UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JIA CHEN, Plaintiff	:	
v.	:	3:98-CV-2478 (EBB)
PITNEY BOWES, Defendant	:	

RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Plaintiff Jia Chen {"Plaintiff" or "Chen") brings this nine-count Complaint against Defendant Pitney Bowes ("PB" or "Defendant"), seeking relief under federal law and state common law. He claims violation of the Age Discrimination in Employment Act ("ADEA"), the Americans with Disability Act ("ADA"), Title VII, breach of contract, breach of the implied duty of good faith and fair dealing, promissory estoppel, the intentional and negligent infliction of emotional distress and negligent misrepresentation. PB now moves for summary judgment on all nine counts.

STATEMENT OF FACTS

The Court sets forth only those facts deemed necessary to an understanding of the issues raised in, and decision rendered on, this Motion.

Chen was born in China and came to this country in 1982. He

spoke no, or *de minimus,* English upon his arrival. In 1983, he was hired by PB in the position of Machine Operator. In this position, Plaintiff had little, if any, contact with his co-employees. By this time, he was able to greet people and say good night. He was not, however, able to understand his performance reviews, except for the word "good". Inasmuch as he could not read English at all, he signed the evaluations without looking at them.

In 1993, Plaintiff received a small promotion, but he still did not have to interact with his co-employees. In late 1993, as part of the workforce transition program, Plaintiff was reclassified as Production Specialist I. This was the lowest of the new classifications, and Plaintiff was placed there because he still could not speak, read, or write English at a fourth-grade level, a requirement for the job and any advancement.

Plaintiff was first assessed for literacy in 1991 and failed to pass the test, In response PB offered Plaintiff on-site literacy training in an effort to help him improve his literacy skills and to pass the test. For two years, Plaintiff attended literacy classes once or twice a week for two hours at a time. He was paid for the time he was in these classes. After two years of literacy training, Plaintiff again failed the test. PB then provided Plaintiff with several more months of literacy training, on a one-to-three basis. Plaintiff was then given the

literacy test again and, again, he failed it.

In January, 1996, immediately after he had failed the literacy test for a third time, Plaintiff went out on long-term disability. This leave was prompted by Plaintiff's alleged "physical and mental disabilities including panic disorder, agoraphobia, and major depression." [1]/

In September, 1996, PB implemented a reduction in force of all manufacturing employees. The reduction in force was necessitated by the gradual elimination in production of mechanical postage meters and the shift towards the full-time production of digital postage meters. Fewer employees were needed to meet these production needs. When not enough employees sought the voluntary reduction, with severance pay, PB moved to the second phase of the reduction and terminated the lowest producing employees. An eight-part questionnaire was used to determine who should be terminated. Approximately one hundred employees were terminated, including all Production Specialists I. All Production Specialists I were terminated due to their failure to pass the literacy and math assessment tests.

On September 29, 1997, Plaintiff returned to work and was told to report to Angela Sposato. Through a translator, Ms. Sposato explained what had happened in his absence, and that he was being terminated for failure to pass the literacy and math

[1]/ In December of 1989, Plaintiff had taken another extended leave of absence due to similar disabilities. He returned to work in May, 1990.

tests. She explained that, although the reduction in force was consummated during his absence, he was not informed of same because it was the policy of PB not to terminate an individual while on a medical leave of absence. Inasmuch as PB continued to pay Chen while on leave, he received eight months more pay than did the other Production Specialists who had been terminated.

In his Complaint, Plaintiff alleges on multiple occasions that PB should have rehired him after his termination. In support of this claim, Plaintiff alleges that one Qi Chen, an employee terminated in 1996 because he failed to pass the literacy and math tests, was rehired as part of a buffer work force. These buffers were not regular PB employees, but temporary employees that had been hired through an employment agency with the understanding that they would be terminated as the production schedule returned to normal. Although Chen alleges that he, too, should have been rehired, he testified that he had never applied for a buffer job and he, in fact, was too sick to apply.

LEGAL ANALYSIS

I. The Standard of Review

In a motion for summary judgment the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). *See also* Anderson v. Liberty

Lobby, 477 U.S. 242, 256 (1986)(plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment). Although the moving party has the initial burden of establishing that no factual issues exist "[o]nce that burden is met, the opposing party must set forth specific facts demonstrating that there is a genuine issue for trial." Sylvetre v. United States, 771 F.Supp. 515, 516 (D.Conn. 1990).

If the nonmoving party has failed to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof at trial, then summary judgment is appropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). "In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Id.* at 322-23. *Accord,* Goenaga v. March of Dimes Birth Defects Foundation, 51 F.3d 14, 18 (2d. Cir. 1995)(movant's burden satisfied by showing if it can point to an absence of evidence to support an essential element of nonmoving party's claim). In this regard, mere assertions and conclusions of the party opposing summary judgment are not enough to defend a well-pleaded motion. Lamontagne v. E.I. DuPont de Nemours & Co., 834 F.Supp 576, 580 (D.Conn. 1993), *aff'd* 41 F.3d 846 (2d Cir. 1994).

The court is mandated to "resolve all ambiguities and draw all inferences in favor of the nonmoving party. . . ." Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d. 520, 523 (2d Cir.), *cert. denied*, 506 U.S. 965 (1992). "Only when reasonable minds could not differ as to the import of the evidence is summary judgment proper." Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir.), *cert. denied*, 502 U.S. 849 (1991). If the nonmoving party submits evidence which is "merely colorable", or is not "significantly probative," summary judgment may be granted. Anderson, 477 U.S. at 249-52 (scintilla of evidence in support of plaintiff's position insufficient; there must be evidence from which a jury could reasonably find in his favor). *See also*, Reeves v. Sanderson Plumbing Products, Inc., 120 S.Ct. 2097 (2000).

The Second Circuit has held that summary judgment is appropriate in certain discrimination cases, regardless that such cases may involve state of mind or intent. "The summary judgment rule would be rendered sterile, however, if the mere incantation of intent or state of mind would operate as a talisman to defeat an otherwise valid motion. Indeed, the salutary purposes of summary judgment -- avoiding protracted, expensive and harassing trials -- apply no less to discrimination cases than to commercial or other areas of litigation." Meiri v. Dacon, 759 F.2d 989, 998 (2d Cir. 1985).

"[T]he mere existence of *some* alleged factual dispute

between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact. As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Anderson 477 U.S. at 247-48 (emphasis in original).

II. The Standard As Applied

I. The ADEA and Title VII Claims

Under the ADEA, it is "unlawful for an employer . . . to fail or refuse to hire or discharge any individual or otherwise discriminate 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). Title VII makes it unlawful for " an employer . . . to fail or refuse to hire or to discharge any individual . . . because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). Both ADEA and Title VII are subject to the same judicial scrutiny. Woroski v. Nashua Corp., 31 F.3d 105, 108 (2d Cir. 1994).

The analytical framework for considering claims of age or racial discrimination is well-established. First, a plaintiff

must set forth a *prima facie* case of age or racial discrimination. As first outlined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), a plaintiff must show: (1) that he was within the protected racial or age group;[2]/ (2) that he was qualified for the position at issue; (3) that he was discharged; and (4) that the discharge occurred under circumstances giving rise to an inference of discrimination. Once a plaintiff has established his *prima facie* case, the burden shifts to the employer which must proffer a legitimate non-discriminatory business rationale for its actions. Woroski, 31 F.3d at 108. This burden is one of production, not persuasion. Reeves, 102 S.Ct. At 2108.

Once this burden is met by offering admissible evidence sufficient for the trier of fact to conclude that the plaintiff was terminated for non-discriminatory reasons, the burden then shifts back to the plaintiff to prove, by a preponderance of the evidence, that the reasons offered by the employer were pretextual and the true reason for his discharge was discriminatory. St Mary's Honor Center v. Hicks, 509 U.S. 502, 507-508 (1981). *See also* Gallo v. Prudential Residential Services., Ltd. Partnership, 22 F.3d 1219, 1225 (2d Cir. 1994). "The ultimate burden of persuading the trier of fact that the

[2]/ Individuals who are at least forty years old are protected by ADEA. 29 U.S.C. § 631(a).

defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981).

To prevail on a claim of age or racial discrimination, a plaintiff must show that his age or race "actually played a role in [the employer's decision-making] process and had a determinative influence on the outcome." Reeves, 102 S.Ct. at 2105. Nonetheless, the ultimate question for the fact finder is whether the employer intentionally discriminated, and proof that the employer's proffered reason is "unpersuasive, or even obviously contrived does not necessarily establish that the plaintiff's proffered reason . . . is correct". St Mary's, 509 U.S. at 511. In other words, "[i]t is not enough . . . to disbelieve the employer; the fact finder must believe the plaintiff's explanation of intentional discrimination." *Id*.

In the present case, it is beyond cavil that Plaintiff has not met his burden of demonstrating intentional age or racial discrimination. The amount of evidence presented by PB to demonstrate non-discriminatory reasons for Plaintiff's termination, supported by Plaintiff's own testimony, is overwhelming. PB terminated Plaintiff's employment, not because of his age or race, but because despite repeated literacy and math testing, he failed on three occasions to pass the simple tests and, as well as all Production Specialists similarly

situated, he was terminated for this reason. It cannot be ignored that PB hired Plaintiff without regard for his age or race.

The Court must next ascertain whether Plaintiff has produced any evidence from which a rational jury could find that Plaintiff would meet his ultimate burden of proving intentional age or racial discrimination. This inquiry must be answered in the negative. Chen has not come forth with any evidence whatsoever with regard to any discrimination. He testified that no one ever made any comments upon his age or race and that is a mere speculation on his part. It is well settled that the party opposing a motion for summary judgment "must do more than simply show thatthere is a metaphysical doubt as to the material facts." Matshusita Elec. Indis. Co. v. Zenith Radio Corp., 465 U.S. 574, 586 (1986). Since Plaintiff's reasons are impermissible conjecture and speculation, he fails to carry his burden on the ADEA and Title VII claims.

II. The ADA Claim

Although the elements of an ADA claim are different from those of a Title VII or ADEA claim, the same burden-shifting analysis has been held to apply to an ADA claim. Greenway v. Buffalo Hilton Hotel, 143 F.3d 47, 52 (2d Cir. 1998); Wernick v. Federal Reserve Bank of New York, 91 F.3d 379. 83 (2d Cir. 1996).

In order to set forth a *prima facie* under the ADA a

plaintiff must show by a preponderance of the evidence that : (1) his employer was subject to the ADA; (2) that he was disabled within the meaning of the ADA; (3) he was otherwise qualified to perform the essential functions of his job; and (4) he suffered adverse employment action because of his disability. Ryan v. Grae & Rybicki, P.C., 135 F.3d F.2d 867, 869-70 (2d Cir. 1998).

Although this prima facie case is also not onerous, nevertheless Plaintiff fails to set forth anything other than speculation and conclusory statements that he was otherwise qualified to perform the essential functions of his job or that he suffered termination due to his disability.

The ADA only allows "a qualified individual with a disability" to bring a claim under the ADA. See 42 U.S.C. § 12112(a). This section defines a "qualified person with a disability" as "an individual with a disability, who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." There is no doubt that Plaintiff is an individual with a psychological disability. However, his disability, as described, has nothing to do with his failure to pass the literacy and math tests three times.[3]/

It is undisputed that the ability to read, write and

[3]/ This was Plaintiff's second leave of absence for his disability. Inasmuch as his job responsibilities at that time had not changed, he was permitted to return to work.

comprehend English at a fourth grade level is one of the job requirements of a Production Specialist. Plaintiff conceded at his deposition that he failed the literacy and math tests three times and that he was, therefore, unable to meet this requirement. Accordingly, he was terminated at the time of the reduction in force, along with twenty others who could not pass the literacy and math tests. Hence, Plaintiff was not treated differently from any of his colleagues who failed the literacy and math tests, and he cannot prove, by a preponderance of the evidence, that he was treated differently at the time of his termination.

As a result, summary judgment shall be granted on the ADA claim, as Plaintiff has failed to make out a prima facie case of disability discrimination.

III. Failure to Rehire

Plaintiff asserts that discrimination reared its head when a temporary buffer force was rehired and that the literacy requirements did not apply to these individuals. His reasoning is invalid for two reasons. First, he never applied for one of these jobs and, in fact, testified that he was "too sick" to apply. It is well established that an essential element to any failure to rehire or promote claim is that the plaintiff has applied for or at least expressed interest in rehire or promotion. *See* Brown, 163 F.3d at 706 . Second, since the

temporary jobs consisted of purely manual labor, including moving materials and replenishing supplies, the literacy skills were not required. This temporary buffer force was terminated in 1999. Accordingly, there was no discrimination against Plaintiff of any kind when this buffer force was rehired to complete this manual labor.

CONCLUSION

Plaintiff has failed to set forth any genuine issues of material fact, as to which he would bear the burden of proof at trial, as to the ADEA, Title VII and the ADA claims. Inasmuch as the Court is granting summary judgment to the Defendant on the federal claims, it declines to exercise supplemental jurisdiction over the state law claims. Defendant's Motion for Summary Judgment [Doc. No. 22] is GRANTED. The Clerk is directed to close this case.

SO ORDERED

_____

ELLEN BREE BURNS

SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this ___ day of November, 2000.