



**DISTRICT OF COLUMBIA OFFICE OF HUMAN RIGHTS**

██████████  
**Complainant,**

**V.**

**CATHOLIC UNIVERSITY  
OF AMERICA  
Respondent.**

§  
§  
§  
§  
§  
§  
§

**DOCKET NO. 16-440-P (N)  
Administrative Law Toya S. Carmichael  
Sitting as Independent Hearing Examiner**

**FINAL ORDER**

On December 12, 2019, Administrative Law Toya S. Carmichael, sitting as an independent hearing examiner, submitted the Proposed Decision and Order in this case. After a review of the Proposed Decision and Order; any subsequent Proposed Substitute Orders and Findings; and the relevant portions of the file in this case, the undersigned members of the Hearing Tribunal adopt in whole the Recommended Decision proposed by the Independent Hearing Examiner and finds that the Complainant, ██████████, fails to establish her claim of unlawful termination on the basis of age under the DCHRA. Specifically, there is no issue of material fact and Respondent, the Catholic University of America, is entitled to judgment as a matter of law. Accordingly, Catholic’s Motion for Summary Judgment is hereby **GRANTED** and this case is **DISMISSED** with prejudice.

So ORDERED this 20<sup>th</sup> day of December, 2019

/s/ Anika Simpson  
Anika Simpson  
Commissioner

/s/ Eleanor Collinson  
Eleanor Collinson  
Commissioner

/s/ Motoko Aizawa  
Motoko Aizawa  
Commissioner

**SERVICE COPIES:**

[REDACTED]



**DISTRICT OF COLUMBIA COMMISSION ON HUMAN RIGHTS**

COMPLAINANT	§	
<b>Complainant,</b>	§	
	§	<b>DOCKET NO. 16-440 P (N)</b>
<b>V.</b>	§	
	§	
<b>CATHOLIC UNIVERSITY</b>	§	
<b>OF AMERICA</b>	§	
<b>Respondent.</b>	§	

**PROPOSED DECISION AND ORDER GRANTING RESPONDENT’S MOTION FOR SUMMARY JUDGMENT**

The undersigned judicial officer has reviewed the entire record, as well as the pleadings and exhibits, with respect to the instant Motion. The issue has been fully briefed and no hearing is deemed necessary. For the reasons stated more fully below, the undersigned recommends that the Hearing Tribunal **GRANT** Respondent’s Motion for Summary Judgment.

**OVERVIEW**

Complainant [REDACTED] ([REDACTED] or “Complainant”) alleges that Catholic University of America (“Catholic” or “Respondent”) discriminated against her based on age when it terminated her employment as Assistant to the [REDACTED] Department. Charge of Discrimination (June 15, 2016). On August 28, 2019, Catholic filed a Motion to Dismiss or, in the Alternative, Motion for Summary Judgment concerning Complainant’s claim against it. Respondent’s Motion to Dismiss or, in the Alternative, Motion for Summary Judgment (Aug. 28, 2019) (hereinafter “Motion”). On October 9, 2019, Catholic filed a Reply in Support of Respondent the Catholic University’s Motion to Dismiss or, in the Alternative, Motion for Summary Judgment. Complainant failed to respond to the Motion.

Regarding the request for dismissal, Catholic argues it is entitled to dismissal for three reasons: the District of Columbia Office of Human Rights (“the Office” or “OHR”) (1) violated its Standard Operating Procedures (“SOPs”) by “failing to inform [Catholic that the Office] was interviewing its supervisory and managerial employees; (2) accepted “gratuitous comments by Complainant’s [former] counsel attributing witnesses’ concerns about possible retaliation[, which] tainted the investigation; and (3) “failed to comply with numerous other significant SOPs during the investigation.” Motion at 3-21.

Regarding the request for summary judgment, Catholic argues it is entitled to a judgment as a matter of law for three reasons: (1) Complainant cannot prove a *prima facie* case of age discrimination; (2) even if Complainant could prove a *prima facie* case, Catholic has articulated a legitimate, nondiscriminatory reason for Complainant’s termination; and (3) Complainant cannot show pretext. Motion at 30-44. Additionally, Catholic argues Complainant is not entitled to any compensatory or punitive damages because she failed to mitigate her damages by not accepting Catholic’s reinstatement offer. Motion at 45-47.

The undersigned will address only the Summary Judgment portion of Catholic’s Motion. Regarding Catholic’s Motion to Dismiss, the issues presented with regards to the OHR investigation are insufficient to dismiss the complaint at this stage of the case. If Respondent believed the OHR investigation was biased in favor of Complainant, it should have filed a Motion for Reconsideration with OHR after the Letter of Determination was issued. See 4 DCMR §§ 720.1, 720.2.

## STATEMENT OF THE CASE

On June 16, 2015, Complainant filed a Charge of Discrimination against Catholic with OHR. Charge of Discrimination (June 15, 2016). Complainant alleged one claim: age discrimination. *Id.* OHR investigated Complainant's claim and issued its findings in a Letter of Determination. *See* Letter of Determination (June 11, 2018) ("LOD"). OHR found probable cause that Catholic discriminated against Complainant based on her age when it terminated her employment on April 15, 2015. LOD at 31. On September 11, 2018, OHR certified this case to the District of Columbia Commission on Human Rights ("Commission").

## ISSUE PRESENTED

Whether, on the basis of the undisputed material facts established by a preponderance of the evidence and considered in the light most favorable to Complainant, Catholic is entitled to judgment as a matter of law on the claim that it discriminated against Complainant based on her age when it terminated her employment on April 15, 2015.

## UNDISPUTED FINDINGS OF MATERIAL FACT

1. Catholic is comprised of twelve schools. Motion Exhibit ("Ex.") 38.
2. Each School is an academic unit headed by a Dean. Motion Ex. 38
3. Deans report to the Provost, who is the chief academic officer for the University.

Motion Ex. 39 at 1.

4. At all times relevant to this case, Dean ("Dean ██████████") was Acting Dean ██████████. Motion Ex. 45 at 1.
5. At all times relevant to this case, Provost ("Provost ██████████") was Interim Provost. *See* Motion Ex. 27 at 1.

6. Departmentalized Schools are made up of specialized departments, each of which is led by a Department Chair responsible for managing the faculty and academic support staff for that department. Motion Exs. 15 and 38.
7. The [REDACTED] Department is housed in the School [REDACTED]. Motion Ex. 38 at 2.
8. On May 7, 1984, Complainant began working at Catholic as Assistant to the [REDACTED] [REDACTED] Department, she was approximately 46 years old. Motion Ex. 41 at 2 and Ex. 48.
9. As of March 1, 2015, she had worked at Catholic for 30 years, 9 months. Motion Ex. 41 at 2.
10. On August 29, 2014, Catholic submitted a proposal to reduce costs by \$10 million for fiscal year 2016. Motion Ex. 27.
11. One component of the proposal was a reduction in force (“RIF”) intended to reduce the number of staff positions in the Academic Area (“Academic Support Staff”). Motion Ex. 27.
12. Respondent identified 109 Academic Support Staff positions for elimination across all of the schools (“RIF Eligible Positions”). See Exhibits 40 and 41.
13. Respondent conducted the Spring 2015 reduction in force (“RIF”) in two phases: a voluntary exit incentive program followed by involuntary position eliminations. Motion Ex. 27.
14. The voluntary exit incentive program offered a lump sum payment based on the individual staff member’s years of continuous service, plus an additional incentive for

those voluntarily resigned from their positions. *See Exhibit 43.*

15. The involuntary termination phase was reserved and utilized only after an insufficient number of employees accepted the voluntary exit incentive program. *Motion Ex. 27.*
16. Complainant was offered the opportunity to participate in the voluntary exit program on March 4, 2015 because she was in a RIF Eligible Position and had more than 10 years of continuous service. *See Exhibit 43.*
17. Complainant did not accept Respondent's offer to participate in the voluntary exit incentive program. *See Exhibit 44.*
18. Twenty-five (25) other employees, ranging in age from 38 to 73, participated in the voluntary exit incentive program. *See Exhibit 44.*
19. Complainant's position was terminated on April 15, 2015. *See Exhibit 48.*
20. The twelve employees whose positions were involuntarily terminated as part of the University-wide RIF ranged in ages from 27 to 77 (specifically 27, 29, 31, 38, 57, 60, 62, 63, 65, 65, 72, and 77). *See Exhibit 37.*
21. On September 30, October 6 and 14, 2016, Respondent offered to reinstate the Complainant to her former position of Assistant [REDACTED] for a one-year appointment. *See Exhibit 50.*
22. On October 27, 2016, Respondent revised its offer and offered to reinstate Complainant as a regular full-time employee. *See Exhibit 51.*

## SUMMARY JUDGMENT STANDARD OF REVIEW

Summary judgment is granted when there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. Pro. 56(c); D.C. Sup. Ct. R. Civ. Pro. 56(a); *Celotex Corp. v. Catrell*, 477 U.S. 317, 318 (1986); *Padou v. District of Columbia*, 29 A.3d 973, 980 (D.C. 2011). In deciding summary judgment motions, courts view the evidence in the light most favorable to the non-moving party. See *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 243 (1986). Summary judgment is appropriate only if the pleadings, depositions, answers to interrogatories, admissions, and affidavits filed pursuant to discovery show that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. See *Holcomb v. Powell*, 433 F.3d 889, 895 (D.C. Cir. 2006); see also *Graff v. Malawar*, 592 A.2d 1038, 1040 (D.C. 1991).

If a moving party has made an initial showing that the record presents no genuine issue of material fact, the burden of proof shifts to the non-moving party to show that a genuine material issue exists. See *Enzo Biochem, Inc. v. Gen-Probe, Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005). In opposing a summary judgment motion, a party may not rely on vague allegations but instead must present specific facts showing that there is a genuine issue for trial. *Graff v. Malawar*, 592 A.2d 1038, 1040 (D.C. 1991).

## STATEMENT OF LAW

Complainant alleges Catholic discriminated against her based on age in violation of the District of Columbia Human Rights Act (“DCHRA”) when it terminated her on April 15, 2015. The DCHRA makes it unlawful, *inter alia*, to “discharge” an employee based on age. D.C. CODE § 2-1402.11(a), (a)(1). District of Columbia courts look to Age Discrimination in



Employment Act (“ADEA”) cases when analyzing age discrimination claims under the DCHRA. *See Schuler v. Price Waterhouse Coopers, LLP*, 595 F.3d 370, 3376 (D.C. Cir. 2010) (“The courts of the District of Columbia ‘look[ ] to federal court decisions interpreting the [ADEA] when evaluating age discrimination claims under the DCHRA’”) (quoting *Wash. Convention Ctr. Auth. v. Johnson*, 953 A.2d 1064, 1073 n.7 (D.C. 2008)). However, the DCHRA protects against age discrimination beginning at eighteen years old. *See* D.C. CODE § 2-1402.02(2) (“‘Age’” means 18 years of age or older”).

When, as here, a complainant does not put forth direct evidence of unlawful discrimination, the proof paradigm established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05 (1973) is used to analyze the claim. *Lathram v. Snow*, 336 F.3d 1085, 1088 (D.C. Cir. 2003). Under this framework, a complainant must first establish a *prima facie* case of discrimination by showing that: (1) a protected trait was at issue; (2) she was otherwise qualified for the position; and (3) she suffered an adverse employment action, (4) which gave rise to an inference of discrimination. *Id.*

When a RIF is at issue, as it is here, the fourth element is modified because the complainant’s position no longer exists. Courts have modified the fourth element in several ways. For example, the District of Columbia Court of Appeals has held that, to establish the fourth element, a complainant challenging a RIF must show “that the jobs of one or more persons who were not members of the protected class, and who had jobs similar to hers, had not been terminated.” *McManus v. MCI Commc’ns Corp.*, 748 A.2d 949, 954 n.5 (D.C. 2000). “Differences in job title, responsibilities, education, experience, and work record can be used to determine whether two employees are similarly situated.” *McFarland v. Geo. Wash. Univ.*, 935

A.2d 337, 353 (D.C. 2007) (internal citations omitted).<sup>1</sup>

After a complainant has established a *prima facie* case, a respondent must articulate that the complainant was rejected for one or more legitimate, non-discriminatory reasons. *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 142 (2000); *Lathram*, 336 F.3d at 1088. Once a respondent has made this articulation, to survive summary judgment, a complainant must show that a reasonable jury could conclude from “all of the evidence” that the respondent’s proffered reason or reasons were a pretext for intentional discrimination. *Lathram*, 336 F.3d at 1088. “All of the evidence” means the combination of (1) evidence establishing a complainant’s *prima facie* case; (2) evidence a complainant presents to attack the employer’s proffered explanation for its actions; and (3) any further evidence of discrimination that may be available to a complainant, such as independent evidence of discriminatory statements or attitudes on the part of the employer. *Aka v. Wash. Hosp. Ctr.*, 156 F.3d 1284, 1289 (D.C. Cir. 1998) (*en banc*).

## DISCUSSION

Although Complainant did not respond to Catholic’s Motion, the undersigned presumes her opposition and analyzes the merits of her claim using Catholic’s Motion and corresponding exhibits.

---

<sup>1</sup> Federal circuits outside of the District of Columbia have crafted their own standards for meeting the fourth element of a discrimination case in the RIF context. *See, e.g., Schoonmaker v. Spartan Graphics Leasing, LLC*, 595 F.3d 261, 265 (6th Cir. 2010) (holding plaintiff must have ““additional direct, circumstantial, or statistical evidence tending to indicate that the employer singled out the plaintiff for discharge for impermissible reasons” to meet fourth element) (quoting *Barnes v. GenCorp Inc.*, 896 F.2d 1457, 1465 (6th Cir. 1990)); *Causey v. Balog*, 162 F.3d 795, 802 (4th Cir. 1998) (stating that the plaintiff could satisfy the fourth element with “other probative evidence that indicates the employer did not treat age... neutrally when making its decision”); *Collier v. Budd. Co.*, 66 F.3d 886, 890-91 (7th Cir. 1995) (analyzing whether younger employees were treated more favorably during a RIF for fourth element purposes). However, because these authorities are only persuasive, the Commission will not apply them here.

1. Complainant has not established a *prima facie* case of age discrimination.

Complainant meets the first and third elements of the *prima facie* case. First, age is a protected trait under the DCHRA, and age is at issue in her claim. D.C. CODE § 2-1402.11(a). She suffered an adverse employment action when she was terminated. Motion Ex. 37.

The second element, whether Complainant was qualified, is complicated by the fact that Catholic revised the functions of the academic support staff as part of the RIF. Prior to the RIF there were approximately 60 administrative staff members. Motion at 25. It is undisputed that Complainant was qualified for the Assistant [REDACTED] position she held prior to the RIF evidenced by the fact that she held that job for nearly 31 years. Motion Ex. 41 at 2. In preparation for the RIF Complainant's and the other 59 administrative staff positions were examined for elimination based on specific job function, location on campus, accreditation requirements for certain departments, and number of administrative support positions in each department. Motion at 25-26.

In [REDACTED] where the Department [REDACTED] was located there were five academic departments with a total of eight administrative support positions. Motion at 26. These eight positions were decreased down to five and according to Respondent, "grouped together to create a shared services pool with five primary functions: Website maintenance and social media outreach; managerial experience; faculty matters; undergraduate affairs; and graduate affairs." Motion at 27. Dean [REDACTED] determined these were the areas common across all the departments and therefore the areas to be covered by the shared services pool. See Motion Ex. 26 at 3, 5-6. According to Respondent, Dean [REDACTED] based her decision in part on a similar restructuring she witnessed at another university. Motion Ex. 26 at 3.

With regards to the shared services jobs, Respondent determined Complainant was not qualified for any of them. *See* Motion Ex. 49; *see also* Motion Ex. 26 at 3, 6. During her tenure as Assistant [REDACTED], Complainant served as an “Administrative Assistant [REDACTED] [REDACTED] and as secretary and receptionist for the department as a whole.” Motion Ex. 9 at 1. Her main duties were answering phones, receiving department visitors, typing, filing, and scheduling. Motion Ex. 9 at 1-2. She did not work on social media outreach, student advising, or finance. *See* Motion Ex. 26 at 3. She also did not work on faculty affairs beyond general faculty assistance. *See* Motion Ex. 26 at 3. Accordingly, in terms of qualification for the new, shared services jobs, Complainant does not meet the second element of the prima facie case “she was otherwise qualified for the position.”

Complainant also fails to meet the fourth element: that an inference of discrimination exists. As previously stated, in addition to Complainant, three Assistants [REDACTED] were involuntarily terminated. Motion Ex. 37. Their ages were, 57, 63, and 65. Motion Ex. 37. One was terminated for performance reasons. Motion Ex. 26 at 3. One was terminated because she was the second assistant for her department, [REDACTED]. Motion Ex. 26 at 2-3. Finally, one was terminated because eleven other Assistant [REDACTED] positions were eliminated. Motion Ex. 37. The Assistants [REDACTED] who were retained for accreditation, safety, or geographical isolation purposes ranged in age from 44 to 63. *See* Motion Exs. 41, 44, and 45.

Of the five employees retained for the [REDACTED] shared services pool, four were either Assistants [REDACTED] or Administrative Assistants to a specific department, and one was a Program Coordinator for an individual department. *See* Motion Ex. 49. Their ages ranged from 22 to 39. *See* Motion Ex. 49. Their work experience differed from Complainant’s. For

example, Comparator 1 had a business background, so Dean [REDACTED] chose her to be the office manager of the shared sources pool. See Motion Ex. 26 at 3, Motion Ex. 49 at 2. The Comparator 2 had overseen faculty personnel matters for several years, and he became the Faculty Affairs specialist. See Motion Ex. 26 at 3, Motion Ex. 49 at 2. Because Complainant had no experience directly transferable to any of the newly created shared sources pool positions, she was not similarly situated to the retained employees and the fact that she was older than those retained does not alone create an inference of discrimination. Accordingly, Complainant has not met the fourth element.

2. Catholic has articulated a legitimate, nondiscriminatory reason for Complainant's termination.

Assuming Complainant had established a *prima facie* case of age discrimination, which she did not, the burden of production shifts to Respondent to “produce admissible evidence from which the trier of fact can rationally conclude that the employment action was not motivated by discriminatory animus” but rather a legitimate, nondiscriminatory reason for terminating Complainant. *Cain v. Reinoso*, 43 A.3d 302, 306 (D.C. 20012) (citing and quoting *Hollins v. Federal Nat'l Mortg. Ass'n*, 760 A.2d 571 (D.C. 2000)). Once the respondent meets this burden, the burden shifts back to the complainant to show the respondent's stated reason for the termination was a pretextual or a “disguise for discrimination.” *Cain*, 43 A.3d at 307. Here, Catholic argues that Complainant was terminated as part of its spring 2015 RIF. 109 employees were subject to being laid off during the RIF. Motion Ex. 41. Of those in Complainant's job category, 12 Academic Support Staff ranging in age from 27 to 77 were laid off including Complainant.

A RIF is a legitimate, nondiscriminatory reason in the employment discrimination

context. See, e.g., *Hill v. Bd. of Trs. of D.C.*, 245 F. Supp. 3d 214, 216 (D.D.C. 2017) (“Defendant has offered a legitimate, non-discriminatory reason for Plaintiff’s termination—the elimination of Plaintiff’s position due to a reduction in force arising from budgetary constraints”); *Durant v. District of Columbia*, 932 F. Supp. 2d 53, 72 (D.D.C. 2013) (“Defendant has produced a legitimate nondiscriminatory reason for its actions—an agency reduction in force.”); *Goss v. Geo. Wash. Univ.*, 942 F. Supp. 659, 664 (D.D.C. 1996) (“Defendant’s motion provides ample evidence of a legitimate, nondiscriminatory motive for plaintiff’s dismissal—a reduction in force—that would rebut the presumption of intentional discrimination that would arise from a prima facie showing....”).

Accordingly, Catholic has met its burden.

3. Complainant cannot show pretext.

As previously stated, Complainant did not submit a response to Catholic’s Motion. It is well settled that “[t]he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff.” *Cain* at 307 (D.C. 20012) (citing and quoting *Hamilton v. Howard Univ.*, 960 A.2d 308, 313 (D.C. 2008)). As Complainant has not made any reference to material facts of record to rebut Respondent’s stated reason for her termination, the undersigned cannot sustain a finding of pretext. Further, for the same reasons articulated above with regard to an inference of discrimination not existing, the evidence in the record does not demonstrate pretext.

Thus, no genuine issue of material facts supports Complainant’s claim of discrimination based on age and her claim must be dismissed. Accordingly, the undersigned will not address Catholic’s damages arguments.

## CONCLUSION OF LAW

On the basis of the undisputed material facts established by a preponderance of the evidence and considered in the light most favorable to Complainant, Catholic is entitled to judgment as a matter of law on the claim that Catholic discriminated against Complainant on the basis of age when it terminated her on April 15, 2015.

## RECOMMENDATION

For the foregoing reasons, the undersigned judicial officer **RECOMMENDS** that the Commission GRANT Catholic University's Motion for Summary Judgment.

**SO RECOMMENDED** this 25<sup>th</sup> day of October 2019.

*Toya S. Carmichael*

Toya S. Carmichael  
Administrative Law Judge  
D.C. Commission on Human Rights