

STATE OF OHIO )  
 ) SS:  
CUYAHOGA COUNTY )

IN THE COURT OF COMMON PLEAS  
CASE NO. CV-617046

MARY STORER )  
 )  
Plaintiff )  
 )  
v. )  
 )  
KEYCORP )  
 )  
Defendant )

**JOURNAL ENTRY**

**Michael J. Russo, J.:**

As set forth below, Defendant KeyBank National Association's Motion for Summary Judgment is granted because there is no evidence that Plaintiff Mary Storer was discriminated against by KeyBank, her former employer, on the basis of age.

The following facts are not in dispute. Storer began her employment with KeyBank in 1997 as a business analyst. Although her initial performance evaluations noted that she performed competently, as early as 1999 she was instructed to improve her interpersonal communications. Beginning in early 2006, KeyBank adopted the agile method of software development. KeyBank subsequently eliminated the specialized role of business analyst, and Jablonski, found Storer resistant to this new methodology. Storer admittedly did not want to be a Storer was placed on a final performance improvement plan and was instructed to focus on tasks assigned and to be "respectful of others' points of view." Storer was assigned to document all of

deadline drew near, Storer requested and was granted an extension on the project. At the end of the extension, Storer had not completed the project and was terminated on September 25, 2006.

Under Ohio law, a person claiming discrimination can prove a case in one of two ways: with direct evidence or by establishing a prima facie case of discrimination. *Mauzy v. Kelly Services Inc.* (1996), 75 Ohio St. 3d 578. In *Barker v. Scovill* (1983), 6 Ohio St. 3d 146, the Ohio Supreme Court adopted the analytic framework established by the United States Supreme Court in *McDonnell Douglas Corp. v. Green* (1973), 411 U.S. 792, and modified the elements of a prima-facie case of age discrimination. In order to establish a prima facie case of age discrimination, Plaintiff must show that she (1) is a member of a protected class, (2) she suffered an adverse employment action, (3) was qualified for the position, and (4) was replaced by, or that her discharge permitted the retention of, a person not belonging to the protected class.

The Court finds that Storer has failed to produce direct evidence of age discrimination. Storer alleges that comments by her supervisors that she was “resistant to change” are evidence that KeyBank discriminated against her on the basis of age. The Eighth District Court of Appeals, in *Olive v. Columbia/HCA Healthcare Corp.* (March 9, 2000), Cuyahoga App. Nos. 75249 and 76349, 2000 Ohio App. Lexis 914, has held that a supervisor’s statement that an employee could not “adapt to change” has no apparent or hidden discriminatory animus. In this instance, there is no evidence of a hidden meaning in the words used by KeyBank to describe Storer’s job performance. The evidence instead indicates that Storer had little, if any, interest in doing her job in any different manner or in accepting new responsibilities as the position evolved.

Likewise, under the *Barker* analysis, Storer cannot establish a prima facie case of age discrimination. Storer meets the first two prongs in that she is a member of a statutorily-protected class because she is over the age of forty and she has suffered an adverse employment action because she was terminated. Nevertheless, she cannot meet either of the two remaining prongs. Storer has failed to establish that she was qualified for the position because she refused

grant of a thirty-day extension, could not complete it. Storer also was required to take on the additional responsibilities of coding and testing when her job title changed but she did not want to do so. Finally, as a programmer analyst, interpersonal communication with team members and clients was an essential job requirement. While Storer had been coached in the area since 1999, she had shown little improvement and by her conduct actively sought to undermine the new programs instituted by KeyBank.

In similar fashion, Storer also has failed to show she was replaced. Storer's duties were not re-assigned to a particular individual within the team after her termination, nor was another employee hired to assume her duties. Instead, the work was re-distributed among the other programmer analysts already on her team. (See Evans deposition, pages 85-86). The Court finds Storer's argument that KeyBank hired interns is spurious. There is no evidence that the use of interns was a prelude to bringing them into full time employment supplanting older workers.

As Plaintiff Storer has failed to establish that there is a genuine issue of material fact for the trial, the Court finds that Defendant KeyBank is entitled to judgment as a matter of law and summary judgment is granted in favor of Defendant. Court cost assessed to the Plaintiff(s).

**IT IS SO ORDERED.**

Date: August \_\_\_\_, 2008

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**CERTIFICATE OF SERVICE**

A copy of the foregoing **Journal Entry** was sent by regular U.S. Mail this 26<sup>th</sup> day of August, 2008 to: David A. Young, Esq. Law Offices of David A. Young LLC, 700 West Saint Clair Avenue, Suite 316, Cleveland, Ohio 44113-1274, Attorney for Plaintiff Mary Storer and Carole Schwartz-Rendon, Esq., 1717 East 9<sup>th</sup> Street, Suite 2100, Cleveland, Ohio 44114, Attorney for Defendant KeyCorp.

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