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

ANTONIA UDASCO-KIST *Plaintiff*	:	**CIVIL ACTION**
	:	**NO. 19-3176**
v.	:	
THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC. *Defendant*	:	

NITZA I. QUIÑONES ALEJANDRO, J. JANUARY 25, 2021

MEMORANDUM OPINION

INTRODUCTION

Plaintiff Antonia Udasco-Kist ("Plaintiff") filed this employment discrimination action against her former employer, Defendant Thomas Jefferson University Hospitals, Inc. ("Jefferson"), asserting claims of unlawful termination based on her age in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621-634, and the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. § 955 *et seq*. Before this Court is Jefferson's motion for summary judgment, filed pursuant to Federal Rule of Civil Procedure ("Rule") 56, in which Jefferson argues that Plaintiff has not produced sufficient evidence from which a reasonable factfinder could find that Jefferson's proffered legitimate, non-discriminatory reason for her termination is pretextual. [ECF 16, 17]. Plaintiff opposes the motion. [ECF 20]. The issues raised in the motion are fully briefed and ripe for disposition. For the reasons set forth herein, Jefferson's motion for summary judgment is granted, and judgment is entered in favor of Jefferson on Plaintiff's ADEA and PHRA claims.

BACKGROUND

When ruling on a motion for summary judgment, a court must consider all record evidence and supported relevant facts in the light most favorable to the non-movant; here, Plaintiff. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Galena v. Leone*, 638 F.3d 186, 196 (3d Cir. 2011). The relevant facts are summarized as follows:[1]

> In 2000, Plaintiff, then forty-five years old, began working at Jefferson as a Nuclear Medicine Technologist ("NMT"). As an NMT, Plaintiff's primary duties were to operate and maintain nuclear medicine imaging technology, perform diagnostic imaging, ensure radiation safety, and accurately perform quality control procedures. Plaintiff spent most of her career at Jefferson's Methodist Hospital Division ("MHD"), initially under the direct supervision of Chief NMT Marie Carr, and later, when Jefferson hired Cheryl Rickley as Chief NMT for both MHD and Jefferson's Center City Campus ("CCC") in April 2015, under Rickley's supervision.
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> Over the course of her employment, Plaintiff was generally well-regarded by her fellow NMTs and by Carr, and received mostly positive performance evaluations. However, beginning in 2013, Plaintiff made several serious errors for which she was disciplined in a manner consistent with Jefferson's Employee Disciplinary Procedures policy manual.
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> Jefferson's Employee Disciplinary Procedures policy manual provides that "when deemed appropriate," four stages of progressive discipline are to be used: "First Written Warning (Documented Discussion/Verbal Warning), Second Written Warning, Suspension/Final Warning, and Termination." [ECF 17-7 at 25]. "Depending on the particular circumstances, progressive discipline may be skipped in instances of serious violations of policy and/or procedures, or where there are repeated violations of policy and/or procedures." *Id.* at 27. The policy manual also provides that "[f]alsifying or providing false records, reports or information of any nature" is misconduct for which an employee "may" be "immediately dismissed." *Id.* at 27-28. The policy manual also includes a grievance procedure, which employees are reminded of when they receive Employee Disciplinary Action forms. *Id*. at 29.
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> Plaintiff's disciplinary record includes the following events: in January 2013, Plaintiff injected a patient with the wrong radiopharmaceutical. Carr had a "documented discussion" with Plaintiff concerning the error. In April 2013, Carr

[1] These facts are taken from the parties' briefs, exhibits, and statements of facts. To the extent that any evidence is disputed, such disputes will be noted and construed in the light most favorable to Plaintiff. *Galena*, 638 U.S. at 196.

counseled Plaintiff about multiple errors, including mislabeling images, dosage errors, and imaging errors. In January 2015, Plaintiff again injected a patient with the wrong radiopharmaceutical. For this serious, repeated error, Carr gave Plaintiff a formal First Written Warning and required Plaintiff to undergo further training. In November 2015, while under Rickley's supervision, Plaintiff injected another patient with a radiopharmaceutical the patient did not need because the ordering physician had canceled the patient's test. In disclosing the error to Dr. Charles Intenzo, the patient's treating physician, Plaintiff omitted that she had seen the cancelation order before she administered the dosage.[2] When Dr. Intenzo learned that Plaintiff had known about the cancelation, he recommended that she be terminated both for the error and for her failure to admit the complete truth. However, Rickley instead gave Plaintiff a Final Warning in accordance with Jefferson's progressive discipline policy.

Plaintiff admits that she committed the aforementioned errors and that she knew her actions constituted violations of Jefferson's policies. Plaintiff did not pursue grievances for any of these disciplinary actions, nor does she argue that any of the discipline imposed was inappropriate or influenced by age discrimination.

In late 2015, Jefferson implemented an initiative to train its NMTs to work at both its MHD and CCC campuses, rather than at only one location. Under this initiative, MHD NMTs like Plaintiff trained at CCC, and vice versa. At some point during Plaintiff's training at CCC, Plaintiff claims that she heard from a coworker that Rickley told another NMT that she [Rickley] "wished [Plaintiff] would just retire."[3]

Though Plaintiff was used to performing quality control ("QC") tests on the machines at MHD, she received training on how to perform the same tests using the machines at CCC. The purpose of the QC test is to ensure that NMTs are not exposed to dangerous radiation from the radiopharmaceuticals they use. The QC test at the CCC campus required the NMTs to wipe down boxes containing the radiopharmaceutical chemicals, then place both the wipes and a chip that emitted a certain amount of radiation within a predefined range (the "Cs137 Source") into the machine, called "the Wizard," which would then print out the QC test results. NMTs were required to enter those test results precisely into Jefferson's computer

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[2] In her response, Plaintiff contends she did not know the test had been canceled before she dosed the patient. [ECF 20 at 23]. However, in her deposition, she also admitted that she saw the cancelation in the computer system *before* she dosed the patient, and that she assumed the cancelation was an error because the ordering physician had not told her about the cancelation when they spoke the previous day. [Udasco-Kist Dep., ECF 17-3 at 235:5-237:22, 246:1-23, 247:24-248:8].

[3] Plaintiff asserts that Rickley made this statement and relies on NMT Anthony Juliana's deposition in which he allegedly learned of Rickley's comment from NMT Tirath Nahar. However, NMT Nahar denies having heard the comment. In its filings, Jefferson denies that Rickley made the comment, and further argues that even if Rickley had said this, such testimony would be inadmissible hearsay. For the purpose of this analysis *only*, this Court will assume Rickley made the statement.

system. If the value for the Cs137 Source fell outside the acceptable range, the QC protocol required the NMT to run the test again. If the value for the Cs137 Source was in an unacceptable range for a second time, the NMT was to notify a supervisor and take the Wizard out of service.

In January 2016, Plaintiff attempted to perform a QC test, but the Wizard did not produce a print-out with the results. Plaintiff then manually entered a made-up number within the acceptable range in order to bypass the system. When this attempt failed, Plaintiff had to notify a supervisor that the Wizard required service. When the supervisor notified Rickley, Plaintiff admitted to Rickley that she made up a value in an attempt to override the system. Plaintiff also admitted that she had previously rounded up the print-out values on several occasions (because they were "so close to the range") to bypass the QC test and be able to use the radiopharmaceuticals for procedures.[4] Upon learning of Plaintiff's actions, Rickley spoke with her own supervisors, the Administrator and the Associate Administrator at Jefferson. All three supervisors agreed that this particular instance of misconduct was so serious as to necessitate Plaintiff's termination. At the time of her termination on February 2, 2016, Plaintiff was sixty years old and had thirty-five years' experience as an NMT, fifteen of those years at Jefferson. Following Plaintiff's termination, Jefferson promoted part-time NMT Samantha Lockerby, then twenty-five years old, to Plaintiff's former position as a full-time NMT.

After discovering Plaintiff's wrongful actions, Rickley conducted an internal audit to ensure no other NMTs were falsifying QC inputs. This audit revealed that two other NMTs, Chris Dihn (age thirty) and Mai Nguyen (age twenty-eight), had made QC test errors. Neither employee had a prior disciplinary record. It was discovered that Dihn, like Plaintiff, rounded up the print-out values if the values were out of range but, unlike Plaintiff, did not make up values for incomplete tests. The Associate Administrator issued Dihn a Final Warning. Nguyen failed to run a repeat test, as required, when the values were out of range. Because Nguyen did not falsify or round up data, the Associate Administrator gave Nguyen a Coaching Record instead of more serious discipline.

LEGAL STANDARD

Rule 56 governs summary judgment motion practice. Fed. R. Civ. P. 56. Specifically, this rule provides that summary judgment is appropriate "if the movant shows that there is no genuine

[4] In her deposition, Plaintiff stated for the first time that NMT Nahar had told her during training that rounding up was acceptable. Nahar denied this. NMT Dihn, who also rounded up, stated that no one told him that doing so was acceptable. Construing this dispute in Plaintiff's favor, this Court will assume Plaintiff was told during training that rounding up was acceptable. However, Plaintiff has not asserted that anyone told her to input false values when no print-out values were received.

dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.* A fact is "material" if proof of its existence or non-existence might affect the outcome of the litigation, and a dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. Under Rule 56, a court must view the evidence in the light most favorable to the nonmoving party. *Galena*, 638 F.3d at 196.

Pursuant to Rule 56(c), the movant bears the initial burden of informing a court of the basis for the motion and identifying those portions of the record that the movant "believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). This burden can be met by showing that the nonmoving party has "fail[ed] to make a showing sufficient to establish the existence of an element essential to that party's case." *Id.* at 322. After the movant has met its initial burden, summary judgment is appropriate if the nonmoving party fails to rebut the moving party's claim by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials" that show a genuine issue of material fact or by "showing that the materials cited do not establish the absence or presence of a genuine dispute." Fed. R. Civ. P 56(c)(1)(A)-(B). The nonmoving party must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The nonmoving party may not rely on "bare assertions, conclusory allegations or suspicions," *Fireman's Ins. Co. of Newark v. DuFresne*, 676 F.2d 965, 969 (3d Cir. 1982), nor rest on the allegations in the pleadings. *Celotex*, 477 U.S. at 324. Rather, the nonmoving party must "go beyond the pleadings" and "designate specific facts showing that there is a genuine issue for trial." *Id.* (internal quotations and citations omitted).

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