IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MAUREEN E. LEYVA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 04-002-KAJ
	)	
COMPUTER SCIENCES CORP.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

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Wilmington, Delaware
January 25, 2005

JORDAN, District Judge

I. INTRODUCTION

Maureen Leyva ("Plaintiff"), who was an employee of Computer Sciences Corporation ("CSC" or "Defendant"), alleges that Defendant violated her rights under the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq*. ("ADEA"), and breached the implied covenant of good faith and fair dealing with regard to her employment. The parties have stipulated that Count I, constructive discharge in violation of the ADEA, is dismissed with prejudice. (Docket Item ["D.I."] 49.) On March 4, 2004, I granted Defendant's Motion to Dismiss Count III, retaliatory discharge in violation of the ADEA. (D.I. 15.) Before me is Defendant's Motion for Summary Judgment with respect to the remaining claims, Counts II and IV of the Complaint. (D.I. 52; the "Motion".) Jurisdiction over this case is proper pursuant to 28 U.S.C. § 1331 and § 1367. For the reasons that follow, Defendant's Motion will be granted.

II. BACKGROUND[1]

Plaintiff worked as an Application Architect for CSC from August 4, 1997 to June 19, 2002. (D.I. 62 at B415.) As an employee of CSC, Plaintiff worked on various projects. Upon completion of her role in a project, she was assigned to a new project.

[1]The following rendition of the background information for my decision does not constitute findings of fact and is cast in the light most favorable to the non-moving party, the Plaintiff.

(*Id*. At B050-51.) During her time at CSC, Plaintiff worked on approximately six major projects.[2] (*Id*. at B050.)

Plaintiff's performance reviews show that she was capable of doing the work she was assigned. In her April 2001 review, her manager rated Plaintiff "very good" in the areas of knowledge, innovation, ability to work independently, and customer relations. (D.I. 63 at B497-98.) In her April 2002 performance review, she was again rated "very good" with respect to several of these traits, with the exception that she was determined to have improved her knowledge and customer relation skills to the level of "excellent." (*Id*. at B489-90.) In both of these reviews, Plaintiff received an overall evaluation of "good." (*Id*. at B492, 500.) In October of 2001, Plaintiff was given a "well deserved" salary increase of five percent. (D.I. 62 at B095.)

Although it appears that management generally thought well of Plaintiff's work and ability to interact with clients, Plaintiff had a history of strained relations with her supervisors and coworkers. In the Spring of 1999, Plaintiff resigned over a dispute concerning her job title. (*Id*. at B055-57.) Plaintiff was convinced to stay and given the chance to work with the Finance team but was not given the disputed job title of computer scientist. (*Id*.) In June of 2001, Plaintiff resigned again, this time over what she believed was an unfair comment in her April 2000 through March 2001 performance evaluation. (*Id*. at B088-89.) In that evaluation, Plaintiff's supervisor noted that she "did not appreciate the work effort of others, sometimes alienating them." (*Id*. at B087.)

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[2]CSC projects are typically of limited duration and of a changing nature. Consequently, employees are placed on projects for a finite period of time, after which, they are transferred to another project that calls for their particular skill set. (D.I. 62 at B050-051.)

After Plaintiff resigned, her supervisors tried to convince her not to leave CSC. (*Id*. at B089.) Plaintiff agreed to stay on the condition that the comment be removed from the evaluation and she be given more support to do her job. (*Id*.)

During the time period covered by that review, April 2000 through March 2001, Plaintiff was working with the Finance team and was specifically assigned to the Global Treasury Systems ("GTS") project. The GTS project was the "replacement of a pretty much manual treasury system at Dupont with a global software package." (*Id*. at B067.) CSC was installing the hardware for the project and would support it after the installation was complete. (*Id*.) Plaintiff was brought on at the beginning of the project to develop the interface between the new third-party software installed at DuPont and the hardware CSC was installing. (*Id*.) By the Spring of 2002, the nature of the GTS project was changing. (D.I. 56 at A198.) It was expected that the GTS project would soon transition from a development project to a support project. (*Id*.) In April of 2002, Plaintiff was informed that her development skills on the GTS project would not be needed after July or August of that year, as the project was moving into a support phase. (*Id*.; D.I. 62 at B075.)

At the same time that Plaintiff was informed that she would no longer be needed on the GTS project, a co-worker named Kerri Siers ("Siers") was transferred to the GTS project and was given the title of "Architect." (D.I. 62 at B356.) As the GTS project progressed, Siers was to be known as the "Application Support Architect." (D.I. 56 at A214.) Because Plaintiff was also an Architect, albeit one grade higher than Siers (*id*. at A177, 205-06; D.I. 62 at B056), she was upset at the introduction of Siers into the team (D.I. 56. at A214).

In May, Jane Reese, Plaintiff's manager, sent Plaintiff an email informing her that there was a need to transfer knowledge from Plaintiff to the new staff, who would take over the support role once development of the GTS project was complete. (*Id*. at A219.) Ms. Reese believed that the working relationship between Plaintiff and the other members of the team was not good and that everyone would benefit if Plaintiff was assigned to another group within the company. (*Id*.) Although the development portion of the GTS project was scheduled to end on May 31st, Plaintiff was again assured that she could stay on the project until July or August. (*Id*.) Plaintiff wanted to remain on the GTS project and met with Ms. Reese to discuss what would be required for Plaintiff to stay with the project beyond the July/August time frame. (*Id*. at A219-21.) Both agreed that Plaintiff would need to improve her working relationships and interactions with management. (*Id*. at A220-21.)

In June, Plaintiff initiated a meeting to get a detailed explanation of how she could improve her working relationships. (D.I. 62 at B238.) The meeting occurred on June 14th and, besides Plaintiff, was attended by Ms. Reese and Maureen Summers, another manager on the GTS project. (*Id*. at B238-39). At this meeting, Plaintiff was informed that her upcoming review would indicate that she would receive "less than meets expectation" marks on categories related to interpersonal skills. (*Id*. at B239.) Ms. Reese identified numerous problems with Plaintiff's working relationships, including that she did not "positively affect others", "couldn't work with others", "wasted people's time", and failed to fully and properly communicate with others on the project. (*Id*.) Ms Reese presented three or four emails as examples of this behavior. (*Id*.)

Plaintiff felt that the meeting amounted a "blistering attack" on her. (*Id*.) After the meeting, at about 2:30 p.m., Plaintiff went home. (*Id*. at B243.) At approximately 4:00 p.m. she called Ms. Summers. (*Id*.) At this point, Plaintiff's and Defendant's accounts of events begin to diverge. Defendant maintains that Plaintiff resigned during this call; however, Plaintiff states that she told Ms. Summers that she felt she had been attacked at the meeting and was going away for the weekend. (*Id*. at B244; D.I. 56 at A205.)

On Sunday of that weekend, Plaintiff went to CSC in an attempt to drop off her work computer and her employee identification and to pick up some papers from her office. (D.I. 62 at B245.) Plaintiff was prevented from entering the building by security personnel, so she left her computer and her company identification badge with the guard. (*Id*.) Plaintiff did not attend work on Monday because, she said, she was "totally exhausted." (*Id*. at B246.) Ms. Summers called Plaintiff later that day to inquire about her condition. (*Id*.) Plaintiff also stated that Ms. Summers requested that she send an email to CSC, although Plaintiff claims she did not know and did not ask what the email should be about. (*Id*. at B246-47.) On Tuesday, Plaintiff left voice mail messages for four of her managers wherein she stated that "I don't want to totally ruin – I don't want to ruin my career, and [she] ... just bled her heart out, [stating] this is horrible, you know, please let me get my vesting." (*Id*. at B077.) That same day, and again later that week, she told certain disinterested third-parties, who documented the conversation, that she had resigned the previous Friday, June 14th. (D.I. 56 at A131-32, 35, 43-45, 47, 57-59, 232, 243, 244.) On Wednesday, Ms. Summers called Plaintiff and told her that management was meeting the following day and that Plaintiff could submit a resignation letter with a proposed termination date. (D.I. 62 at B250.) That same day, Plaintiff

emailed a resignation letter to Ms. Summers which stated "[b]elow is the Resignation letter [which] ... has the effective date to be presented to the Management Team." (D.I. 56 at A228-29.) Plaintiff's proposed effective date was August 6, 2002, two days after her five year vesting date with CSC and approximately six weeks after the date of the letter. (*Id*.) After considering Plaintiff's requested termination date, the CSC management team decided to accept Plaintiff's resignation effective immediately, rather than effective on the date suggested by Plaintiff. (*Id*. at A174-75, A198.)

III. STANDARD OF REVIEW

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment shall be entered if "there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law." "[T]he availability of summary judgment turn[s] on whether a proper jury question ... [has been] presented." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). "[T]he judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Id.* In making that determination, the court is required to accept the non-moving parties' evidence and draw all inferences from the evidence in the non-moving parties' favor. *Id.* at 255; *Eastman Kodak Co. v. Image Technical Servs., Inc.*, 504 U.S. 451, 456 (1992). Nevertheless, the party bearing the burden of persuasion in the litigation, must, in opposing a summary judgment motion, "identify those facts of record which would contradict the facts identified by the movant." *Port Authority of New York and New Jersey v. Affiliated FM Ins. Co.,* 311 F.3d 226, 233 (3d Cir. 2002) (internal quotes omitted).

IV. DISCUSSION

A. Violation of the Age Discrimination in Employment Act

The ADEA prohibits an employer from "discriminating against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age ... ." 29 U.S.C. § 623(a)(1). When a plaintiff does not have direct evidence of age discrimination, the court must use the burden shifting approach. *Fakete v. Aetna, Inc.*, 308 F.3d 335, 337-38 (3d Cir. 2002). Under the burden shifting analysis, a plaintiff must first establish a *prima facie* case of age discrimination. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 506 (1993). A plaintiff can establish a *prima facie* case by showing that: (1) she is at least 40 years of age and thus a member of the protected class; (2) she was qualified for the position from which she was discharged; (3) she was dismissed despite being qualified; and (4) her "employer retained someone similarly situated to [her] who was sufficiently younger." *Monaco v. American General Assurance Co.*, 359 F.3d 296, 305 (3d Cir. 2004). The question before me is whether Plaintiff was dismissed at all.

Plaintiff's and Defendant's accounts of what happened on the June 14th call from Plaintiff to Ms. Summers differ but do not create a material issue of fact. On summary judgment I must view the "underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." *Pa. Coal Ass'n v. Babbitt*, 63 F.3d 231, 236 (3d Cir. 1995). But the "mere existence of a scintilla of evidence in support of nonmovant's potion is insufficient to withstand summary judgment motion." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (U.S. 1986). In this case, Plaintiff denies that she resigned during her telephone call to Ms. Summers. (D.I. 62 at B243.) If the content of the phone call were the only evidence, issues of credibility would prevent

the grant of summary judgment based on a June 14th resignation. *See Modrovich v. Allegheny County*, 385 F.3d 397, 415 (3d Cir. 2004) (holding "a court's role remains circumscribed in that it is inappropriate for a court to resolve factual disputes and to make credibility determinations").

However, the phone call is not the only evidence. On the contrary, a wealth of evidence overwhelmingly demonstrates that Plaintiff resigned on the 14th, and she does not even attempt to explain or dispute much of that evidence. She admits that she was never told, either during her earlier meeting or on the phone, that she was fired. (D.I. 62 at B247.) Further, she admits that she told Ms. Summers during the telephone call that she was going to drop off her computer and employee identification badge the following Monday and that Ms. Summers told her to take the weekend to think about it. (*Id*. at B245.) An affidavit by Ms. Summers, corroborated by contemporaneous notes, states that Plaintiff resigned during that phone call. (D.I. 56 at A205, 08.) The notes further state that Ms. Summers consequently revoked Plaintiff's access to the building. (*Id*.) Ms. Summers' notes are in turn corroborated by the fact that Plaintiff tried to enter the building on Sunday but was denied entry and by the further fact that she turned in both her work computer and her employee identification badge to the guard at the building. (D.I. 62 at B245.) The Plaintiff's own admissions are especially telling. It is undisputed that she told totally disinterested third-parties that she resigned on Friday, June 14th.[3]

[3]Plaintiff argues that the records revealing her admission are privileged. (D.I. 61 at 16.) Plaintiff, however, signed a waiver explicitly waiving privilege with respect to these documents. (D.I. 68 at C2.) On January 12, 2005, Plaintiff filed a Motion for Leave to File a Surreply with an attached Surreply. (D.I. 70.) I have read Plaintiff's arguments and in effect allowed the Surreply; however, I reject the arguments contained therein. In that Surreply, Plaintiff cites an email that states that the waiver was given on

The sole evidence offered by Plaintiff in the face of these admissions and the other proof offered by Defendant is her own equivocal and self-serving description of what she said in the phone call she made on June 14th. She has thus raised no more than a scintilla of evidence about her resignation on that date. Even assuming, however, that an issue of material fact existed as to whether Plaintiff resigned on June 14th, it is uncontested that she sent a resignation letter to Defendant on Wednesday, June 19th (D.I. 56 at A100, 228-29), and that is dispositive. Plaintiff maintains that she was "tricked ... into submitting a resignation letter." (D.I. 61 at 15.) She argues that she was told she would be allowed "to wrap up things with the client and keep [her] vesting." (*Id*. citing D.I. 62 at B249 (alteration in original).) Due to this representation, Plaintiff gave her resignation with an effective date of August 6th. (*Id*.) Nevertheless, Plaintiff admits that she submitted her resignation with a proposed effective date, and that there was no guarantee that the date would be accepted. (*Id*. at B251.) Moreover, the resignation letter itself states that "[b]elow is the Resignation letter [which] ... has the effective date to be presented to the Management Team." (D.I. 56 at A228-29.)

An employer's decision to accept a resignation immediately, rather than accepting an employee's request that the resignation be effective at a future date, does not constitute an adverse employment action. *Wynn v. Paragon Sys.*, 301 F. Supp. 2d 1343, 1354 (D. Ga. 2004). Plaintiff was an at-will employee. She had no right to resign and then demand her own chosen termination date. Further, there is no evidence fairly

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the condition that she had not "waived any trial objections." (D.I. 70, Ex. A.) But the waiver itself was explicit, stating that "I hereby waive any ... privilege I may otherwise have to said information." (D.I. 68 at C2.) If Plaintiff wished to restrict her waiver, she should have included such restrictions in the waiver she signed.

suggesting that the Defendant's decision to accept Plaintiff's resignation letter immediately, as opposed to a date six weeks later, was driven by any desire to discriminate against her on the basis of her age.[4]

B. Breach of the Implied Covenant of Good Faith and Fair Dealing

Here Plaintiff makes two arguments with respect to the alleged breach. First, Plaintiff maintains that "Defendant manipulated its employment records to create fictitious grounds for termination before the offered date of resignation." (D.I. 61 at 36.) Second, Plaintiff alleges that "Defendant used its superior bargaining power to deprive Plaintiff of clearly identifiable compensation relating to her four years, ten months, and fifteen days of past service." (*Id*. at 37.)

With respect to the first allegation, Plaintiff does not describe what records were manipulated. More importantly, however, Plaintiff was not terminated. The Plaintiff cannot now argue that Defendant created fictitious grounds for termination when she is the one who, by her resignation, ended the employment relationship.

As to the second allegation, the case law that Plaintiff cites clearly holds that termination is a requirement for a finding of breach. (*Id*. at 37-38.) "[T]he covenant might be violated if termination of an at-will employee was a mere pretext to cheat the worker out of another contract benefit to which the employee was clearly entitled ... ."

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[4]Plaintiff argues that the decision to accept her resignation was driven by Defendant's desire not to let Plaintiff's benefits fully vest. (D.I. 61 at 35.) Vesting, however, was determined by her time in service, not her age. If an employee started working at CSC at 18 years of age, she would be fully vested at 23 years of age. It cannot be said that vesting is age-related, as it affects people under 40 as well as those over 40.

Guz v. Bechtel Nat., Inc., 8 P.3d 1089, 1112 (Cal. 2000). Again, because Plaintiff was not terminated, Plaintiff's second argument must also fail.

V. CONCLUSION

For the reasons set forth, Defendant's Motion for Summary Judgment will be granted. One might wish that events had worked out differently and that Plaintiff's years of service had been recognized by the vesting of employment benefits, but the Defendant was within its rights to immediately accept Plaintiff's ill-timed resignation. An appropriate order will follow.

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FOR THE DISTRICT OF DELAWARE

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Plaintiff,	)	
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v.	)	Civil Action No. 04-002-KAJ
	)	
COMPUTER SCIENCES CORP.,	)	
	)	
Defendant.	)	

ORDER

For the reasons set forth in the Memorandum Opinion issued today, it is hereby ORDERED Defendant's Motion for Summary Judgment (Docket Item 52) is GRANTED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

January 25, 2005
Wilmington, Delaware