

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

CYNTHIA HINES KING,)	
)	
Plaintiff,)	
v.)	No. 2:10-cv-02921-SHL-tmp
)	
HILTON WORLDWIDE, INC.,)	
)	
Defendant.)	

**ORDER GRANTING DEFENDANT HILTON WORLDWIDE INC.’S MOTION FOR
SUMMARY JUDGMENT**

Before the Court is Defendant Hilton Worldwide, Inc.’s Motion for Summary Judgment (ECF No. 88), filed on August 1, 2014. Plaintiff filed a Response in Opposition (ECF No. 104), to which Defendant filed a Reply (ECF No. 110). For the reasons set forth below, Defendant’s Motion is **GRANTED**.

BACKGROUND

Plaintiff alleges that Defendant discriminated against her on the bases of her race and gender as well as retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981 and on the bases of age and retaliation in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq. (“ADEA”).

The following material facts are undisputed for purposes of summary judgment unless otherwise noted. Cynthia Hines King is an African American female over the age of forty. King began working at Hilton in 2005, initially as a temporary employee. King was promoted to Brand Distribution Marketing Manager in 2005 and then to Senior Interactive Marketing Manager in 2007. King’s primary job responsibilities as an Interactive Marketing Manager were to work with representatives of various Hilton Family Brands (e.g. Embassy Suites, Homewood

Suites) as well as Hilton Worldwide corporate departments (e.g. design, I.T.) to develop and implement online marketing initiatives.

On October 5, 2005, one of the brands for which King was responsible (Conrad Hotels), sent e-mails to King and her then-supervisor Jamie Welsh complaining about King's untimeliness, failure to respond to electronic communications, and general unpreparedness. (ECF No. 89-7.) On October 10, 2005, Welsh placed King on a 30-day mentoring program due to King's issues with time management and communication skills. (ECF No. 89-2 at 10-11.) In the Mentoring Recap, Welsh noted that King had "a very hard time embracing more efficient ways of doing work," had poor communication skills, and an argumentative nature. (ECF No. 89-2 at 10-11.)

Welsh pointed out similar issues in King's 2005 Performance Review. (ECF No. 89-8.) King was placed on an Action Plan on December 16, 2005 to work on the issues cited in her Performance Review. (ECF No. 89-9.) King protested this Action Plan in a letter on June 9, 2006, stating that she thought the Performance Review was unfair and that she signed it only because she was under "great stress, duress, and physical illness." (ECF No. 89-10.) King's 2006 Performance Review noted some improvements, but also that King continued to struggle with conflict management. (ECF No. 89-11 at 4.) Despite signs of improvement, King received a written warning from her then supervisor Kathy Millican on April 20, 2007 for failure to timely submit expense reports. (ECF No. 89-2.)

On August 20, 2007, Hilton hired Patrick Brady (Caucasian, male, then-age 38) as Director, Website Identity and Marketing, a job King applied for but was not offered. In this position, Brady was the direct supervisor of the Interactive Marketing team, which included King, Diana Plazas (Hispanic, female, then-age 26) and Elisabeth Yarbrough (Caucasian, female,

then-age 33). King continued to have performance issues under Brady's supervision.

On October 17, 2007, Rich Clayton, Director of Website Experience for Hilton, complained to Brady about some rush jobs that had to be completed for King due to King's poor time management. (ECF No. 89-4 at 13-14.) On October 24, 2007, Brady met with King to discuss issues with King's performance. Brady identified performance issues and stated that there was a need for improvement in the following areas: (1) communicating with management; (2) meeting deadlines and overall time management; (3) advice and communications with the brands; (4) conflict resolution to avoid being confrontational; (5) teamwork with colleagues; and (6) accountability.

Despite this meeting, King continued to struggle with these issues. On November 29, 2007, Brady received an email from his supervisor, Tucker Taylor, stating that a brand was upset about some work that was not completed when expected because of King's mistakes. (ECF No. 89-6 at 17-20.) On December 6, 2007, Brady received another e-mail from Taylor about the same issue, in which Taylor stated that he and King "had some tense back and forth in which Cynthia [King] continued to blame others and I reiterated that I believed she dropped the ball." (ECF No. 89-6 at 19.) That same day, Brady sent an e-mail to King, seeking to set up a meeting to discuss her performance issues. (ECF No. 89-6 at 22.) King responded, stating she was concerned that there was a continuous "rush to judgment" in relation to her and that she believed there was "an overarching agenda." (ECF No. 89-6 at 21.)

Brady and Taylor met with King on December 14, 2007 to discuss the responsibilities and expectations of King's position, performance issues involving some of the projects King managed, and the same issues previously discussed in the October 24, 2007 meeting. (ECF No. 89-6 at 23-26.) Immediately after this meeting, Carla Raynor, Director of Hilton Family

Marketing, sent an e-mail to Brady and Taylor stating that King had just approached her for a performance evaluation and that the request caused Raynor to feel like she was being drawn into personal drama. (ECF No. 89-6 at 27-30.)

King's performance issues continued into the next year. On January 28, 2008, Brady e-mailed King regarding a project that was initially due on January 15, which had not been turned in. (ECF No. 89-6 at 31-32.) The project was eventually submitted on January 30. (ECF No. 89-6 at 33.) To address the ongoing problems, Brady put King on a Performance Improvement Plan on February 28, 2008. The Performance Improvement Plan provided that King would be closely monitored by management for 60 days, requiring Brady and King to meet two times each week to discuss these issues. King was also required to demonstrate immediate improvement in four areas: (1) teamwork and relationships with colleagues and customers; (2) on-time completion of assigned tasks; (3) quality and quantity of contribution to brand initiatives; (4) taking responsibility for her performance. (ECF No. 89-6 at 34-36.) If King failed to improve in these areas, she was subject to further disciplinary action, up to and including termination. King refused to sign the Performance Improvement Plan. Shortly after this plan was in place (March 27, 2008), King failed to meet a deadline for a new project. (ECF No. 89-6 at 43-47.)

On April 2, 2008, King submitted a "Rebuttle [*sic*] to Action Plan Presented 2/28/08." (ECF No. 89-12.) In the letter, King alleged that the accusations made in the action plan were not truthful, that the action plan was unjustified and unfair, and that she believed Brady was treating her poorly because of her gender, age, and/or race. Jennifer Baker, Manager of Human Resources, conducted an investigation into King's allegations and determined that King had not been subjected to any discrimination based upon her race, gender, or age.

On June 5, 2008, Brady issued a final written warning to King based on her failure to

meet the requirements of her Performance Improvement Plan. (ECF No. 89-6 at 48-52.) King refused to sign the final written warning. On June 9, King e-mailed Diane Heyman, Vice President of Human Resources, to complain that King had been falsely accused of work related issues and was experiencing retaliation for filing a complaint of discrimination with Human Resources. Ms. Heyma met with King to discuss her allegations on June 17. After investigating the allegations, Heyman determined that there had not been retaliation and that King had failed to meet the requirements of her Performance Improvement Plan, therefore the final written warning was justified. (ECF No. 89-13 at 2.) On August 4, 2008, Hilton issued King a Notice of Termination for failing to improve her performance. Brady and Tucker Taylor jointly made the decision to terminate King.

STANDARD OF REVIEW

Summary judgment is proper “if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(c). Although hearsay evidence may not be considered on a motion for summary judgment, Carter v. Univ. of Toledo, 349 F.3d 269, 274 (6th Cir. 2003), evidentiary materials presented to avoid summary judgment otherwise need not be in a form that would be admissible at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The court is to “view facts in the record and reasonable inferences that can be drawn from those facts in the light most favorable to the nonmoving party.” Bible Believers v. Wayne Cnty., — F.3d —, 2014 WL 4211190, at *5 (6th Cir. Aug. 27, 2014) (citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)).

Once a properly supported motion for summary judgment has been made, “an opposing

party may not rely merely on allegations or denials in its own pleading; rather, its response must—by affidavits or as otherwise provided in this rule—set out specific facts showing a genuine issue for trial.” Fed.R.Civ.P. 56(e)(2). A genuine issue for trial exists if the evidence would permit a reasonable jury to return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The court’s role is not to weigh evidence or assess credibility of witnesses, but simply to determine “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Kroll v. White Lake Ambulance Auth., — F.3d —, 2014 WL 4067748, at *3 (6th Cir. Aug.19, 2014) (quoting Anderson, 477 U.S. at 251–52).

ANALYSIS

Defendant seeks summary judgment on Plaintiffs’ claims for age discrimination and retaliation under the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq. (“ADEA”), and race and gender discrimination and retaliation under Title VII, 42 U.S.C. § 1981.

The ADEA prohibits an employer from “discharg[ing] any individual or otherwise discriminat[ing] 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). The ADEA also prohibits an employer from “discriminat[ing] against any of his employees ... because such individual ... has opposed any practice made unlawful under [the ADEA],” or has caused, testified, or participated in an official investigation under the ADEA. 29 U.S.C. § 623(d). Title VII provides that it is an “unlawful employment practice for an employer ... to discriminate against any individual ... because of [her] race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e–2(a)(1). Like the ADEA, Title VII also prohibits employers from retaliating

against employees who oppose any practice made unlawful by Title VII (i.e. race and gender discrimination). 42 U.S.C. § 2000e-3(a).

Because King does not have direct evidence of discrimination, she must rely on the circumstantial-evidence framework set forth in McDonnell Douglas Corp. v. Green. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Under that framework, the Plaintiff must first make out a *prima facie* case for employment discrimination. If the Plaintiff establishes a *prima facie* case, the burden shifts to the Defendant, who must articulate a legitimate, nondiscriminatory reason for its employment action. Finally, if the Defendant provides such a reason, the Plaintiff must prove that the reason given was pretextual. See Blizzard v. Marion Technical College, 698 F.3d 275, 283 (6th Cir. 2012) (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973)).

1. *Prima-Facie* Case

a. Gender and Race Discrimination

To make out a *prima facie* case of race and gender discrimination under Title VII, King must prove: (1) that she was a member of a protected class; (2) that she was discharged; (3) that she was qualified for the position held; and (4) that she was replaced by someone outside of the protected class. Griffin v. Finkbeiner, 689 F.3d 584, 592 (6th Cir. 2012).

King has shown that she was a member of a protected class (African-American, female), that she was discharged, and that she was arguably qualified for the position she held. She has shown that she was replaced by someone of a different race (Rayna Schein, bi-racial), but not by someone of another gender. Therefore, summary judgment is **GRANTED** as to King's gender discrimination claim under Title VII for failure to establish a genuine issue of material fact as to her *prima facie* case.

b. Age Discrimination

To make out a *prima facie* case of age discrimination, King must prove four elements: (1) that she was a member of a protected group; (2) that she suffered an adverse employment action; (3) that she was qualified for the position; and (4) that she was either replaced by a significantly younger person or that a similarly situated younger employee was not subject to the same adverse employment action. Martin v. Toledo Cardiology Consultants, Inc., 548 F.3d 405, 410 (6th Cir. 2008).

King has shown sufficient proof at this stage to establish the first three elements. King has not put forth evidence showing her replacement was significantly younger. However, in light of the Defendants failure to deny that King's replacement was not significantly younger, the Court will assume for the purposes of this motion that King's replacement was significantly younger. Therefore, King has made a *prima facie* case for age discrimination.

c. Retaliation

To make out a *prima facie* case of retaliation, King must show that (1) she engaged in activity protected under Title VII or the ADEA; (2) her exercise of her protected rights was known to Defendant; (3) an adverse employment action was subsequently taken against her; and (4) there was a causal connection between the protected activity and the adverse employment action. Fuhr v. Hazel Park School Dist., 710 F.3d 668, 674 (6th Cir. 2013) (citing Garner v. Cuyahoga Cnty. Juvenile Court, 554 F.3d 624, 639 (6th Cir. 2009)).

King has made out the first three elements of her *prima facie* case of retaliation, but there are serious doubts as to whether King has established a causal connection between the protected activity. While King was dismissed relatively soon after reporting the alleged discrimination, the temporal proximity between the alleged retaliation and the complaint is not so immediate to

compel an inference of causal connection and King has not presented evidence of retaliation beyond this proximity. See Randolph v. Ohio Dep't of Youth Servs., 453 F.3d 724, 737 (6th Cir. 2006) (temporal proximity itself is generally insufficient to find a causal connection, and typically retaliation claims must be coupled with other indicia of retaliatory conduct to support a finding of a causal connection.) However, even assuming for the purposes of this motion that King has made out a *prima facie* case, King's retaliation claims fail because she cannot show that Hilton's legitimate, non-discriminatory reason for terminating her was a pretext for discrimination.

2. Defendant's Legitimate, Non-Discriminatory Reason

Once a Plaintiff has established a *prima facie* case for her discrimination claims, the burden shifts to the Defendant to provide a legitimate, non-discriminatory reason for terminating Plaintiff. Here, Defendant has asserted that King was terminated because she failed to improve in the areas set forth in her Performance Improvement Plan. More specifically, Defendant contends that King was terminated because her work was untimely, she had poor communication skills, and she had difficulty accepting criticism and responsibility, and these work deficiencies occurred over a period of time of almost three years. This is sufficient to satisfy the defendant's burden, which is "one of production, not persuasion; it involves no credibility assessment."

Felder v. Nortel Networks Corp., 187 F. App'x 586, 592 (6th Cir. 2006) (citing St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 509 (1993)).

3. Plaintiff's Failure to Prove Pretext

Since Hilton has provided a legitimate, non-discriminatory reason for terminating King, the burden shifts to King to prove by a preponderance of the evidence that the reasons given are mere pretext for intentional discrimination. To demonstrate intentional discrimination, King

may prove that the proffered reason (1) has no basis in fact, (2) is not the actual reason, or (3) is insufficient to explain Hilton's actions. Logan v. Denny's, 259 F.3d 558, 567 (6th Cir. 2001). Moreover, "a reason cannot be proved to be a 'pretext for discrimination' unless it is shown *both* that the reason was false, *and* that discrimination was the real reason." St. Mary's Honor Ctr., 509 U.S. at 515.

King must ultimately show that Hilton intentionally discriminated against her. Reeves v. Sanderson Plumbing Prods., 530 U.S. 133, 153 (2000). It is not sufficient to show that Hilton's rationale was "mistaken, foolish, trivial or baseless" so long as Hilton honestly believed in the rationale and based this belief on the particularized facts before it at the time. Smith v. Chrysler Corp., 155 F.3d 799, 806-7 (6th Cir. 1998). Furthermore, in the case of the age discrimination and retaliation claims, King must show that these factors were the "but-for" reason for terminating her and not simply one of several reasons leading to her termination. Univ. of Texas Sw. Med. Ctr. v. Nassar, 133 S. Ct. 2517, 2533, 186 L. Ed. 2d 503 (2013) (retaliation claims must be proven by "but-for" causation); Gross v. FBL Fin. Servs., Inc., 557 U.S. 167, 177, 129 S. Ct. 2343, 2351, 174 L. Ed. 2d 119 (2009) (age discrimination claims must be proven by "but-for" causation). Under either a mixed-motive theory or a "but-for" theory, King has failed to show that there is a genuine issue of material fact supporting her contention of intentional discrimination.

King argues that there has been a conspiracy against her at Hilton. She believes that ever since Brady was hired he was out to get her based on her race/age/gender. This belief appears to be based in part on perceived slights against her (e.g., not including her in every meeting), alleged preferential treatment for other team members (e.g., allowing them to work from home more often), as well as a single disputed remark (King alleges that Brady said in a meeting that

“all of our team is young and energetic, except for you Cynthia.”) When Brady’s superior and the Hilton Human Resources department took Brady’s side after King complained of the alleged discrimination, King became convinced that they were all conspiring against her as well.

King also believes Brady judged her work unfairly, disputing his criticisms of her performance. She backs this up with e-mails and letters from brands that compliment King’s work. While some co-workers may have been pleased with King, she fails to show that the complaints against her are false, not the actual reason for her termination, or insufficient to explain Hilton’s actions. The record shows that King had a history of performance issues going back well before Brady became her supervisor. King was cited multiple times for being combative, a poor communicator and for having difficulties getting work done in a timely manner. The record shows that Brady gave King several opportunities to improve upon these issues but she was either unable or unwilling to do so.

Although King disagrees with the assessment of her performance, she never points to proof to support her contention that these issues did not exist or to others who had the same issues but were not penalized for them. Instead of refuting her managers’ consistent complaints, King relies on her own assessment of her performance and a few e-mails from other co-workers saying she did a good job. However, a few e-mails from people saying she did good does not negate the problems that others identified. Thus, King has not shown that Hilton’s legitimate, non-discriminatory reason was a pretext for discrimination.

CONCLUSION

King has shown that she believes she was doing a good job and that some of her co-workers agreed with her. However, she has failed to show that her supervisor (indeed, several supervisors) did not honestly believe she was performing poorly or that her perceived poor

performance was a pretext for intentional discrimination. Therefore, Defendant's Motion for Summary Judgment is **GRANTED** as to all Plaintiffs' claims. The Motion to Strike, (ECF No. 112), Motion to Dismiss (ECF No. 120), Motion for Leave to File a Reply (ECF No. 122), and Motion in Limine to Exclude Plaintiff's Witnesses (ECF No. 128) are all **DENIED as MOOT**.

IT IS SO ORDERED, this 7th day of October, 2014.

/s/ Sheryl H. Lipman _____

Sheryl H. Lipman

U.S. DISTRICT COURT JUDGE