See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of Appeals 4th Cir. Rule 32.1.

United States Court of Appeals, Fourth Circuit.

Samantha L. COLEMAN, Plaintiff - Appellant,
v.
SCHNEIDER ELECTRIC USA, INC., Defendant - Appellee.

No. 18-1265

Submitted: December 28, 2018Decided: January 9, 2019

Appeal from the United States District Court for the District of South Carolina, at Anderson. Henry M. Herlong, Jr., Senior District Judge. (8:15-cv-02466-HMH)

Attorneys and Law Firms

Candy M. Kern-Fuller, UPSTATE LAW GROUP, LLC, Easley, South Carolina, for Appellant. C. Frederick W. Manning II, Nicole P. Cantey, FISHER & PHILLIPS LLP, Columbia, South Carolina, for Appellee.

Before KEENAN, THACKER, and QUATTLEBAUM, Circuit Judges.

PER CURIAM:

Samantha Coleman appeals the district court's order granting summary judgment to Schneider Electric USA, Inc. ("Schneider") on her discrimination and retaliation claims raised pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. §§ 2000e to 2000e-17 (West 2012 & Supp. 2018), and the Equal Pay Act, 29 U.S.C. § 206(d) (2012). Finding no error, we affirm the district court's order.

We "review[ ] de novo the district court's order granting summary judgment." *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562, 565 n.1 (4th Cir. 2015). "A district court 'shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.' " *Id.* at 568 (quoting Fed. R. Civ. P. 56(a)). "A dispute is genuine if a reasonable jury could return a verdict for the nonmoving party." *Id.* (internal quotation marks omitted). In determining whether a genuine dispute of material fact exists, "we view the facts and all justifiable inferences arising therefrom in the light most favorable to ... the nonmoving party." *Id.* at 565 n.1 (internal quotation marks omitted). However, "the nonmoving party must rely on more than conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence." *Dash v. Mayweather*, 731 F.3d 303, 311 (4th Cir. 2013).

To establish a failure to promote claim under Title VII, a plaintiff must first make a prima facie showing "that [she] (1) is a member of a protected class; (2) applied for the position in question; (3) was qualified for the position; and (4) was rejected for the position under circumstances giving rise to an inference of unlawful discrimination." *Honor v. Booz-Allen & Hamilton, Inc.*, 383 F.3d 180, 189 (4th Cir. 2004). "If the

plaintiff makes such a showing, the defendant must respond with evidence that it acted on a legitimate, non-discriminatory basis." *Worden v. SunTrust Banks, Inc.*, 549 F.3d 334, 341 (4th Cir. 2008). "If the defendant does so, the plaintiff is then obliged to present evidence to prove that the defendant's articulated reasons were a pretext for unlawful discrimination." *Id.*

Here, the district court correctly granted summary judgment on Coleman's failure to promote claims. While Coleman applied for a position as the Customer Service Supervisor, Schneider subsequently decided to eliminate the position and assigned the position's duties to Marcengill, another supervisor, with no raise in pay. A plaintiff cannot establish a prima facie case if the employer eliminates the position that the plaintiff applied for without other evidence of discriminatory intent. *See Morgan v. Fed. Home Loan Mortg. Corp.*, 328 F.3d 647, 651-52 (D.C. Cir. 2003). Coleman's challenge to Schneider's characterization of its business decision and to Marcengill's eligibility for the position are unavailing.

Turning to the Trainer position, we conclude that the district court correctly concluded that Coleman failed to establish that Schneider's legitimate, nondiscriminatory reason for not promoting Coleman—her poor communication skills—was a pretext for discrimination. Coleman's argument on appeal focuses primarily on her qualifications for the position. "A plaintiff alleging a failure to promote can prove pretext by showing that [she] was better qualified, or by amassing circumstantial evidence that otherwise undermines the credibility of the employer's stated reasons." *Heiko v. Colombo Sav. Bank, F.S.B.*, 434 F.3d 249, 259 (4th Cir. 2006). "We assess relative job qualifications based on the criteria that the employer

has established as relevant to the position in question." *Id.* The plaintiff need not have been the better-qualified candidate for the position, but must show "evidence which indicates that the [employer's] stated reasons for promoting [the other candidate] were a pretext for discrimination." *Anderson v. Westinghouse Savannah River Co.*, 406 F.3d 248, 269 (4th Cir. 2005). However, a plaintiff "cannot establish pretext by relying on criteria of her choosing when the employer based its decision on other grounds." *Id.* at 271.

Here, while Coleman may have satisfactorily trained engineers in her department in the past, the hiring manager believed that Coleman's communication skills were not well-suited to a training role. A former manager had previously informed Coleman that her communication skills needed improvement, and after working with Coleman, her new manager developed a similar opinion. While another former supervisor found that Coleman performed her training tasks adequately, the hiring manager was entitled to form a different opinion of Coleman's capabilities. *See id.* at 272 (recognizing that we "cannot require that different supervisors within the same organization must reach the same conclusion on an employee's qualifications and abilities"). Coleman's other evidence of pretext likewise fails to call into question Schneider's decision to not promote her.

Finally, we conclude that the district court did not err in rejecting Coleman's retaliation claim. To establish a prima facie *250 case of retaliation under Title VII and the Equal Pay Act,[1] a plaintiff is required to "show (1) that she engaged in protected activity; (2) that her employer took an adverse action against her; and (3) that a causal connection existed between the adverse activity and the protected action." *Jacobs*, 780

F.3d at 578 (alterations and internal quotation marks omitted). A plaintiff may attempt to demonstrate that the protected act caused an adverse action through two routes. First, a plaintiff may establish that the adverse act bears sufficient temporal proximity to the protected activity. *See Clark Cty. Sch. Dist. v. Breeden*, 532 U.S. 268, 273-74, 121 S.Ct. 1508, 149 L.Ed.2d 509 (2001). Second, a plaintiff may establish the existence of other facts that alone, or in addition to temporal proximity, suggests that the adverse employment action occurred because of the protected activity. *See Lettieri v. Equant Inc.*, 478 F.3d 640, 650 (4th Cir. 2007).

3The district court correctly recognized that Coleman failed to establish a causal connection between her protected activity and the alleged adverse actions. While Coleman attempts to create temporal proximity by relying on Schneider's default in her lawsuit (subsequently set aside) that occurred closer to the events in question, the relevant date is when the decisionmakers learned of Coleman's protected activity. *See Strothers v. City of Laurel*, 895 F.3d 317, 336 (4th Cir. 2018). Coleman points to no evidence in the record that the relevant decisionmakers knew of the default in this litigation. Stokes learned of Coleman's first EEOC charge in late 2014, and Parks, the human resources manager, learned of it in January 2015, more than one year before Stokes issued the performance evaluation and Parks began drafting the development plan.[2] *See Causey v. Balog*, 162 F.3d 795, 803 (4th Cir. 1998) ("A thirteen month interval between the charge and termination is too long to establish causation absent other evidence of retaliation.").

Additionally, Coleman lacks other evidence of retaliatory animus. Stokes issued Coleman an above-average performance review after learning of her first

EEOC charge, undercutting any inference that he acted with retaliatory animus when he issued the disputed performance evaluation. *See* *Dixon v. Gonzales*, 481 F.3d 324, 336 (6th Cir. 2007). As to the development plan, Parks drafted the plan to improve Coleman's promotion opportunities, and the tasks in the plan were designed to remedy specific shortcomings identified by Schneider.

Accordingly, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Footnotes

1Retaliation claims under Title VII and the Equal Pay Act are governed by the same standard. *Darveau v. Detecon, Inc.*, 515 F.3d 334, 340-44 (4th Cir. 2008); *Culver v. Gorman & Co.*, 416 F.3d 540, 545 (7th Cir. 2005).

2Like the district court, we assume without deciding that these actions were adverse.

United States District Court, D. South Carolina,
Anderson Division.

Samantha L. COLEMAN, Plaintiff,
v.
SCHNEIDER ELECTRIC USA, INC., Defendant.
C.A. No. 8:15-2466-HMH-KFM
Signed 02/05/2018

Attorneys and Law Firms

Stephen Henry Brown, Stephen H. Brown Law Firm, Greenville, SC, for Plaintiff.
C. Frederick W. Manning, II, Nicole Paul Cantey, Fisher and Phillips, Columbia, SC, for Defendant.

OPINION & ORDER

Henry M. Herlong, Jr., Senior United States District Judge

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Kevin F. McDonald, made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 of the District of South Carolina.[1] Samantha L. Coleman ("Coleman") alleges race discrimination and retaliation claims against her employer, Schneider Electric USA, Inc. ("Schneider Electric") under Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000e, et seq., and the Equal Pay Act of 1963 ("EPA"), 29 U.S.C. § 206(d). Schneider Electric filed a motion for summary judgment on July 13, 2017. (Mot. Summ. J., ECF No. 70.) Magistrate Judge McDonald recommends granting

Schneider Electric's motion for summary judgment. (R&R, ECF No. 78.) After review, the court adopts the magistrate judge's Report and Recommendation and grants Schneider Electric's motion for summary judgment.

I. Factual and Procedural History

Coleman, an African American female, was hired by Schneider Electric as an electrical drafter in its Switchboard Order Engineering Group in September 1992 at its manufacturing facility in Seneca, South Carolina. (Mot. Summ. J. Attach. 3 (Pl. Dep. 18), ECF No. 70-3.) In June 1995, Coleman was promoted to Application Engineer in the Switchboard Order Engineering Group. (Id. Attach. 3 (Pl. Dep. 19-21), ECF No. 70-3.) In 1999, Schneider Electric transferred its switchboard production to its Columbia, South Carolina facility and moved its enclosed drives production from Columbia to its Seneca facility. (Id. Attach. 3 (Pl. Dep. 22), ECF No. 70-3.) Coleman remained at the Seneca facility and was transferred to the Enclosed Drives Group. (Id. Attach. 3 (Pl. Dep. 22-24), ECF No. 70-3.) Ammon L. "Lanny" Sullivan, Jr. ("Sullivan"), the Order Engineering Supervisor over the Enclosed Drives Group at the time, relocated to the Seneca facility and became Coleman's supervisor. (Id. Attach. 3 (Pl. Dep. 22-24), ECF No. 70-3.)

In 2002, Sullivan assigned Coleman as the coordinator for engineering training. (Mot. Summ. J. Attach. 3 (Pl. Dep. 25-26), ECF No. 70-3.) Coleman did not obtain a promotion or receive any additional pay in connection with this assignment. (Id. Attach. 3 (Pl. Dep. 25-29), ECF No. 70-3.) In 2006, Coleman was promoted to Senior Application Engineer. (Id. Attach. 3 (Pl. Dep.

26-27), ECF No. 70-3.) Coleman's annual performance reviews were consistently well above average. (Id. Attach. 5 (Stokes Dep. Exs. 3, 5, 7, 10), ECF No. 70-5.) Salary increases were, in significant part, dependent upon these annual performance reviews. (Id. Attach. 5 (Stokes Dep. 45-48), ECF No. 70-5.)

Sullivan retired on July 1, 2012, and Schneider Electric elected not to fill his position. (Resp. Opp'n Mot. Summ. J. Attach. 1 (Coleman Aff. ¶¶ 18-19), ECF No. 73-1.) Sullivan's duties and responsibilities were delegated among the members of the Enclosed Drives Group. (Id. Attach. 1 (Coleman Aff. ¶ 19), ECF No. 73-1.) Coleman was designated the Administrative Lead in Enclosed Drives. (Mot. Summ. J. Attach. 5 (Stokes Dep. 144), ECF No. 70-5.) According to Ted Stokes ("Stokes"), the Enclosed Drives Manager, Coleman's salary increase in July 2012, reflected the new duties she was assigned as Administrative Lead. (Id. Attach. 5 (Stokes Dep. 48), ECF No. 70-5.) However, Coleman's 2012 Individual Salary Statement does not indicate that the increase was related to the additional duties and Coleman was never informed that her annual salary increase was compensation for these additional duties. (Id. Attach. 5 (Stokes Dep. Ex. 4 (2012 Individual Salary Statement), ECF No. 70-5.)

Schneider Electric has an internal recruiting department that is responsible for coordinating and handling the process of filling vacant positions. (Id. Attach. 6 (Burke Dep. 23-24), ECF No. 70-6.) Schneider Electric employees can apply for vacant positions online. (Id. Attach. 6 (Burke Dep. 115-16), ECF No. 70-6.) On February 5, 2014, Coleman submitted an application for Schneider Electric's Customer Service Supervisor position. (Resp. Opp'n Mot. Summ. J. Attach. 1 (Coleman Aff. ¶ 20), ECF No. 73-1.) While

Schneider Electric's recruiting department was searching for a candidate to fill the position, Ken Hooker ("Hooker"), the hiring manager, requested that Jeff Marcengill ("Marcengill"), Technical Assistant Group ("TAG") Supervisor in Hooker's department, assume the duties of the Customer Service Supervisor position on an interim basis. (Mot. Summ. J. Attach. 3 (Pl. Dep. 101), ECF No. 70-3.)

Before any candidates were formally interviewed for the position, the Seneca Plant Manager, Larry Smith ("Smith"), received a directive to reduce base costs at the facility. (Id. Attach. 8 (Hooker Dep. 44), ECF No. 70-8.) Hooker suggested to Smith that he could achieve a cost reduction in his department by not filling the Customer Service Supervisor position and having Marcengill assume those duties on a permanent basis. (Id. Attach. 8 (Hooker Dep. 45-46), ECF No. 70-8.) Smith discussed Hooker's proposal with Jamie McDonald ("McDonald"), Vice President responsible for overseeing Schneider Electric's plants, and agreed that the Customer Service Supervisor position would not be filled, and the duties would be permanently assigned to Marcengill. (Id. Attach. 8 (Hooker Dep. 48-49), ECF No. 70-8.) Accordingly, Schneider Electric consolidated the Customer Service and TAG Supervisor positions, and Marcengill assumed the Customer Service Supervisor duties on a permanent basis. (Id. Attach. 8 (Hooker Dep. 48-50), ECF No. 70-8.) Marcengill did not receive a pay raise as a result of this consolidation. (Mot. Summ. J. Attach. 8 (Hooker Dep. 50), ECF No. 70-8.)

Hooker and Jeff Brown ("Brown"), the Senior Human Resources Representative, met with Coleman and advised her that she was not going to be interviewed for the Customer Service Supervisor

position because it was being consolidated with the position of TAG Supervisor. (Id. Attach. 3 (Pl. Dep. 100-01), ECF No. 70-3.) Schneider Electric's Customer Service Supervisor requisition history, Requisition 000U2L, provides that the requisition was cancelled on March 5, 2014: "Requisition cancelled: Req cancelled as internal promotion to strategize and reduce base costs." (Resp. Opp'n Mot. Summ. J. Attach. 4 (Requisition History), ECF No. 73-4.)

Marcengill does not have a four-year college degree. (Mot. Summ. J. Attach. 8 (Hooker Dep. 49), ECF No. 70-8.) Coleman holds a Bachelor of Science in Electrical Engineering Technology. (Resp. Opp'n Mot. Summ. J. Attach. 1 (Coleman Aff. ¶ 3), ECF No. 73-1.) At the time that Marcengill assumed the Customer Service Supervisor duties, Schneider Electric had a requirement that an employee have a four-year degree in order to become a supervisor. (Mot. Summ. J. Attach. 7 (Brown Dep. 54), ECF No. 70-7.) However, employees with the title of supervisor were grandfathered in regardless of whether they had a four-year degree. (Id. Attach. 7 (Brown Dep. 54), ECF No. 70-7.)

On February 7, 2014, Coleman submitted an application for the position of LVMCC Assembly/Fabrication Manager. (Resp. Opp'n Mot. Summ. J. Attach. 1 (Coleman Aff. ¶ 24), ECF No. 73-1.) Three other candidates from the Seneca facility applied for the position, and Schneider Electric received two hundred applications from outside candidates. (Mot. Summ. J. Attach. 7 (Brown Dep. 39), ECF No. 70-7.) According to Schneider Electric, after reviewing the candidates' resumes and applications, it determined that none of the candidates, including Coleman, possessed the necessary supervisory or management experience. (Id. Attach. 7 (Brown Dep. Ex. 4), ECF No.

70-7.) Schneider Electric expanded its search and eventually hired Robert Ireton, who had eighteen years of experience as a production and business unit manager and, in his previous role as a manufacturing manager, was responsible for overseeing the entire manufacturing operations of a low volume, highly complex plant. (Id. Attach. 7 (Brown Dep. Ex. 4), ECF No. 70-7.)

In April 2014, Coleman met with Brown, Schneider Electric's Senior Human Resources Representative at the Seneca facility, to discuss her concerns about not being interviewed for the Customer Service Supervisor and the LVMCC Assembly/Fabrication Manager positions. (Resp. Opp'n Mot. Summ. J. Attach. 1 (Coleman Aff. ¶ 27), ECF No. 73-1.) Coleman specifically told Brown that she was subjected to discrimination due to her race and gender, because she met the qualifications for each position, but was not granted an interview for either job. (Id. Attach. 1 (Coleman Aff. ¶ 27), ECF No. 73-1.) Coleman alleges that Brown told her that he did not want to hear her complaints about discrimination and asked her to leave his office. (Id. Attach. 1 (Coleman Aff. ¶ 28), ECF No. 73-1.)

In July 2014, Coleman met with her manager, Stokes, to discuss Schneider Electric's failure to consider her applications for the positions and her claims of racial and gender discrimination. (Id. Attach. 1 (Coleman Aff. ¶ 29), ECF No. 73-1.) Coleman testified that Stokes refused to discuss the employment discrimination issues with her, telling her that she would have to discuss that with the Human Resources Department, and asked her to leave his office. (Id. Attach. 1 (Coleman Aff. ¶ 29), ECF No. 73-1.) On July 30, 2014, Coleman filed a Charge of Discrimination with

the Equal Employment Opportunity Commission ("EEOC"), alleging that she had been discriminated against on the basis of her race and gender. (Mot. Summ. J. Attach. 3 (Coleman Dep. Ex. 23 (EEOC Charge of Discrimination)), ECF No. 70-3.) Specifically, Coleman alleged that she was unlawfully denied promotions to the positions of Customer Service Supervisor and LVMCC Assembly/Fabrication Manager, and that Schneider Electric was paying her less than Sullivan despite the fact that she was performing the same job duties. (Id. Attach. 3 (Coleman Dep. Ex. 23 (EEOC Charge of Discrimination)), ECF No. 70-3.)

In October 2014, Coleman submitted her application for the position of Technical Trainer Application Engineer ("Trainer position"), which was a vacant position at Schneider Electric's Columbia facility. (Resp. Opp'n Mot. Summ. J. Attach. 1 (Coleman Aff. ¶ 31), ECF No. 73-1.) Coleman alleges that she met all of the requirements for the Trainer position. (Id. Attach. 1 (Coleman Aff. ¶ 34), ECF No. 73-1.) Further, Coleman claims that she was particularly well suited for this position because she had years of experience training order engineers in the Enclosed Drives Group in Seneca and had experience with the pertinent products. (Id. Attach. 1 (Coleman Aff. ¶ 34), ECF No. 73-1.) On October 29, 2014, Coleman had an interview that lasted no more than one hour, and she was not given a tour of the Columbia plant. (Id. Attach. 5 (Interview Confirmation), ECF No. 73-5 & Attach. 1 (Coleman Aff. ¶ 35), ECF No. 73-1.)

At the beginning of Coleman's interview, Chris Bready ("Bready"), the hiring manager, informed her that he had already spoken with her manager. (Id. Attach. 1 (Coleman Aff. ¶ 35), ECF No. 73-1.) After the

interview, Bready determined that Coleman lacked the communication skills necessary for the Trainer position. (Mot. Summ. J. Attach. 6 (Burke Dep. 54), ECF No. 70-6.) Specifically, Coleman was very nervous during the interview. (Id. Attach. 6 (Burke Dep. 54), ECF No. 70-6.) Schneider Electric produced an email from Bready dated November 5, 2014, referencing Coleman's communication skills. (Id. Attach. 6 (Burke Dep. Exs. 7A-7B), ECF No. 70-6.) The email provides that Coleman's "interpersonal communication (very nervous) does not play well with a training role." (Id. Attach. 6 (Burke Dep. Exs. 7A-7B), ECF No. 70-6.) In August 2015, Schneider Electric hired Pankaj Potdar ("Potdar") for the Trainer position. (Id. Attach. 12 (Potdar Dep. 22-24), ECF No. 70-12.) Potdar did not train anyone during the approximately six months that he served in that position. (Mot. Summ. J. Attach. 12 (Potdar Dep. 28), ECF No. 70-12.) In March 2016, Potdar was demoted to the position of Senior Application Engineer as a result of reduction-in-force at the Columbia facility. (Id. Attach. 6 (Burke Dep. 107-08), ECF No. 70-6.)

In January 2015, Coleman met with Athenia Parks ("Parks"), the Human Resources Manager of the Seneca facility, to discuss her claims of race and gender discrimination, including the denial of promotions and the inequity in pay compared to white male employees. (Resp. Opp'n Mot. Summ J. Attach. 1 (Coleman Aff. ¶ 41), ECF No. 73-1.) Parks testified that she encouraged Coleman to utilize Schneider Electric's Development Plan process to improve her skills and position herself to become a preferred candidate for future promotional opportunities. (Mot. Summ. J. Attach. 14 (Parks Dep. 50-51, 56), ECF No. 70-14.) In addition, Parks provided that she offered to work directly with Coleman on her

Development Plan, but despite raising the issue on several occasions, Coleman never followed up with Parks, or submitted a Development Plan. (Id. Attach. 14 (Parks Dep. 56), ECF No. 70-14.) (Id. Attach. 15 (Newsome Dep. 47), ECF No. 70-15.) However, Coleman testified that Parks never encouraged her to utilize the Development Plan process, or offer to work directly with Coleman on her Development Plan. (Resp. Opp'n Mot. Summ. J. Attach. 1 (Coleman Aff. ¶¶ 41-42), ECF No. 73-1.)

In February 2016, Coleman received her annual performance review for the calendar year 2015. (Mot. Summ. J. Attach. 5 (Stokes Dep. Ex. 13), ECF No. 70-5.) Coleman received an overall performance rating that was less than above average for the first time during her employment with Schneider Electric. (Resp. Opp'n Mot. Summ. J. Attach. 1 (Coleman Aff. ¶ 44), ECF No. 73-1.) Schneider Electric altered its rating scale from five possible categories to four for the 2015 annual performance reviews. (Id. Attach. 1 (Coleman Aff. ¶ 45), ECF No. 73-1.) However, most of the categories of performance remained unchanged. (Mot. Summ. J. Attach. 5 (Stokes Dep. Ex. 13), ECF No. 70-5.) Stokes gave Coleman an overall rating of "Competent." (Id. Attach. 5 (Stokes Dep. Ex. 13), ECF No. 70-5.) Stokes did not observe or witness any behavior from Coleman that would justify the low rating, but based this rating on what he was told by Human Resources regarding Coleman's behavior in a group meeting. (Id. Attach. 5 (Stokes Dep. 95-96), ECF No. 70-5.) Coleman claims there was no factual basis for this rating and that it was part of Schneider Electric's retaliatory actions against her as a result of filing this lawsuit. (Resp. Opp'n Mot. Summ. J. Attach. 1 (Coleman Aff. ¶ 46), ECF No. 73-1.)

Coleman claims that had she received a high rating, she would have received a minimum pay increase of at least 1.8 percent in 2016. (Id. Attach. 1 (Coleman Aff. ¶ 45), ECF No. 73-1.) However, based upon the "Competent" rating, Coleman received a pay increase of 1.3 percent in 2016. (Id. Attach. 1 (Coleman Aff. ¶ 45), ECF No. 73-1.) David Huff, who received a 1.8 percent increase in his base salary, was the only employee in Enclosed Drives who received a larger salary increase than Coleman. (Mot. Summ. J. Attach. 2 (Stokes Aff. ¶ 6), ECF No. 70-2.) Schneider Electric contends that the percentage increase for all employees at the Seneca facility was lower than usual because the amount of available funds allocated to managers to use for salary increases in their respective departments was approximately half of what they typically received. (Id. Attach. 2 (Stokes Aff. ¶ 5), ECF No. 70-2.)

On April 28, 2016, Coleman was called into a meeting with Stokes and a representative from Human Resources. (Resp. Opp'n Mot. Summ. J. Attach. 1 (Coleman Aff. ¶ 49), ECF No. 73-1.) Coleman was presented with a five-page Development Plan that was unlike any plan she had received from Schneider Electric. (Id. Attach. 1 (Coleman Aff. ¶ 50), ECF No. 73-1.) Schneider Electric claims the Development Plan was to assist Coleman in her professional development. (Mot. Summ. J. Attach. 14 (Parks Dep. 57-58), ECF No. 70-14.) Coleman contends that the Development Plan placed unreasonable burdens and demands on her time at work and was designed to cause her to fail. (Resp. Opp'n Mot. Summ. J. Attach. 1 (Coleman Aff. ¶ 52), ECF No. 73-1.) Parks testified that the purpose of the Development Plan was to focus on giving Coleman opportunities for exposure and experience in leadership roles. (Mot. Summ. J. Attach. 14 (Parks Dep. 57), ECF

No. 70-14.) According to Parks, due to Coleman's complaints about career advancement, Parks took the initiative to create a Development Plan to help her achieve that goal. (Id. Attach. 14 (Parks Dep. 34-36), ECF No. 70-14.)

The Development Plan provided that Schneider Electric would hire a communications coach to assist Coleman with her communications skills and afford her the opportunity to work with a mentor. (Id. Attach. 14 (Parks Dep. Ex. 6 (Development Plan)), ECF No. 70-14.) In addition, Schneider Electric arranged for Coleman to make presentations to the Seneca Leadership Team in order to develop her presentation skills and offered to provide Coleman with a mock interview to prepare her for future promotional opportunities. (Id. Attach. 14 (Parks Dep. Ex. 6 (Development Plan)), ECF No. 70-14.) Further, the Development Plan provided Coleman with the opportunity to work within the Motor Controls Center Group to gain experience with another product line and increase her potential for career advancement. (Id. Attach. 14 (Parks Dep. 61-62), ECF No. 70-14.)

After receiving the Development Plan, Coleman filed another discrimination charge with the EEOC alleging retaliation. (Mot. Summ. J. Attach. 17 (Charge of Discrimination), ECF No. 70-17.) Coleman filed her complaint in this action on June 18, 2015. (Compl., ECF No. 1.) On August 29, 2016, Coleman filed her amended complaint in this action, adding claims for retaliation. (Am. Compl., ECF No. 45.)

II. Report and Recommendation

First, Magistrate Judge McDonald recommends granting Schneider Electric's motion for summary

judgment on the Title VII claims for failure to promote, because Coleman failed to establish the essential elements of a prima facie case of discrimination in connection with her application for the Customer Service Supervisor, LVMCC Assembly/Fabrication Manager, and Trainer positions. (R&R 18-25, ECF No. 78.) Specifically, Coleman failed to provide sufficient evidence to establish that she was rejected for the positions under circumstances giving rise to an inference of unlawful discrimination. (Id., ECF No. 78.) Second, Magistrate Judge McDonald recommends granting Schneider Electric's motion for summary judgment for pay discrimination under the EPA and Title VII, because Coleman failed to provide sufficient evidence to dispute the legitimate, nondiscriminatory reasons proffered by Schneider Electric, and show that race and/or gender discrimination motivated the pay difference. (Id. at 25-29, ECF No. 78.) Third, Magistrate Judge McDonald recommends granting Schneider Electric's motion for summary judgment on the Title VII and EPA retaliation claims because Coleman failed to provide sufficient evidence to establish any causal connection between the protected activity and Schneider Electric's actions, both of which are required elements for a retaliation claim. (Id. at 29-32, ECF No. 78.)

III. DISCUSSION OF THE LAW

A. Summary Judgment Standard

Summary judgment is appropriate only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In

deciding whether a genuine issue of material fact exists, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in his favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). However, "[o]nly 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." Id. at 248.

A litigant "cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another." Beale v. Hardy, 769 F.2d 213, 214 (4th Cir. 1985). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, disposition by summary judgment is appropriate." Monahan v. County of Chesterfield, 95 F.3d 1263, 1265 (4th Cir. 1996). "[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." Ballenger v. N.C. Agric. Extension Serv., 815 F.2d 1001, 1005 (4th Cir. 1987).

B. Objections to the Report and Recommendation

Coleman filed objections to the Report and Recommendation. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the

magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that many of Coleman's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate her claims. However, the court was able to glean three specific objections. First, Coleman objects to the magistrate judge's finding that Coleman failed to establish a prima facie case of discrimination in connection with her application for the Customer Service Supervisor position, because this position was filled by promotion. (Objs. 1-7, ECF No. 82.) Second, Coleman objects to the magistrate judge's finding that she did not provide sufficient evidence to prove that Schneider Electric's decision not to hire her for the Trainer position was pretext for unlawful discrimination. (Id. at 7-10, ECF No. 82.) Third, Coleman objects to the magistrate judge's finding that she cannot establish a causal connection between her protected activities and the alleged adverse employment actions of Schneider Electric pursuant to her retaliation claims under Title VII and the EPA. (Id. at 10, ECF No. 82.)

The parties agree that Coleman's claims for discriminatory failure to promote are evaluated under the McDonnell Douglas burden-shifting framework. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). To establish a prima facie case of discriminatory failure to promote, a plaintiff must show: (1) she is a member of a protected class; (2) she applied for the position in question; (3) she was qualified for the position; and (4) she was rejected for the position under circumstances giving rise to an inference of unlawful discrimination. Anderson v. Westinghouse Savannah River Co., 406

F.3d 248, 268 (4th Cir. 2005). After establishing a prima facie case, the burden then shifts to the employer to articulate some "legitimate, nondiscriminatory reason" for the employment decision at issue. Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). If Schneider Electric demonstrates a legitimate, nondiscriminatory reason for its decision, Coleman must then show that Schneider Electric's stated reason is mere pretext for unlawful discrimination. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 142 (2000).

Coleman contends that the magistrate judge erred in finding that there was no claim for denial of promotion for the Customer Service Supervisor position because no applicants were considered for promotion. (Objs. 1-2, ECF No. 82.) Specifically, Coleman argues that the Customer Service Supervisor's requisition history establishes that Marcengill was internally promoted to the position. (Id., ECF No. 82.) The requisition history provides: "Requisition Cancelled: Req cancelled as internal promotion to strategize and reduce base costs." (Resp. Opp'n Mot. Summ. J. Attach. 4 (Requisition History), ECF No. 73-4.)

Coleman focuses on the "internal promotion" language, however, the full entry establishes that the recruitment for the Customer Service Supervisor position was cancelled to reduce base costs. Further, no candidates were formally interviewed for the position, and the TAG Supervisor and Customer Service Supervisor positions were consolidated without an increase in pay pursuant to a directive to reduce base costs at the facility. (Mot. Summ. J. Attach. 8 (Hooker Dep. 44-50), ECF No. 70-8.)

The facts do not raise an inference of race and/or gender discrimination. The record establishes that the Customer Service Supervisor position was not filled by promotion. Hooker, the hiring manager for the position, testified that the position was consolidated to reduce base costs. (Id. Attach. 8 (Hooker Dep. 45-46), ECF No. 70-8.) There was no competitive selection to fill the position, the TAG Supervisor and Customer Service Supervisor positions were consolidated to reduce base costs, and Marcengill was not awarded an increase in pay. Therefore, Coleman's failure to promote claim for the Customer Service Supervisor position fails. See e.g., Wilder v. Columbia Fire Dept., C/A No. 3:07-976-CMC-BM, 2008 WL 3010084, at *5 (D.S.C. July 31, 2008) (unpublished) (finding plaintiff's failure to promote claim failed because there was no promotion as no candidates were considered and the position was filled by a lateral transfer when another employee was reassigned to the position with no increase in pay); see also Hackney v. Perry, No. 97-2055, 1998 WL 801490, at *2 (4th Cir. Nov. 18, 1998) (unpublished) (finding that where a lateral transfer resulted in the cancellation of a vacant position, there was no competitive selection to fill the position, and, thus, the plaintiff's application was neither considered, nor rejected within the meaning of McDonnell Douglas Corp., 411 U.S. 792). Based on the foregoing, the court finds that Schneider Electric is entitled to summary judgment on Coleman's claim that Schneider Electric violated Title VII when it failed to promote her to Customer Service Supervisor.

Further, Coleman argues that the magistrate judge erred in finding that she failed to present sufficient evidence upon which a reasonable jury could find that Schneider Electric's proffered explanation for not promoting her to the Trainer position was pretext

for race and/or gender discrimination. (Objs. 7-10, ECF No. 82.) Coleman contends that Schneider Electric's explanation of poor communications skills was merely pretext for discrimination, and that Coleman was never seriously considered for the Trainer position. (Id., ECF No. 82.) Specifically, Coleman stresses that her previous performance reviews, conducted by her former supervisor, provide that she was more qualified for the Trainer position than Potdar. (Id., ECF No. 82.) However, where hiring decisions are made by different supervisors, the opinion of one individual has no probative value with regard to the motivation of the decision made by the other individual. See Lettieri v. Equant, Inc., 478 F.3d 640, 647-48 (4th Cir. 2007); see also Anderson v. Westinghouse Savannah River Co., 406 F.3d 248, 272 (4th Cir. 2005) ("We cannot require that different supervisors within the same organization must reach the same conclusion on an employee's qualifications and abilities."). Coleman's former supervisor's opinion as to her prior performance is irrelevant to her subsequent application for the Trainer position in 2014. Bready, the hiring manager for the Trainer position, determined that Coleman's poor communications skills would not work well in a training role. (Mot. Summ. J. Attach. 6 (Burke Dep. 54, Exs. 7A-7B), ECF No. 70-6.) Based on the foregoing, the court finds that Schneider Electric is entitled to summary judgment on Coleman's claim that Schneider violated Title VII when it failed to promote her to the Trainer position.

Coleman objects to the magistrate judge's finding that she cannot establish a causal connection between her protected activities and the alleged adverse employment actions of Schneider Electric pursuant to her retaliation claims under Title VII and

the EPA. (Objs. 10, ECF No. 82.) To establish a prima facie case for a Title VII retaliation claim, the plaintiff must first present sufficient evidence to establish that: (1) she engaged in protected activity; (2) the defendant took an adverse employment action against her; and (3) a causal connection exists between her protected activity and the alleged adverse action(s). Lettieri, 478 F.3d at 650. If the plaintiff establishes a prima facie case, the defendant employer then has the burden of producing a legitimate, non-discriminatory reason for its actions, and if the employer does so, the plaintiff must then demonstrate that the defendant's proffered reason for its actions is pretext for retaliation. Id. at 646. To establish an adverse action with respect to a retaliation claim, "a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, 'which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.' " Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 68 (2006) (quoting Rochon v. Gonzales, 438 F.3d 1211, 1219 (D.C. Cir. 2006)).

The EPA provides that it is unlawful "to discharge or in any other manner discriminate against an employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter...." 29 U.S.C. § 215(a)(3). "Thus, to state a claim for retaliation [under § 215(a)(3)], a plaintiff must plausibly allege that: (1) engagement in [a] protected activity, (2) materially adverse action ... which ... might well have dissuaded a reasonable worker from making or supporting a charge of discrimination, and (3) causality." Reardon v. Herring, 191 F. Supp. 3d 529, 549

(E.D. Va. 2016) (citations and internal quotation marks omitted).

Coleman argues that she does not rely on temporal proximity between the filing of this lawsuit and Schneider Electric's issuance of the 2015 annual performance review and the 2016 Development Plan to satisfy the causation element of a prima facie case of retaliation. (Objs. 11, ECF No. 82.) Specifically, Coleman contends that the "extraordinary and inexplicable" actions by Schneider Electric are sufficient to satisfy causation, despite the large temporal proximity between the events. (Id., ECF No. 82.) This objection is without merit. The Fourth Circuit has noted that "[e]ven a mere ten-week separation between the protected activity and termination 'is sufficiently long so as to weaken significantly the inference of causation between the two events.' " Perry v. Kappos, No. 11-1476, 2012 WL 2130908, at *6 (4th Cir. Jun. 13, 2012) (unpublished) (quoting King v. Rumsfeld, 328 F.3d 145, 151 n.5 (4th Cir. 2003)). "Where the time between the events is too great to establish causation based solely on temporal proximity, a plaintiff must present 'other relevant evidence ... to establish causation,' such as 'continuing retaliatory conduct and animus' in the intervening period." Id. (quoting Lettieri, 478 F.3d at 650.)

Coleman fails to present other relevant evidence to establish the causation element. Coleman does not provide any continuing retaliatory conduct and animus during the approximately six-month period between the filing of the lawsuit and the issuance of the 2015 annual performance review. (Resp. Opp'n Mot. Summ. J., generally, ECF No. 73.) (Objs., generally, ECF No. 82.) However, Coleman has no complaint with the rating she received on her 2014 annual performance

review that was provided to her in early 2015, after she had filed her two Charges of Discrimination. (Objs. 11-12, ECF No. 82.) Based on the foregoing, the court finds that Schneider Electric is entitled to summary judgment on Coleman's retaliation claims. Therefore, after a thorough review of the magistrate judge's Report and the record in this case, the court adopts Magistrate Judge McDonald's Report and Recommendation.

Therefore, it is

ORDERED that Schneider Electric's motion for summary judgment, docket number 70, is granted.

IT IS SO ORDERED.

Footnotes

1The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1) (2006).

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA ANDERSON/GREENWOOD DIVISION

Civil Action No. 8:15-2466-HMH-KFM

Samantha L. Coleman, Plaintiff,
vs.
Schneider Electric USA, Inc., Defendant.

REPORT OF MAGISTRATE JUDGE

This matter is before the court on the defendant's motion for summary judgment (doc. 70). Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(A), and Local Civil Rule 73.02(B)(2)(g) (D.S.C.), all pretrial matters in employment discrimination cases are referred to a United States Magistrate Judge for consideration.

The plaintiff, who is a black female, alleges claims in her amended complaint against her current employer for race and gender discrimination in the alleged denial of various promotions, inequality in pay, and retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, and claims for alleged inequality in pay and retaliation in violation of the Equal Pay Act of 1963 ("EPA"), as amended (doc. 45).

The defendant filed a motion for summary judgment on July 13, 2017 (doc. 70). The plaintiff filed a response in opposition to the defendant's motion on July 27, 2017 (doc. 73), and the defendant filed a reply on August 3, 2017 (doc. 75).

FACTS PRESENTED

Employment Background

In September 1992, the defendant hired the plaintiff to work as an Electrical Drafter in its Switchboard Order Engineering Group at its manufacturing facility in Seneca, South Carolina (doc. 73-1, pl. aff. ¶ 5; doc. 70-3, pl. dep. 18). In June 1995, Group (doc. 73-1, pl. aff. ¶ 9). At the time of the product transfer, the Order Engineering Supervisor over the Enclosed Drives Group at the defendant's Columbia facility was Ammon L. "Lanny" Sullivan, Jr. Sullivan relocated to the defendant's Seneca facility as of June 1, 1999, and at that time became the plaintiff's supervisor (doc. 73-1, pl. aff. ¶ 10; doc. 70-3, pl. dep. 23; doc. 70-4, Sullivan dep. 10-11).

Working in the Enclosed Drives Group under the supervision of Sullivan, the plaintiff would occasionally be assigned to train new order engineers assigned to the group. One of the engineers that the plaintiff trained in the processes and procedures of the Enclosed Drives Group was Jim Stryker (white, male), who had the title of Senior Application Engineer (doc. 73-1, pl. aff. ¶ 11). Stryker remained in the Enclosed Drives Group until his retirement in 2017. The plaintiff testified that once Stryker completed his training with the plaintiff, the two of them were performing the same job as order engineers, involving equal work, skill, effort, and responsibility (id. ¶ 12). According to Sullivan, "[Stryker and the plaintiff] were doing very much the same thing most of the time" (doc. 70-4, Sullivan dep. 55). The plaintiff testified in her affidavit that she and Stryker worked in the same conditions, in the same offices, under the same supervisor, doing the same work, for many years (doc. 73-1, pl. aff. ¶ 12).

Stryker was paid more than the plaintiff for years (id. ¶ 13; doc. 73-3).

The plaintiff had excellent results training the new order engineers entering the Enclosed Drives Group (doc. 73-1, pl. aff. ¶14). In 2002, Sullivan made her coordinator for order engineering training (id.; doc. 70-3, pl. dep. 25-26). Her assignment as the training coordinator involved training new order engineers assigned to the Enclosed Drives Group in the methods, processes, and procedures to engineer orders for the defendant's customers (doc. 73-1, pl. aff. ¶ 15; doc. 70-4, Sullivan dep. 59). The plaintiff did not obtain a promotion or receive any additional pay in connection with this assignment (doc. 73-1, pl. aff. ¶ 16; doc. 70-3, pl. dep. 25-26).

In 2006, the plaintiff was promoted to Senior Application Engineer by her then manager, Ken Hooker (white, male) (doc. 70-3, pl. dep. 26-27). She continued working in the Enclosed Drives Group after her promotion, and her duties as a Senior Application Engineer were the same as her duties as an Application Engineer, including her training duties and responsibilities (doc. 73-1, pl. aff. ¶ 17). According to Sullivan, the plaintiff's performance as the training coordinator was exemplary (doc. 70-4, Sullivan dep. 57-59 & ex. 6).[1]

The plaintiff's annual performance reviews were consistently well above average. Her overall job performance was consistently rated by the defendant as "exceeds requirements" (doc. 70-5, Stokes dep., exs. 3, 5, 7, 10). Annual appraisals were given to the plaintiff by her superiors in the early part of the calendar year following the year covered by the performance appraisal. The determination as to any salary increase that may have been granted to the plaintiff in any given

year, as with other employees, was in significant part dependent upon the plaintiff's job performance in the prior calendar year. For example, the plaintiff received a pay increase effective July 1, 2012, that was reflected on her 2012

Individual Salary Statement (doc. 70-5, Stokes dep., ex. 4). That 2012 Individual Salary Statement provided, "Your increase was based on a number of factors including: your previous overall performance rating, your current salary relative to the mid-point of your grade, the timing of your last increase to base pay and budgetary considerations." That same document reflects that the plaintiff's annual performance rating for the prior year, 2011, was "Exceeds requirements," a four on a scale of one to five (with five being the best possible score).

Sullivan retired effective July 1, 2012 (doc. 70-4, Sullivan dep. 8). The defendant chose not to fill Sullivan's position (id. 74; doc. 70-3, pl. dep. 53; doc. 70-5, Stokes dep. 29). In the months leading up to his retirement, Sullivan worked with Ted Stokes and other members of the Enclosed Drives Group regarding the distribution of his duties. Sullivan created a document entitled "My Tasks," which listed his responsibilities and the Enclosed Drives employee to whom the tasks were to be delegated upon his retirement (doc. 70-3, pl. dep., ex. 14; doc. 70-4, Sullivan dep. 95-96 & ex. 14). Stokes, as the manager over Enclosed Drives, assumed Sullivan's remaining supervisory responsibilities, which were expense management, APP's (performance reviews) and Bridge[2] personnel activities (doc. 70-3, pl. dep., ex. 14; doc. 70-5, Stokes dep. 145-46). Although each member of Enclosed Drives received some of Sullivan's non-supervisory job responsibilities, the majority were

delegated to the plaintiff and Stryker (doc. 70-3, pl. dep., exs. 13, 14). In connection with the plaintiff's assignment of specific administrative duties performed by Sullivan, the plaintiff was to serve as the Administrative Lead in Enclosed Drives (id., ex. 13; doc. 70-4, Sullivan dep. 74; doc. 70-5, Stokes dep. 144). The plaintiff admits she has never performed salary or performance reviews on Enclosed Drives personnel, that she has never had the authority to approve expenditures or personal expenses, and that she has never had any direct reports (doc. 70-3, pl. dep. 53, 86-88). Stryker, who assumed the technical duties performed by Sullivan, was to serve as the Technical Lead in Enclosed Drives (doc. 70-3, pl. dep., ex. 12). According to Stokes, the plaintiff's salary increase in July 2012 reflected "some of the new responsibilities that [she] would be taking on as admin lead. . . . [T]hat was a higher increase than average in the plant" (doc. 70-5, Stokes dep. 48 & ex. 4). However, nothing on the 2012 Individual Salary Statement reflects that the plaintiff's pay increase was tied to additional duties assigned to her subsequent to Sullivan's retirement on July 1, 2012. The plaintiff was never advised by any agent of the defendant that her annual salary increase was compensation for additional duties for which she was responsible after Sullivan's retirement (doc. 73-1, pl. aff. ¶ 19).

The defendant has an internal recruiting department that is responsible for coordinating and handling the process of filling vacant positions (doc. 70-6, Burke dep. 23-24). An employee of the defendant who finds a job posting that she believes she might be qualified for and interested in can file an application for that promotion online (id. 115-16). The recruiter assigned to a specific job posting works with the hiring

manager for that particular position to screen applicants (id. 117-18). Johnda Burke, Senior Human Resources Business Professional, testified that the hiring manager, in consultation with the recruiter, makes the decision to move an applicant to the "short list" after determining that the candidate meets the requirements for the position and would potentially be a good fit (id. 111-13). However, Jeff Brown, Senior Human Resources Representative, testified that all internal employees are automatically moved to the "short list," whether they have the minimum qualifications or not (doc. 70-7, Brown 30(b)(6) dep. 46).

Customer Service Supervisor Position

In early 2014, the defendant posted an opening for the Customer Service Supervisor position (doc. 70-8, Hooker dep. 23). The plaintiff submitted an application for this position on February 5, 2014 (doc. 73-1, pl. aff. ¶ 20; doc. 70-3, pl. dep. 98). The plaintiff met all of the requirements of the position, and the defendant advanced her application to the "short list" (doc. 73-1, pl. aff. ¶ 21; doc. 70-8, Hooker dep., ex. 2). While the defendant's recruiting department was searching for a candidate to fill the position, Ken Hooker (white, male), the hiring manager for the position, requested that Jeff Marcengill (white, male), who was working in Hooker's department as a TAG Supervisor, assume the duties of the Customer Service Supervisor position on an interim basis (doc. 70-3, pl. dep. 101).

Before any candidates were formally interviewed for the position, the Seneca Plant Manager, Larry Smith (white, male) received a directive to reduce base costs at the facility (doc. 70-8, Hooker 30(b)(6) dep. 44). Smith then contacted his various department managers and

asked them to look for ways to reduce costs in their respective departments (id. 45). Hooker, who was responsible for customer service and the enclosed drives and electric vehicle charging stations assembly, suggested to Smith that he could achieve a cost reduction in his department by not filling the Customer Service Supervisor position and having Marcengill assume those duties on a permanent basis (id. 8, 45-46). Smith discussed Hooker's proposal with Jamie McDonald (white, male), the Vice-President who oversaw all of the defendant's engineer to order plants, and both agreed that the Customer Service Supervisor position would not be filled, and the duties would be permanently assigned to Marcengill (id. 49). Accordingly, the defendant consolidated the Customer Service and TAG Supervisor positions, and Marcengill assumed the Customer Service Supervisor duties on a permanent basis (id.). Marcengill did not receive an increase in pay as a result of this consolidation (id. 50).

Hooker and Jeff Brown (white, male), Senior Human Resources Representative, met with the plaintiff and advised her that she was not going to be interviewed for the Customer Service Supervisor position because it was being consolidated with the position of TAG Supervisor (doc. 70-3, pl. dep. 100-102; doc. 70-8, Hooker 30(b)(6) dep. 47). The defendant's Customer Service Supervisor requisition history for this position, Requisition 000U2L, reflects that this requisition was cancelled on March 5, 2014: "Requisition cancelled: Req cancelled as internal promotion to strategize and reduce base costs" (doc. 73-4).

Marcengill does not have a four- year college degree (doc. 70-8, Hooker dep. 49). The plaintiff holds a Bachelor of Science in Electrical Engineering

Technology (doc. 73-1, pl. aff. ¶ 3). At the time Marcengill assumed the Customer Service Supervisor duties, the defendant had a requirement that an employee had to have a four-year degree in order to become a supervisor (doc. 70-7, Brown 30(b)(6) dep. 54; see also doc. 70-1 at 19, n. 8).

However, employees who had the title of supervisor were grandfathered in regardless of whether they had a four-year degree (doc. 70-7, Brown 30(b)(6) dep. 54; doc. 70-6, Burke 30(b)(6) dep. 118; doc. 70-8, Hooker 30(b)(6) dep. 31).

LVMCC Assembly/ Fabrication Manager Position

On August 15, 2013, the defendant posted an opening for the position of LVMCC Assembly/Fabrication Manager (doc. 70-7, Brown 30(b)(6) dep. 33). The hiring manager for the position was Seneca Plant Manager Smith (id. 28). On February 7, 2014, the plaintiff submitted an application for the position of LVMCC Assembly/Fabrication Manager (doc. 73-1, pl. aff. ¶ 24; doc. 70-3, pl. dep. 104). Three other candidates from the Seneca facility applied for the position, and the defendant received 200 applications from other candidates (doc. 70-7, Brown 30(b)(6) dep. 39 & ex. 2). The plaintiff's application was advanced to the "short list" (id.; doc. 73-1, pl. aff. ¶ 25).

According to the defendant, after reviewing the applicants' resumes and applications, it determined that none of the candidates, including the plaintiff, possessed the necessary supervisory or management experience (doc. 70-7, Brown 30(b)(6) dep., ex. 4). The LVMCC Assembly/Fabrication Manager is responsible for virtually all of the manufacturing operations at the

Seneca f acility and reports directly to the Plant Manager (id., ex. 5). As a result, the defendant was looking for a candidate with extensive supervisory and management experience over multiple departments in a manufacturing environment. (id. 48, 70). The defendant expanded its search and eventually hired Robert Ireton (white, male) (id. 34), who had 18 years of experience as a Production and Business Unit Manager and, in his most recent role as a Manufacturing Manager, was responsible for overseeing the entire manufacturing operations of a low volume, highly complex plant (doc. 70-9). The defendant offered the job to Ireton on June 24, 2014, with a starting salary of $100,000 a year (doc. 70-10).

Complaint to Human Resources

In April 2014, the plaintiff met with Brown, the defendant's Senior Human Resources Representative at the Seneca facility, to discuss her concerns about not being interviewed for the Customer Service Supervisor and the LVMCC Assembly/Fabrication Manager positions (doc. 73-1, pl. aff. ¶ 27; doc. 70-3, pl. dep. 141). The plaintiff specifically told Brown that she believed she was subjected to discrimination due to her race and gender and explained to Brown that she met the qualifications set by the defendant for the positions, yet was not even granted an interview for either job (doc. 73-1, pl. aff. ¶ 27). The plaintiff claims that Brown told her that he did not want to hear her complaints about discrimination and asked her to leave his office (id. ¶ 28; doc. 70-3, pl. dep,. ex. 23).

The plaintiff testified that Brown told her that she did not receive the Customer Service Supervisor position because the duties were assumed by TAG

Supervisor Marcengill, and, thus, no one was actually hired for the job (doc. 70-3, pl. dep. 141-42). With regard to the LVMCC Assembly/Fabrication Manager position, Brown testified that he explained to the plaintiff that she had no management or supervisory experience and, therefore, did not possess the necessary qualifications for the position (doc. 70-7, Brown 30(b)(6) dep. 70). Brown further testified that the plaintiff also stated that she believed she would not be respected if she were ever placed in a Team Lead position (Sullivan's former position) because she is an African-American female (id.). When Brown asked the plaintiff why she believed that, she stated, "You're not from the South, are you?" When Brown stated that he was not from the South, the plaintiff stated that she felt she would not be respected because of her race and gender. Brown testified that when he asked the plaintiff why she felt that way, the plaintiff could provide no information or examples (id. 70-71).

In July 2014, the plaintiff met with her manager, Stokes, to discuss the failure of the defendant to seriously consider her applications for the promotions and her claims of racial and gender discrimination. The plaintiff testified that Stokes refused to discuss the employment discrimination issues with her, telling her that she would have to take that up with the Human Resources Department, and asked her to leave his office (doc. 73-1, pl. aff. ¶ 29).

EEOC Charge

On July 30, 2014, the plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") alleging that she had been discriminated against on the basis of her race

and gender (doc. 70-3, pl. dep., ex. 23). Specifically, she alleged that she was unlawfully denied promotions to the positions of Customer Service Supervisor and LVMCC Assembly/Fabrication Manager and that the defendant was paying her less than Sullivan despite the fact that she was performing the same job duties (id.).

Trainer Position

In October 2014, the plaintiff applied for the position of Technical Trainer Application Engineer, Electrical ("Trainer Position"), which was open and available at the defendant's facility in Columbia (doc. 73-1, pl. aff. ¶ 31; doc. 70-3, pl. dep. 142; doc. 70-6, Burke dep., ex. 3). The plaintiff had never worked in the Columbia facility, as she has been assigned to the Seneca facility since she began working for the defendant (doc. 73-1, pl. aff. ¶ 32). To obtain a promotion and a significant pay increase, the plaintiff was willing to uproot her family and move to the Columbia area (id. ¶ 33).

The hiring manager for the position was Chris Bready (white, male), Engineering Manager (doc. 70-6, Burke 30(b)(6) dep., ex. 2). The plaintiff met all of the requirements of the Trainer Position (id. 54-55). The plaintiff claims that she was particularly well suited for this job because she had years of experience training order engineers in the Enclosed Drives Group in Seneca and had experience with the pertinent products (doc. 73-1, pl. aff. ¶ 34).

The plaintiff was scheduled for a one hour interview with the review panel, including the hiring manager, on October 29, 2014 (doc. 73-1, pl. aff. ¶ 35; doc. 73-5). The interview lasted no more than one hour, and the plaintiff was not given a plant tour (doc. 73-1, pl. aff. ¶ 35). A typical interview for a position of this level is "45 minutes to an hour. Sometimes an hour and a half,

for . . . Behavioral Interview Questions. And after that, there may be a few technical questions. And a plant tour, if the employee is not familiar with the location, or requests one. So possibly two hours, maybe three, typically" (doc. 70-6, Burke 30(b)(6) dep. 68-69). At the start of her interview with Bready and the interview panel, Bready told the plaintiff that he had already spoken with her manager. During her interview, the plaintiff explained her experience and qualifications to the interview panel, including her role as training coordinator and her experience in Seneca engineering orders on switchboard products (doc. 73-1, pl. aff. ¶ 35).

According to the defendant, after the interview, Bready determined that the plaintiff lacked the communication skills for the Trainer Position (doc. 70-6, Burke 30(b)(6) dep. 54). Specifically, the plaintiff was very nervous during the interview (id.). In response to the plaintiff's written discovery requests seeking all documents related to her application for the Trainer Position, the defendant produced an email from Bready dated November 5, 2014, referencing the plaintiff's communication skills (id., exs. 7A, 7B).[3] The email is difficult to read but appears to state, in pertinent part: "interpersonal communication (very nervous) does not play well with a training role" (id.).

The defendant initially offered the Trainer Position to Anthony Thompson (white, male), who declined the offer (id., exs. 4, 14). After Thompson declined the offer, the requisition for that specific Training Position was cancelled (id., ex. 4).[4] Two candidates who had applied under requisition 001FB3, Hanan Attia (unknown race, female) and Hector Gonzalez (Hispanic, male), were considered for and subsequently offered the position under the remaining

open requisition (001FB2) (id.). Attia declined the offer, and Gonzalez's offer was subsequently rescinded. (id.).

In the weeks following her interview for the Trainer Position, the defendant did not provide any feedback to the plaintiff or advise her regarding its decision about her application (doc. 73-1, pl. aff. ¶ 36). However, by letter dated November 11, 2014, the defendant offered the plaintiff an Application Engineer job if she would transfer to the Columbia facility. This job was a demotion from her current position (doc. 70-6, Burke 30(b)(6) dep., ex. 8). According to the defendant, the offer was an error on the part of the Columbia facility's Human Resources Department (id. 100). The plaintiff had no desire to move to Columbia for a lesser position and rejected the offer (doc. 73-1, pl. aff. ¶ 37).

By letter dated November 17, 2014, the defendant offered the plaintiff a lateral transfer to a Senior Application Engineer position in Columbia (doc. 70-6, Burke 30(b)(6) dep., ex. 9). The defendant offered the plaintiff a starting salary of $75,000 with a hiring bonus of $4,000 (doc. 70-3, pl. dep., ex. 25). Again, the plaintiff had no desire to uproot her family and make a lateral move to accept a position in Columbia, and she rejected the offer (doc. 73-1, pl. aff. ¶ 37). The plaintiff was unsure of what to make of the job offers contained in these two November 2014 letters as she had not applied for either position offered, had no interest in moving to Columbia for a lateral transfer, much less a demotion, and had not heard back from the defendant concerning her application for the Trainer Position since the date of her interview (id.).

Although the plaintiff had received no response from the defendant following her interview for the Trainer Position, by early 2015, she assumed that she

had been rejected for the job because the Trainer Position remained open, the defendant continued to accept applications, and she had received two letters in November 2014 offering jobs for which she had not applied (id. ¶ 38). At that time, the plaintiff hired legal counsel and filed an amended EEOC charge dated January 23, 2015, alleging unlawful employment discrimination by the defendant based on rejection of her application for the Trainer Position (doc. 70-3, pl. dep., ex. 26). The plaintiff filed the instant lawsuit on June 18, 2015 (doc. 1).

In August 2015, the defendant offered the Trainer Position to Pankaj Potdar (Asian, male), who accepted the position and received a starting salary of $95,000 (doc. 70-12, Potdar dep. 22-24). The defendant's interview of Potdar was three to four hours and included a tour (id. 27). Potdar was raised in India and first came to the United States in 2014 (id. 13-14). The plaintiff and Brian Coleman state in their affidavits that Potdar speaks with a very thick foreign accent that makes it very difficult at times to understand him (doc. 73-1, pl. aff. ¶ 40; doc. 73-2, Brian Coleman aff. ¶ 7). Potdar did not train anyone during the approximately six months that he served in that job (doc. 70-12, Potdar dep. 28). In March 2016, Potdar was demoted to the position of Senior Application Engineer as a result of reduction-in-force at the Columbia facility (doc. 70-6, Burke 30(b)(6) dep. 107-108). While his compensation was not affected, Potdar's pay grade went from a six to a five, which affected the top salary he could make (id.).

In a letter dated October 8, 2015, the plaintiff was informed for the first time that the defendant would not be moving forward with her application for the Trainer Position (doc. 73-1, pl. aff. ¶ 39; doc. 70-6, Burke 30(b)(6) dep., ex. 10).

Meeting with Parks

Athenia Parks (African-American, female) became the Human Resources Manager of the Seneca facility in October 2014. The plaintiff met with Parks in January 2015 to discuss the race and gender discrimination to which she was allegedly being subjected, including the denial of promotions and the inequity in her pay as compared to white male employees (doc. 73-1, pl. aff. ¶ 41).

Parks testified in her deposition that in meetings with the plaintiff she encouraged the plaintiff to utilize the defendant's Development Plan process in order to improve her skills and position herself to become a preferred candidate for future promotional opportunities. (doc. 70-14, Parks dep. 50-51, 56). Parks testified that she offered to work directly with plaintiff on her Development Plan, but despite raising the issue on several occasions, the plaintiff never followed up with Parks, nor did she submit a Development Plan (id. 56; doc. 70-15, Newsome dep. 47).

In her affidavit, the plaintiff testified that Parks never encouraged her to utilize the defendant's Development Plan process to improve her chances for future promotional opportunities, nor did she ever offer to work directly with the plaintiff on her Development Plan (doc. 73-1, pl. aff. ¶¶ 41-42). The plaintiff further stated that, in that 2015 time frame, she would not have understood why Parks would even make reference to a "Development Plan" process. In her approximately 23 years of employment with the defendant, she had never seen a Development Plan utilized as a tool for advancement. Such plans, to the extent completed at all, were simple one-page forms with the blanks filled in

by the employee around the time of the annual performance review. Only after the defendant issued a five-page Development Plan to the plaintiff on April 28, 2016, with no input from the plaintiff or her supervisor, did the term "Development Plan" come up in any of the plaintiff's communications with Parks (id. ¶¶ 42-43).

2015 Performance Review

In February 2016, the plaintiff received her annual employee performance review for the calendar year 2015 (doc. 70-5, Stokes dep., ex. 13). For the first time in her employment with the defendant, the plaintiff received an overall performance rating that was less than above average (doc. 73-1, pl. aff. ¶ 44). The plaintiff's manager, Stokes, gave her an overall performance rating of "Competent." The defendant changed its rating scale for the 2015 annual performance reviews to four possible categories. This was down from five potential ratings that employees could have received in prior years. For the 2015 annual performance review, the rating categories were, from low to high, Under-performer, Competent, Performer, and High Performer (id. ¶ 45).

Although the defendant modified its rating scale for the 2015 annual performance review, most of the categories of performance to be rated remained unchanged. For example, in 2015, the defendant rated the plaintiff's performance in the areas of Professional Behavior/Attitude, Quality, and Service, among others (doc. 70-5, Stokes dep., ex. 13). Those same three categories were used in the defendant's review of the plaintiff's annual performance for each of the years 2012, 2013, and 2014 (id. 94). For each of the years 2012 through 2014, the plaintiff "Exceeded Requirements"

for Professional Behavior/Attitude and was rated with a 4 on a five point scale, with 5 being the best possible score. For 2015, Stokes rated the plaintiff as only "Partially on target" in the category of Professional Behavior/Attitude. This was the first time that the plaintiff had received a rating of anything less than "meets requirements" (id. 95; doc. 73-1, pl. aff. ¶ 46). Stokes did not observe or witness any behavior on the part of the plaintiff to justify such a low rating, but based this rating on what he was told by Human Resources regarding the plaintiff's behavior in a group meeting (doc. 70-5, Stokes dep. 95-96). The plaintiff claims there was no factual basis for this rating and was part of the defendant's retaliatory actions against her as a result of having filed this lawsuit (doc. 73-1, pl. aff. ¶ 46).

The categories of Quality and Service are both set up as objective measurements of an employee's performance, as opposed to a subjective opinion of a manager. For the Quality rating, the defendant tracks the employee's error rate and literally counts the number of Corrective Action Reports ("CARs") that the employee had over the year (id. ¶ 47). For 2015, the plaintiff's performance under the category of Quality was perfect; she had zero CARs and zero percent errors. Stokes gave the plaintiff a rating of only "On target" as opposed to the earned rating of "Exceeds target" (id.; doc. 70-5, Stokes dep., ex. 13). For the Service rating, the defendant tracks the employee's on-time delivery of customer orders and the number of missed shipments. For 2015, the plaintiff's performance under the category of Service was perfect; she had 100% on-time for all release of orders and zero missed shipments. Stokes gave the plaintiff a rating of only "On target" as opposed to the earned rating of

"Exceeds target" (doc. 70-5, Stokes dep., ex. 13; doc. 73-1, pl. aff. ¶ 47).

The plaintiff claims that had she received a rating of "Performer," she would have received a minimum pay increase in 2016 of at least 1.8% (doc. 73-1, pl. aff. ¶ 45; doc. 73-6). Based on the "Competent" rating that she received for 2015, the plaintiff received a pay increase in 2016 of 1.3% (doc. 73-1, pl. aff. ¶ 45; doc. 70-2, Stokes aff. ¶ 6). David Huff (white, male), who received a 1.8% increase in his base salary, was the only employee in Enclosed Drives who received a larger salary increase than the plaintiff (doc. 70-2, Stokes aff. ¶ 6). David Hornick (white, male) received a 0.8% salary increase, Dave Jeffcoat (white, male) received a 1.2% increase, and Sean Robertson (white, male) received a 0.7% increase (id.). Jim Stryker (white, male) did not receive an increase in his base salary because he was already at the upper end of the range for his pay grade (id.). The percentage increase for all employees at the Seneca facility was lower than usual, as the amount of available funds allocated to managers to use for salary increases in their respective departments was approximately half of what they typically received (id.).

2016 Development Plan

In April 2016, the defendant made changes to its order engineering organization such that, effective April 15, 2016, the Seneca plant Enclosed Drives Group, of which the plaintiff was a team member, was assigned to report to Tim Smith (doc. 70-16, Smith dep., ex. 1; doc. 73-1, pl. aff. ¶ 48).

On April 28, 2016, the plaintiff was called into a meeting with her former manager, Stokes; the Seneca

Plant Manager; and a representative from Human Resources and was presented with a five-page Development Plan (doc. 70-5, Stokes dep., ex. 29; doc. 73-1, pl. aff. ¶ 49). The plaintiff had no input into this Development Plan (doc. 73-1, pl. aff. ¶ 49). Similarly, Smith had no knowledge of and no input into the Development Plan that was issued to the plaintiff. In his experience as a supervisor, Smith had never seen a plan that was drafted without the input or knowledge of either the employee or her supervisor (doc. 70-16, Smith dep. 31-32, 38). The Development Plan given to the plaintiff was not at all similar to previous ones the plaintiff had received from the defendant (doc. 73-1, pl. aff. ¶ 50; doc. 70-14, Parks dep., exs. 2, 3, 4, 5).

The plaintiff was caught totally off guard when she was presented with this Development Plan in the presence of the Plant Manager. She was not given any choice concerning her performance of the Development Plan, and she had no option but to comply if she intended to remain employed by the defendant (doc. 73-1, pl. aff. ¶ 51). While the defendant claimed the Development Plan was to assist the plaintiff in her professional development, the plaintiff claims that it actually placed unreasonable burdens and demands on her time at work and was designed to cause her to fail. The plaintiff further claims that the Development Plan contained statements that were inaccurate or misleading regarding the history of her employment with the defendant and her efforts for advancement (doc. 73-1, pl. aff. ¶ 52). It specifically referenced that the plaintiff declined a position offered to her in Columbia in November 2014 (the demotion) (id.).

Parks testified that the purpose of the Development Plan was to focus on giving the plaintiff opportunities for exposure and experience in leadership

roles (doc. 70-14, Parks dep. 57). As the plaintiff had complained to Parks and Stokes that she felt she was not being given the opportunity to advance her career, Parks testified that she took the initiative and created a Development Plan to help her achieve that goal (id. 34-36). The Development Plan provided that the defendant would hire a communications coach to assist the plaintiff with her communications skills and that she would be given the opportunity to work with a mentor (id. 58, ex. 6). The defendant also arranged for the plaintiff to make presentations to the Seneca Leadership Team in order to help her with her presentation skills and offered to provide her with a mock interview in connection with any position for which she applied in an effort to help prepare her for the selection process (id., ex. 6). The Development Plan further provided that the plaintiff would work within the Motor Controls Center Group in order to gain experience with another product line as the enclosed drives product line was being transferred to the defendant's facility in Raleigh, North Carolina (id. 61-62).

Following the receipt of this Development Plan, the plaintiff filed another discrimination charge with the EEOC alleging retaliation. On August 29, 2016, she filed her amended complaint in this action, adding claims for retaliation (doc. 45).

APPLICABLE LAW AND ANALYSIS

Federal Rule of Civil Procedure 56 states, as to a party who has moved for summary judgment: "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). As to the first of

these determinations, a fact is deemed "material" if proof of its existence or nonexistence would affect the disposition of the case under the applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. Id. at 257. In determining whether a genuine issue has been raised, the court must construe all inferences andambiguities against the movant and in favor of the non-moving party. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the district court that there is no genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings; rather, he must demonstrate that specific, material facts exist that give rise to a genuine issue. Id. at 324. Under this standard, the existence of a mere scintilla of evidence in support of the plaintiff's position is insufficient to withstand the summary judgment motion. Anderson, 477 U.S. at 252.

Likewise, conclusory allegations or denials, without more, are insufficient to preclude the granting of the summary judgment motion. Id. at 248. "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." Id.
Failure to Promote

The plaintiff alleges that the defendant failed to promote her based upon her race and/or gender to three positions for which she applied: Customer Service Supervisor, LVMCC Assembly/ Fabrication Manager, and Trainer (doc. 73 at 19). The defendant argues that it is entitled to summary judgment as to each of these claims (doc. 70-1 at 17-24).[5] The parties agree that the plaintiff must pursue her claims for discriminatory failure to promote under the McDonnell Douglas burden-shifting framework. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). In order to prev ail, she must first establish a prima facie case of discrimination by proving that (1) she is a member of a protected group; (2) she applied for the position in question; (3) she was qualified for the position; and (4) she was rejected for the position under circumstances giving rise to an inference of unlawful discrimination. Anderson v. Westinghouse Savannah River Co., 406 F.3d 248, 268 (4th Cir. 2005). If the plaintiff establishes a prima facie case, the burden shifts to the defendant to produce a legitimate, non-discriminatory reason for the employment decision at issue. See Texas Dept. of Cmty. Affairs v. Burdine, 450 U.S. 248 (1981). If the defendant offers a legitimate, non-discriminatory reason, the plaintiff must produce evidence that the legitimate reason offered by the defendant is not the true reason but is a pretext for unlawful discrimination. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133 (2000).

1. Customer Service Supervisor Position

The defendant argues that the plaintiff cannot establish a prima facie case of discrimination in connection with her application for the Customer Service Supervisor position because she cannot show

that she was rejected for the position under circumstances giving rise to an inference of unlawful discrimination. The undersigned agrees.

It is undisputed that before any candidates were formally interviewed for the position, Hooker, who had been told to look for ways to reduce costs, suggested that he could achieve a cost reduction in his department by not filling the Customer Service Supervisor position and having TAG Supervisor Marcengill assume those duties on a permanent basis (doc. 70-8, Hooker 30(b)(6) dep. 44-49). That suggestion was accepted, the Customer Service and TAG Supervisor positions were consolidated, and Marcengill assumed the Customer Service Supervisor duties on a permanent basis (id.). It is also undisputed that Marcengill did not receive an increase in pay as a result of this consolidation (id. 50).

The facts do not raise an inference of race and/or gender discrimination. In Wilder v. Columbia Fire Dept., C.A. No. 3:07-976-CMC-BM, 2008 WL 3010084 (D.S.C. July 31, 2008), the defendant argued that the plaintiff could not prevail on a claim for failure to promote because the position sought by the plaintiff was not filled via promotion, but was instead filled via a lateral transfer when another employee was reassigned to the position with no increase in pay. Id. at *5. On these facts, the court concluded that because no applicants were considered for the promotion, then none were rejected, and, therefore, there was no claim for denial of a promotion. Id. (citing Hackney v. Perry, No. 97-2055, 1998 WL 801490, * 2 (4th Cir. Nov. 18, 1998)) (finding that where a lateral transfer resulted in the cancellation of a vacant position, there was no competitive selection to fill the position and, therefore, the plaintiff's application was neither considered nor

rejected within the meaning of McDonnell Douglas)). Likewise, here, because no candidates were considered or rejected for the Customer Service Supervisor position, the plaintiff has no claim that she was denied a promotion. Furthermore, it is illogical to argue that Hooker did not promote the plaintiff due to her race and gender when in 2006 he promoted her to Senior Application Engineer (doc. 70-3, pl. dep. 26-27). See Proud v. Stone, 945 F.2d 796, 797-98 (4th Cir. 1991) ("It hardly makes sense to hire workers from a group one dislikes (thereby incurring the psychological costs of associating with them), only to fire them once they are on the job.").

The plaintiff attempts to raise an issue of material fact by arguing that Marcengill was not "qualified for the promotion" because he does not have a four-year college degree (doc. 73 at 27-28). The plaintiff recognizes the defendant's argument that Marcengill was "grandathered in," but argues that he could only be grandfathered in to the position he held at the time the policy requiring four-year degrees was imposed (id.). However, as argued by the defendant, the plaintiff has no evidence that her concept of what being "grandfathered in" is what the defendant follows. Rather, the defendant has provided testimony that Marcengill was not promoted at all. Rather, he was already a supervisor, and thus there was no requirement that he have a four-year degree when he assumed the additional duties of Customer Service Supervisor with no pay increase (doc. 70-7, Brown 30(b)(6) dep. 54; doc. 70-6, Burke 30(b)(6) dep. 118; doc. 70-8, Hooker 30(b)(6) dep. 31, 44-50).

Based upon the foregoing, the defendant is entitled to summary judgment on the plaintiff's claim

that the defendant violated Title VII when it failed to promote her to this position.

2. LVMCC Assembly/ Fabrication Manager Position

The defendant argues that the plaintiff cannot establish a prima facie claim that she was unlawfully denied the LVMCC Assembly/Fabrication Manager position. Specifically, the defendant argues that the plaintiff was not qualified for the position, and there is no evidence that she was rejected for the position under circumstances giving rise to an inference of unlawful discrimination (doc. 70-1 at 21-23; doc. 75 at 4-5).

The defendant first argues that the plaintiff was not qualified for the position because she had no experience as a manager or supervisor, which was one of the main criteria for the position (doc. 70-1 at 21).[6] The plaintiff argues that she was qualified for the position as evidenced by the fact that the defendant placed her application on the "short list" (doc. 73 at 29). As set forth above, there is contradictory testimony from the defendant's Human Resources employees as to whether internal candidates for a position are automatically placed on the "short list." Nonetheless, the undersigned finds that summary judgment is appropriate because, whether or not the plaintiff can establish a prima facie claim, she has failed to show that the defendant's legitimate, non-discriminatory reason for hiring Ireton rather than her was pretext for unlawful discrimination.

The defendant has offered evidence that the plaintiff and three other internal candidates (a white female, a white male, and an Asian male) were considered for the position, but the defendant, after

reviewing the applicants' resumes and applications, determined that none of the candidates, including the plaintiff, possessed the necessary supervisory or management experience (doc. 70-7, Brown 30(b)(6) dep. 39 & exs. 2, 4). The LVMCC Assembly/Fabrication Manager is responsible for virtually all of the manufacturing operations at the Seneca facility and reports directly to the Plant Manager (id., ex. 5). As a result, the defendant was looking for a candidate with extensive supervisory and management experience over multiple departments in a manufacturing environment. (id. 48, 70). The defendant expanded its search and eventually hired Robert Ireton (white, male) (id. 34), who had 18 years of experience as a Production and Business Unit Manager and, in his most recent role as a Manufacturing Manager, was responsible for overseeing the entire manufacturing operations of a low volume, highly complex plant (doc. 70-9).

"Job performance and relative employee qualifications [are] widely recognized as valid, non-discriminatory bas[i]s for any adverse employment decision." Evans v. Techs. Applications & Serv. Co., 80 F.3d 954, 960 (4th Cir.1996). A plaintiff in a Title VII case can establish pretext either "by showing that he was better qualified, or by amassing circumstantial evidence that otherwise undermines the credibility of the employer's stated reasons." Heiko v. Colombo Sav. Bank, F.S.B., 434 F.3d 249, 259 (4th Cir. 2006).

Importantly,

The Fourth Circuit has expressly instructed that, when comparing the relative job qualifications of two candidates, if "the plaintiff has made a strong

showing that his qualifications are demonstrably superior, he has provided sufficient evidence that the employer's explanation may be pretext for discrimination." Heiko, 434 F.3d at 261-62. But where "a plaintiff asserts job qualifications that are similar or only slightly superior to those of the person eventually selected, the promotion decision remains vested in the sound business judgment of the employer." Id. at 261 (citing Dennis v. Columbia Colleton Med. Ctr., Inc., 290 F.3d 639, 649 & n. 4 (4th C)ir.2002) (emphasis added); Evans, 80 F.3d at 960.

Kelly v. Anderson Cty. Fire Prot. Comm'n, C.A. No. 8:07-1171-HMH-BHH, 2008 WL 2227247, at *7 (D.S.C. May 27, 2008) (ADA case).

The defendant has presented evidence that it deemed management experience to be a key qualification for the LVMCC Assembly/Fabrication Manager position, and the undisputed evidence is that the person chosen, Ireton, had 18 years of experience as a Production and Business Unit Manager and Manufacturing Manager (doc. 70-9).

While the plaintiff argues that her experience as a Team Lead and the fact that she had worked for the defendant for over 20 years and knew its internal processes made her the better candidate (doc. 73 at 29-30), "she cannot establish pretext by relying on criteria of her own choosing when the employer based its decisions on other grounds." Anderson v. Westinghouse Savannah River Co., 406 F.3d 248, 271 (4th Cir. 2005). In order to prove pretext, the plaintiff must show that "she was better qualified than [Ireton] with regard to the qualities and qualifications [the defendant] has deemed important." Johnson v. Midlands Tech. Coll. Found., C.A. No. 3:08-803-JFA-PJG, 2009 WL 3063048,

at *4 (D.S.C. Sept. 21, 2009) (citing Anderson, 406 F.3d at 271). The plaintiff has failed to present sufficient evidence upon which a reasonable jury could find that the defendant failed to promote her to the LVMCC Assembly/Fabrication Manager position under circumstances giving rise to an inference of unlawful race and/or gender discrimination. Accordingly, summary judgment should be granted to the defendant on this claim.

3. Trainer Position

The defendant argues that the plaintiff cannot establish a prima facie case of discrimination in connection with her application for the Trainer Position because she has no evidence that she was rejected under circumstances giving rise to an inference of unlawful discrimination (doc. 70-1 at 23-24). The defendant further argues that, even if the plaintiff could establish a prima facie case of discrimination, it had a legitimate, nondiscriminatory reason for not offering her the position: her poor communication skills (doc. 70-6, Burke 30(b)(6) dep. 54).

The plaintiff argues that "everything about the way this promotion was handled by Defendant establishes that Plaintiff was rejected under circumstances giving rise to an inference of unlawful discrimination" (doc. 73 at 19). Specifically, the plaintiff points out that her interview was only scheduled for one hour, and she was not given a plant tour (doc. 73-1, pl. aff. ¶ 35, doc. 73-5), while a typical interview for a position of this level is "45 minutes to an hour. Sometimes an hour and a half, for . . . Behavioral Interview Questions. And after that, there may be a few technical questions. And a plant tour, if the employee is not familiar with the

location, or requests one. So possibly two hours, maybe three, typically" (doc. 70-6, Burke 30(b)(6) dep. 68-69). The defendant's interview with Potdar, the applicant ultimately hired for the position, was three to four hours and included a tour (doc. 70-12, Potdar dep. 27).

The plaintiff further notes that, at the start of her interview, the hiring manager, Bready, told the plaintiff that he had already spoken with her manager (doc. 73-1, pl. aff. ¶ 35). The plaintiff's argues that this was "an ominous sign" as she had already complained to her manager, Stokes, about her concerns regarding race and gender discrimination (doc. 73 at 21 (citing doc. 73-1, pl. aff. ¶¶ 27-30)). However, the plaintiff has presented absolutely no evidence as to the substance of any conversation between Bready and Stokes, and she testified in her deposition that she did not know why Stokes would not support her promotion (doc. 70-3, pl. dep. 198-99). The plaintiff further notes that she did not hear any official word from the defendant about the position until nearly a year after she applied and that, in the interim, she was offered two jobs for which she had not applied, a demotion to Application Engineer if she would transfer to Columbia (an offer the defendant claims was a mistake) and a lateral transfer to a Senior Application Engineer position in Columbia (doc. 70-6, Burke 30(b)(6) dep., exs. 8, 9). The plaintiff also finds problematic the fact that the defendant produced only one document supporting its decision to not offer her the Trainer Position: an email from Bready referencing her communication skills (id., exs. 7A, 7B).[7]

As set forth above, a plaintiff in a Title VII case can establish pretext either "by showing that he was better qualified, or by amassing circumstantial evidence that otherwise undermines the credibility of the employer's stated reasons." Heiko, 434 F.3d at 259.

Assuming that the plaintiff can establish a prima facie case of discrimination, the undersigned finds that the plaintiff has failed to meet her burden of showing that the defendant's reason for not selecting her was pretext for unlawful discrimination.

The plaintiff argues that she was the training coordinator for order engineers in Enclosed Drives for approximately 12 years prior to her application for the Trainer Position, and her performance as the training coordinator was viewed as exemplary by her supervisor at that time (doc. 73 at 24-25 (citing doc. 70-4, Sullivan dep. 57-59 & ex. 6)). However, the plaintiff's former supervisor's opinion as to the plaintiff performance has nothing to do her application for the Trainer Position in 2014. The defendant has offered undisputed evidence that Bready did not believe that the plaintiff's communication skills were suitable for the Trainer Position. There is no evidence Bready spoke with Sullivan (who had retired two years earlier) or was aware of Sullivan's opinion. More importantly, Bready was not required to rely upon the opinion or assessment of the plaintiff's former supervisor, and it is not evidence of discrimination if he did not.

The plaintiff further argues that pretext is shown by the fact that Potdar, who was hired for the subject position, "has a very thick foreign accent[] and has very poor communication skills in comparison to the plaintiff" (doc. 73 at 25 (citing doc. 73-1, pl. aff. ¶ 40; doc. 73-2, Brian Coleman aff. ¶¶ 7-9)). However, as argued by the defendant, having poor communication skills and speaking with an accent are not the same thing (doc. 75 at 8). Whether Potdar has a thick foreign accent is a subjective opinion of the plaintiff and her colleague, Brian Coleman; it is not evidence that the plaintiff's communications skills were not the real reason why the

defendant did not offer her the Trainer Position. "'In assessing pretext, a court's focus must be on the perception of the decisionmaker, that is, whether the employer believed its stated reason to be credible.'" Holland v. Washington Homes, Inc., 487 F.3d 208, 217-18 (4th Cir.2007) (quoting Azimi v. Jordan's Meats, Inc., 456 F.3d 228, 246 (1st Cir.2006)).

Lastly, the plaintiff argues that pretext is shown because Potdar never trained anyone during the six months he held the position in question, which she argues shows that her communication skills were irrelevant for the job (doc. 73 at 25 (citing doc. 70-12, Potdar dep. 28)). The defendant presented evidence that during the short time that Potdar worked in the Trainer Position, he created training materials to be utilized by employees throughout the company (doc. 70-12, Potdar dep. 28-29). He did not continue in his role as a Trainer at the Columbia facility because a reduction-in-force eliminated the position (doc. 70-1, Burke 30(b)(6) dep. 107-108). As argued by the defendant, the plaintiff's assertion that communication skills were not necessary for the position is based upon speculation as there is no evidence that Potdar would not have begun training employees upon completing the training materials had the reduction-in-force not occurred.

The plaintiff has failed to present sufficient evidence upon which a reasonable jury could find that the defendant's proffered explanation for not promoting her to the Trainer Position was pretext for race and/or gender discrimination. Accordingly, summary judgment should be granted to the defendant on this claim.

Pay Discrimination

The plaintiff alleges claims for pay discrimination under the EPA and Title VII. To establish a prima facie case of pay discrimination under Title VII, a plaintiff must show that she (1) is a member of a protected class; (2) was as qualified as other employees not of the protected class; and (3) was paid less than similarly situated employees who were outside her protected class. Woodward v. United Parcel Serv., Inc., 306 F. Supp. 2d 567, 574–75 (D.S.C. 2004) (citation omitted). If the plaintiff is able to establish a prima facie case, the burden shifts to the defendant to provide a legitimate, nondiscriminatory reason for the difference in pay. Brinkley-Obu v. Hughes Training, Inc., 36 F.3d 336, 344 (4th Cir. 1994). Upon making such a showing, the burden shifts back to the plaintiff to produce evidence of pretext. Id.

To establish a prima facie case under the EPA, a plaintiff must prove: (1) that her employer has paid different wages to employees of opposite sexes; (2) that said employees hold jobs that require equal skill, effort, and responsibility; and (3) that such jobs are performed under similar working conditions. Id. (citations omitted). The fact that a female and a male employee have the same job title and/or classification and are paid different salaries is insufficient to create a genuine issue of material fact as to whether the employer has violated the EPA. See Wheatley v. Wicomico Cty., Md., 390 F.3d 328, 332 (4th Cir. 2004) ("We decline to accept the argument ... that employees with the same titles and only the most general similar responsibilities must be considered equal under the EPA."). The touchstone of the equal work analysis is whether the work is "substantially equal." Brewster v. Barnes, 788 F.2d 985, 991 (4th Cir. 1986). Jobs must be "virtually identical" to satisfy the "substantially equal"

requirement, because "[i]n enacting the EPA, Congress chose the word 'equal' over the word 'comparable' in order 'to show that the jobs involved should be virtually identical, that is ... very much alike or closely related to each other.'" Wheatley, 390 F.3d at 333-34 (citation omitted). Once a plaintiff establishes a prima facie case under the EPA, the employer bears the burden to prove, by a reponderance of the evidence, that the pay differential is justified by one of four statutory exceptions: (1) a seniority system, (2) a merit system, (3) a system that measures earnings by quantity or quality of production, or (4) a differential based on any other factor other than sex. Strag v. Bd. of Trustees, 55 F.3d 943, 948 (4th Cir. 1995) (citing 29 U.S.C. § 206(d)(1)).

In the motion for summary judgment, the defendant addresses the plaintiff's allegations as to several comparators: Lanny Sullivan, Jim Stryker, Pankaj Potdar, Jim Roberson, James Lemons, Ali Baker, and Dave Jeffcoat (doc. 70-1 at 26-32). However, in her response to the motion for summary judgment, the plaintiff limits her arguments to Stryker and Potdar (doc. 73 at 30-33). Accordingly, the undersigned will only consider the plaintiff's claims as to these two comparators.

1. Jim Stryker

In support of her claim, the plaintiff argues that she and Stryker were both Senior Application Engineers in the Enclosed Drives Group at the Seneca facility until Stryker's recent retirement; she trained Stryker in the processes and procedures of the Enclosed Drives Group; she and Stryker worked alongside each other for over 15 years; Stryker did not

have a four-year degree while she did; they performed the same job as order engineers in the same office, under the same supervisor; and Stryker was paid "significantly more" than her (doc. 73 at 30-31 (citing doc. 73-1, pl. aff. ¶¶ 11-13)).

During Stryker's 45-year tenure with the defendant, he has served as a Test and Repair Supervisor and as a Senior Manufacturing Supervisor (doc. 70-18, Stryker dep. 7, 15-16). He transferred from the Columbia facility to the Seneca facility as Senior Manufacturing Supervisor in November 1998 and moved into the Enclosed Drives Group in approximately 2000 or 2001 (id. 14-18). Upon Sullivan's retirement in July 2012, Stryker assumed the technical responsibilities of Sullivan's job while the plaintiff assumed the administrative responsibilities (id. 22). According to the defendant, Stryker's annual salary in 2016 was approximately $106,000, and the plaintiff's annual salary in 2016 was approximately $81,000 (doc. 70-1 at 27).

Assuming for purposes of this motion that the plaintiff can establish a prima facie case of pay discrimination under both the EPA and Title VII, the defendant has presented evidence that Stryker's pay is higher for a legitimate, non-discriminatory reason, or a differential based upon any factor other than sex. Further, the plaintiff has failed to show any evidence of pretext. Accordingly, summary judgment is appropriate.

Stryker was employed with the defendant for 45 years, 21 years longer than the plaintiff (doc. 70-1, Stryker dep. 7), and he served as a supervisor on two occasions during his employment with the defendant. He worked as a Manufacturing Supervisor for over 20 years. Thus, he was previously paid as a supervisor

even though he later transitioned into the role of a Senior Application Engineer. In explaining the basis for Stryker's salary during his deposition, Sullivan testified as follows:

> He had been a Manufacturing Supervisor when we first move the product up to Seneca, and he remained on the floor as a -- as a Manufacturing Supervisor for years after we moved. In Columbia, he had been a Manufacturing Supervisor from the late '80's until the mid-90's . . . . And then we moved him into the Order Engineering Group there. And then when we transferred up, we moved him as the Manufacturing Supervisor to help the new employees learn and know the new product. He was well respected as a supervisor, one of the better respected in the two plants.

(Doc. 70-4, Sullivan dep. 48-49). Moreover, it is undisputed that Stryker had more technical expertise than the plaintiff and was the technical expert in the department (doc. 70-3, pl. dep. 72, 152).

The Fourth Circuit has held that prior work experience and prior compensation are permissible factors other than sex for a difference in pay. Maron v. Va. Polytechnic Inst. & State Univ., 508 F. App'x 226, 232-33 (4th Cir. 2013) (holding that defendant proved its affirmative defense under the EPA that pay differential was based upon permissible factors other than sex, including education, previous work experience, and prior compensation); Gibbs v. Bd. of Educ. of Dorchester Co., C.A. No. 16-395-JMC, 2017 WL 68637, at * 7 (D. Md. Jan. 6, 2017) (finding that quantitative and qualitative professional experience is a legitimate factor other than sex); Jones v. Dole Food Co., 827 F. Supp. 2d 532, 557 (W.D.N.C. 2011) ("Greater work experience is a legitimate non-discriminatory reason

for paying more experienced employees more than an employee in a protected class."). The plaintiff has failed to offer any evidence upon which a jury could reasonably conclude that the legitimate, nondiscriminatory reasons proffered by the defendant for the pay difference was pretext for race and/or age discrimination. Based upon the foregoing, the plaintiff's pay discrimination claim with respect to Stryker fails under both the EPA and Title VII.

2. Pankaj Potdar

The plaintiff argues that the defendant has discriminated against her by paying Potdar approximately $17,000 more per year while she and Potdar perform the same job that requires equal skill, effort, and responsibility. She further contends that she is deserving of higher pay than Potdar as she has more years of engineering experience, served as a Team Lead for years, and has worked for the defendant longer (doc. 73 at 32-33).

The defendant hired Potdar for the Trainer Position in 2015, and his duties were creating a standardized training procedure for all Application Engineers, which included designing training programs that could be accessed via the defendant's online portal (doc. 70-12, Potdar dep. 22-23, 28-29). His starting salary was $95,000 (id. 24). After approximately six months, Potdar was demoted to the position of Senior Application Engineer in March 2016 as a result of a reduction-in-force at the Columbia facility (id. 23; doc. 70-6, Burke 30(b)(6) dep. 107-108). As argued by the defendant, the plaintiff and Potdar clearly did not hold jobs that required equal skill, effort, and responsibility that were performed under similar

working conditions at the time Potdar was hired into the Trainer Position. Furthermore, the fact that the defendant did not reduce Potdar's salary after his demotion in connection with a reduction-in-force is not evidence of pay discrimination with respect to the plaintiff. A reorganization that results in different salaries being paid to male and female employees is a legitimate factor other than sex for the disparity. Boaz v. FedEx Customer Info. Servs., Inc., 668 F. App'x 152, 153-54 (6th Cir. 2016) (affirming district court's finding that defendant established affirmative defense under the EPA showing that a factor other than sex, i.e., reorganization of its staff, was reason for pay differential). The plaintiff has presented no persuasive evidence to dispute the legitimate reason proffered by the defendant, and she has presented no evidence that race and/or gender discrimination motivated the pay differential. Accordingly, this claim fails under both the EPA and Title VII.

Retaliation

The plaintiff alleges that the defendant retaliated against her for filing her Charges of Discrimination and this lawsuit in violation of the EPA and Title VII by giving her lower than earned and deserved ratings on her 2015 annual performance review and creating the 2016 Development Plan (doc. 45, amended comp. ¶¶ 44-64).

In order to establish a Title VII retaliation claim, the plaintiff must first present evidence sufficient to establish a prima facie case, as follows: 1) that she engaged in protected activity; 2) that the defendant took an adverse employment action against her, and 3) that a causal connection exists between her protected

activity and the alleged adverse action(s). Lettieri v. Equant, Inc., 478 F.3d 640, 650 (4th Cir. 2007). If the plaintiff establishes a prima facie case, the defendant employer then has the burden of producing a legitimate, non-discriminatory reason for its actions, and if the employer does so, the plaintiff must then demonstrate that the defendant's proffered reason for its actions is pretext for retaliation. Id. To establish an adverse action with respect to a retaliation claim, "a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, 'which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.' " Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 68 (2006) (quoting Rochon v. Gonzales, 438 F.3d 1211, 1219 (D.C. Cir. 2006)).

The EPA provides that it is unlawful "to discharge or in any other manner discriminate against an employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter . . . . "

29 U.S.C. § 215(a)(3). "Thus, to state a claim for retaliation, a plaintiff must plausibly allege: (1) engagement in protected activity, (2) materially adverse action ... which ... might well have dissuaded a reasonable worker from making or supporting a charge of discrimination, and (3) causality." Reardon v. Herring, 191 F. Supp.3d 529, 549 (E.D. Va. 2016) (citations and internal quotation marks omitted).

The defendant argues that the plaintiff's 2015 performance review and the 2016 Development Plant were not adverse employment actions (doc. 70-1 at 33-39). For purposes of this motion, the undersigned will assume that they did constitute adverse employment actions. However, the undersigned finds that the

plaintiff has not established a causal connection between her protected activities and the alleged adverse employment actions. Accordingly, summary judgment should be granted.

The plaintiff's first Charge of Discrimination was filed in July 2014, her second Charge of Discrimination was filed in January 2015, and the complaint in this action was filed in June 2015 (doc. 1; doc. 70-3, pl. dep., exs. 23, 26). The 2015 performance review was issued to the plaintiff in February 2016, and the 2016 Development Plan was presented to the plaintiff in April 2016 (doc. 73-1, pl. aff. ¶¶ 44, 49). Courts have held that other than situations in which the adverse employment decision follows the protected activity "very close[ly]," "mere temporal proximity" between the two events is insufficient to satisfy the causation element of a prima facie case of retaliation. Clark Cnty. Sch. Dist. v. Breeden, 532 U.S. 268, 273 (2001); Perry v. Kappos, 489 F. App'x 637, 643 (4th Cir. 2012). Although neither the Fourth Circuit nor the Supreme Court have adopted a bright temporal line, the Fourth Circuit has held "that a three- or four-month lapse between the protected activities and discharge was 'too long to establish a causal connection by temporal proximity alone,' and that 'even a mere ten week separation between the protected activity and termination' is sufficiently long so as to weaken significantly any inference of causation between the two events." Perry, 489 Fed. Appx. at 643 (citing Pascual v. Lowe's Home Ctrs., Inc., 193 F. App'x 229, 233 (4th Cir.2006), King v. Rumsfeld, 328 F.3d 145, 151 n.5 (4th Cir. 2003)). In this case, the shortest time between any protected activity and any alleged adverse action is over six months. Furthermore, the plaintiff has taken no issue with the rating she received on her 2014 performance evaluation that was issued to her in early

2015, after she had filed her two Charges of Discrimination. As argued by the defendant, no factfinder could reasonably infer that the defendant would issue the plaintiff a legitimate, non-retaliatory evaluation in 2015, soon after she had engaged in protected activity, and then issue an evaluation one year later that was tainted by retaliatory animus.

Furthermore, the plaintiff has failed to show that the defendant's proffered reasons for the plaintiff's 2015 performance review and 2016 Development Plan were pretext for retaliation. The Fourth Circuit has recently explained:

"Title VII retaliation claims require proof that the desire to retaliate was the but-for cause of the challenged employment action." Univ. of Tx. Sw. Med. Ctr. v. Nassar, 133 S.Ct. 2517, 2528 (2013) (emphasis added); see Foster v. Univ. of Maryland-Eastern Shore, 787 F.3d 243, 246, 252 (4th Cir. 2015) ("Nassar ... held that a successful retaliation plaintiff must prove that retaliatory animus was a but-for cause of the challenged adverse employment action."). Because Title VII prohibits discrimination only when it results from particular, enumerated motivations, "when an employer articulates a reason for discharging the plaintiff" that the statute does not proscribe, "it is not our province to decide whether the reason was wise, fair, or even correct, ultimately, so long as it truly was the reason for the plaintiff's termination." DeJarnette v. Corning Inc., 133 F.3d 293, 299 (4th Cir. 1998) (internal quotation marks omitted); see also id. (explaining that it is not our role to sit "as a kind of super-personnel department weighing the prudence of employment decisions") (internal quotation marks omitted).

Villa v. CavaMezze Grill, LLC, 858 F.3d 896, 900–01 (4th Cir. 2017). In Foster, the Fourth Circuit stated

that the but-for causation standard is not applied at the prima facie stage, but rather, the but-for causation requirement is part of a plaintiff's proof at the pretext stage. 787 F.3d at 252. Here, the plaintiff has failed to present evidence upon which a reasonable jury could determine that race and/or gender discrimination was the but-for cause of the plaintiff's 2015 annual performance review and the 2016 Development Plan.

Based upon the foregoing, summary judgment should be granted on the plaintiff's retaliation claims.

CONCLUSION AND RECOMMENDATION

Wherefore, based upon the foregoing, the defendant's motion for summary judgment (doc. 70) should be granted.

IT IS SO RECOMMENDED.

s/ Kevin F. McDonald
United States Magistrate Judge

December 11, 2017
Greenville, South Carolina

Footnotes

[1] Sullivan was either the plaintiff's supervisor or team lead in the Enclosed Drives Group from the time of his transfer to Seneca in 1999 until his retirement at the end of June 2012. Sullivan had many years to work with the plaintiff and observe her performance training the

new order engineers in the Enclosed Drives Group (doc.73-1, pl. aff. ¶18)

[2] Bridge was a personnel management system widely used by the defendant (doc.70-15, Newsome dep. 16-17).

[3] An enlarged version of exhibit 7A was entered as exhibit 7B (doc. 70-6, Burke 30(b)(6) dep., exs. 7A, 7B) .

[4] The defendant had openings for two Training Positions at the Columbia facility under two separate requisition numbers (doc. 70-6, Burke 30(b)(6) dep. 25, 27 & ex. 4).

[5] The defendant also argues that any claim by the plaintiff that she was denied promotion to Staff Application Engineer after Sullivan retired in July 2012 (doc. 45, amended comp. ¶¶ 16, 30) is time-barred as the plaintiff failed to file a charge of discrimination within 300 days of the promotion denial (doc. 70-1 at 17-18). The plaintiff apparently concedes this point as she does not address the Staff Application Engineer position in her response in opposition to the motion for summary judgment. Accordingly, summary judgment for the defendant is appropriate on that claim.

[6] The job announcement states that "[p]revious manufacturing supervision is strongly preferred . . . . " (doc. 70-7, Brown 30(b)(6) dep., ex. 5).

[7] The email is difficult to read but appears to state, in pertinent part: "interpersonal communication (very nervous) does not play well with a training role" (doc. 70-6, Burke 30(b)(6) dep., ex. 7B).

Filed 2/12/2019
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 18-1265
(8:15-cv-02466-HMH)

SAMANTHA L. COLEMAN Plaintiff - Appellant

v.

SCHNEIDER ELECTRIC USA, INC.
Defendant - Appellee

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk