 348 n. 1, 352, 356 (3d Cir. 1999)).

Once a prima facie case is established, the second stage shifts the burden of production to the defendant, where the defendant must produce evidence sufficient to support a

finding that there was a legitimate, nondiscriminatory reason for the employment action. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 506-07 (1993). Summary judgment should be granted for the plaintiff if the defendant is unable to satisfy this burden. Killer v. Orix Credit Alliance, Inc., 130 F.3d 1101, 1108 (3d Cir. 1997).

If defendant does satisfy this burden, the third stage shifts the burden back to the plaintiff, and "the plaintiff may survive summary judgment or judgment as a matter of law by submitting evidence from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." Id. at 1109 (citing Fuentes v. Perskie, 32 F.3d 759, 762 (3d Cir. 1994)).

To discredit the employer's proffered reason . . . the plaintiff cannot simply show that the

> employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent or competent. Rather, the nonmoving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable factfinder could rationally find them unworthy of credence.

Fuentes, 32 F.3d at 765. In other words, "the question is not whether the employer made the best, or even a sound, business decision; it is whether the real reason is discrimination." Keller, 130 F.3d at 1109 (quoting Carson v. Bethlehem Steel Corp., 83 F.3d 157, 159 (7th Cir. 1996)).

IV. DISCUSSION

1. Plaintiff cannot establish a prima facie case of discrimination.

Plaintiff's claim that Defendant discriminated against him because of his race or national origin in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), et

seq. and its amendments, and the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 951 et seq. fails as a matter of law. While there is no dispute that Plaintiff's Indian ancestry qualifies him as a member of a protected class, he was qualified for the position, and his termination constitutes an adverse employment action, Plaintiff has not established the final element necessary for a prima facie case of discrimination. Specifically, Plaintiff has not produced any evidence creating an inference of discrimination or of anyone outside his protected class being treated more favorably. Plaintiff alleges a number of incidents argued to be discriminatory in nature, each of which will be addressed below.

Plaintiff first points to two separate comments made by his manager John Minassian, the first being when Minassian referred to Plaintiff as "Patel" when asking another employee where Plaintiff was, and the second being when Minassian referred to Plaintiff as "a person living in a cave" in an email. (Pl.'s Mem. Opp. Summ. J., Ex. A, Adeni Dep. 257-262.) Specifically, Plaintiff alleges "Patel" is analogous to calling an African American the name "Leroy," and the statement "a person living in a cave" was a reference to the fact that Plaintiff was from a third world country. (Pl.'s Mem. Opp. Summ. J., Ex. A, Adeni Dep. 257-262; Ex. I, Amy Ellis Email dated December 20, 2006.)

The Court has examined these statements both in and out of context and is unpersuaded by Plaintiff's arguments. The Court has no knowledge of the above remarks having discriminatory connotations and Plaintiff has provided no evidence to support such an inference other than his own allegations and interpretations. As Defendant points out, Plaintiff's own explanation as to why the term "Patel" was derogatory was simply that he was offended at being referred to by the wrong name. (Pl.'s Mem. Opp. Summ. J., Ex. A, Adeni Dep. 258.) These

remarks not only occurred roughly five years prior to Plaintiff's termination, but they also fail in themselves to create any inference of discrimination on Defendant's part. See. e.g., Boyd v. State Farm Ins. Companies., 158 F.3d 326, 330 (5th Cir. 1998) (holding that "absent a casual link between the references and the conduct complained of, such epithets become stray remarks that cannot support a discrimination verdict.")

Plaintiff also argues that Minassian possessed a general discriminatory attitude towards him. To support this contention, Plaintiff points to a meeting held in 2001 by Ms. Debbie Wright of Human Resources where Plaintiff and Minassian were called in to discuss Plaintiff's most recent performance review. Ms. Wright's account of this meeting indicates that Minassian berated Plaintiff, was "in Kamal's face," and acted consistently hostile towards Plaintiff throughout the entire meeting. (Pl.'s Mem. Opp. Summ. J., Ex. B, Performance Review Mem. from Wright to File dated April 19, 2001.) The Court has studied the submitted accounts of this meeting, and while Minassian's attitude towards Plaintiff in this meeting, coupled with Minassian's "Patel" and "cave" comments, does suggest apparent differences between Plaintiff and Minassian and may constitute rude and unprofessional behavior on Minassian's part, the Court cannot justify a finding of any inference of racial or national origin discrimination related to Plaintiff's termination years later. See, e.g., Ezold v. Wolf, Block, Schorr and Solic-Cohen, 983 F.2d 509, 547 (3d Cir. 1992) (Third Circuit holding that stray remarks by a non-decisionmaker[3] over a five year period, while inappropriate, were insufficient to prove that the employer's actions

3. The Court recognizes that Ezold differs from the present matter in that Minassian was in fact a decision-maker yet finds the context of Minassian's actions and the time frame of the events justifies a finding of no inference of discrimination.

were "so infected with discriminatory bias that such bias more likely motivated [the employer's] decision than its articulated legitimate reason.").

Plaintiff's remaining alleged examples of discriminatory behavior all follow the same pattern, where Plaintiff does not provide evidence showing how any of these incidents create an inference of discrimination or in any way relate to Plaintiff's termination. Plaintiff alleges Defendant discriminated against him by denying him the opportunity to participate in an education program under Defendant's policy of reimbursing employees for such programs. Defendant, however, argues that the proposed coursework focused on computers rather than tax and was therefore not justified given Plaintiff's role with the company. (Def.'s Mem. Supp. Summ. J. 16-17.) Defendant also notes that it asked Plaintiff at this time whether he wished to move into software development, an opportunity Plaintiff declined. (Def.'s Mem. Supp. Summ. J., Ex. B, Minassian Dep. 81.)

Plaintiff also alleges several incidents of discriminatory behavior stemming from his transition from the STR Group to the ITCG in 2001. First Plaintiff argues that he was denied access to certain research data. Defendant contends that the data restriction was normal company procedure when employees transfer departments, and Plaintiff's access was restored once his need for access was apparent. (Def.'s Mem. Supp. Summ. J. 17-18.) Plaintiff also argues that his desk was moved to an inferior location in the office as a result of this transfer in that his office was smaller and isolated from the remainder of the group. (Def.'s Mem. Supp. Summ. J., Ex. A, Adeni Dep. 232-233.) Defendant argues this was a function of his work group, and Plaintiff moved from this office when he was reassigned to the STR Group. (Id.) Plaintiff has not

provided any evidence of an inference of discrimination or how these incidents related to his termination.

Furthermore, Plaintiff has not put forth sufficient evidence of Defendant having sought out individuals with similar qualifications to fill Plaintiff's position. Plaintiff claims that after speaking to Don Fuga, an individual with the STR Group, he was informed that Tim Butts ("Butts") had taken over some of his responsibilities following his termination. (Pl.'s Mem. Opp. Summ. J., Ex. A, Adeni Dep. 154-155.) Again, Plaintiff has not provided any additional evidence to support his claim. Defendant, on the other hand, maintains that Plaintiff's position was eliminated due to their being a lack of work to keep the department busy and thus Plaintiff's position was never filled. (Def.'s Mem. Supp. Summ. J., Ex. B, Minassian Dep. 21; Ex. Concitis Dep. 46-47, 53.) Defendant has provided evidence that Butts was a member of a different group during Plaintiff's employment and did begin to contribute to the STR Group following Plaintiff's termination, but he in no way replaced Plaintiff, worked the projects Plaintiff had been assigned to, or assumed any of Plaintiff's duties following his termination. (Def.'s Mem. Supp. Summ. J., Ex. J, Certification of Concitis.)

2. Plaintiff has failed to establish that Defendant's legitimate non-discriminatory reasons for terminating plaintiff were pretext for unlawful discrimination.

Even if the Court were to assume that Plaintiff has provided sufficient evidence to establish a prima facie case of discrimination, Defendant has satisfied its burden of production within the McDonnell Douglas model by producing substantial evidence of Plaintiff's performance being the legitimate non-discriminatory reason for his termination. Plaintiff received mixed reviews throughout his tenure with Defendant, and a thorough evaluation based on

extensive and appropriate criteria was conducted on all members of the STR Group when it became clear that the department's needs had changed and less work was anticipated in the future. (See Def.'s Mem. Supp. Summ. J., Ex. E, Performance Reviews dated February 2002, May 2003, and February 2004; Ex. I, Staffing of the STR Group Mem. dated December 2004 ("Staffing Analysis").) Using this analysis, Defendant identified Plaintiff and Lionel Moses as the poorest performers in the STR Group, and it is not the Court's role to question Defendant's business decision. See Keller, 130 F.3d at 1109.

The burden therefore shifts back to Plaintiff, and Plaintiff has not produced any evidence "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." Killer, 130 F.3d at 1108 (3d Cir. 1997) (citing Fuentes, 32 F.3d at 762 (3d Cir. 1994)). Moreover, Plaintiff has not demonstrated "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in [Defendant's] proffered legitimate reasons for its actions that a reasonable factfinder could rationally find them unworthy of credence." Fuentes, 32 F.3d at 765. Plaintiff's only argument challenging Defendant's legitimate non-discriminatory reasons for his termination is that Defendant's Staffing Analysis "appears to have been produced on March 11, 2005, well after [Plaintiff] was terminated by [Defendant]." (Pl.'s Mem. Opp. Summ. J. 8.) This argument, however, fails to address the fact that the write-up aspect of the Staffing Analysis is dated December 2004 and was thus conducted prior to Plaintiff's termination; it is merely the chart form of that same information that possesses a date after Plaintiff's termination. (Def.'s Mem. Supp. Summ. J., Ex. I, Staffing of the STR Group Mem. dated December 2004.)

Defendant has also provided legitimate business reasons for the unrelated incidents discussed above, none of which have been further challenged by Plaintiff as pretext for discrimination. Specifically, Defendant offers that Plaintiff was denied the opportunity to participate in an education program under Defendant's employee reimbursement policy because Plaintiff's chosen course was computer-focused rather than tax-focused. (Def.'s Mem. Supp. Summ. J. 16-17.) In regards to the incidents surrounding Plaintiff's transfer to the ITCG, Defendant has argued that Plaintiff's research access was restricted as a matter of policy and then restored once Plaintiff expressed a need for such access, and Plaintiff's office was relocated in conjunction with the transfer as a function of his work group and then moved again when Plaintiff was transferred back to the STR Group. (Def.'s Mem. Supp. Summ. J. 17-18.) Plaintiff has not provided any evidence permitting the Court to either disbelieve Defendant's articulated legitimate reasons for these actions or believe that invidious discriminatory reasons were more likely a motivating cause, and it is Plaintiff's burden to do so. Fuentes, 32 F.3d at 762.

V. CONCLUSION

For the reasons stated above, Defendant's Motion for Summary Judgment is granted. An appropriate order follows.

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

KAMAL ADENI,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO. 06-686
v.	:	
	:	
VERTEX, INC.,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 18th day of September, 2007, upon consideration of Defendant's Motion for Summary Judgment (Docket No. 8) and Plaintiff's Response thereto (Docket No. 14), it is hereby **ORDERED** that Defendant's Motion for Summary Judgment is **GRANTED**. Judgment is entered in favor of Defendant Vertex, Inc. and against Plaintiff Kamal Adeni.

This case is **CLOSED**.

BY THE COURT:

s/ Ronald L. Buckwalter
RONALD L. BUCKWALTER, S.J.