

service examination. Plaintiff had taken civil service examinations for at least eight other administrative and clerical job classifications. On April 14, 2000, plaintiff and six other applicants were interviewed by a three-member panel at Trumbull Correctional Institution. Plaintiff was notified by a letter dated June 7, 2000, that she had not been selected for the secretarial position.

{¶3} Plaintiff first asserts claims for discrimination based upon age and national origin. R.C. 4112.02 provides in relevant part:

{¶4} "It shall be an unlawful discriminatory practice: (A) For any employer, because of the race, color, religion, sex, national origin, handicap, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment."

{¶5} Plaintiff's discrimination claims are based upon the theory of disparate treatment. In a case of disparate treatment discrimination, an employer treats some people less favorably than others because of national origin, age, or other protected characteristics. See *Albaugh v. Columbus Div. of Police* (1999), 132 Ohio App.3d 545, 725 N.E.2d 719; *Hazen Paper Co. v. Biggins* (1993), 507 U.S. 604, 609. To prevail on a claim of disparate

treatment discrimination, plaintiff must prove that the protected trait actually motivated the employer's decision. *Hazen Paper Co.*, *supra*, at 610.

{¶6} The Supreme Court of Ohio has stated that "[f]ederal case law interpreting Title 7 of the Civil Rights Act of 1964, Section 2000(e) *et seq.*, Title 42, U.S. Code, is generally applicable to cases involving alleged violations of R.C. Chapter 4112." *Plumbers & Steamfitters Comm.*, *supra*, at 196. Plaintiff must prove by a preponderance of the evidence a prima facie case of discrimination. *McDonnell Douglas Corp. v. Green* (1973), 411 U.S. 792. Absent direct evidence, a prima facie case may be established by showing that: 1) plaintiff was a member of a statutorily protected class; 2) plaintiff was subject to adverse employment action; 3) plaintiff was qualified for the position; and 4) comparable, non-protected persons were treated more favorably than plaintiff. *Kohmescher v. Kroger Co.* (1991), 61 Ohio St.3d 501.

{¶7} Plaintiff did not present any direct evidence that the hiring decision was motivated by discrimination based upon age or national origin. Instead, she relied upon circumstantial evidence to establish her claim.

{¶8} Following the interview process, defendant hired Jennifer Pence. Pence is under forty years of age. Upon review of the evidence, the court finds that plaintiff has satisfied her burden

of proof under the first and fourth elements of her prima facie case. However, defendant contends that plaintiff was not suitably qualified for the secretarial position.

{¶9} Defendant relied on plaintiff's testimony regarding her employment history to support its assertion that she was not qualified for the job. Plaintiff testified that she had been terminated from at least ten secretarial or clerical positions prior to submitting her application to defendant. According to her testimony and information contained in her employment application, plaintiff was often terminated after less than three months of employment. Plaintiff testified that she either did not know or could not recall the reasons for most of the terminations, except that she believed some of the decisions involved discrimination.

{¶10} David Fisher, a member of defendant's interview panel, testified about defendant's interview process. Fisher acknowledged that plaintiff obtained "qualifying" scores on her civil service examinations, but explained that exam scores received less weight in the decision-making process than the applicants' answers to the "standard questions." Fisher testified that the interview panel determined that Pence was the best qualified applicant based upon both her eighteen months of experience working in the corrections system on assignment by a temporary agency, and her job skills and "good personality." Pence had experience working in defendant's records office and the warden's office, and in performing

institution audits. Fisher further testified that the panel did not rank plaintiff as one of "the top two" applicants.

{¶11} Although plaintiff received qualifying scores on the civil service exams and therefore qualified for the interview, the court finds that plaintiff's employment history provides substantial support for defendant's assertion that plaintiff was not the best qualified applicant for the position at defendant's correctional institution. As a general rule, this court will not substitute its judgment for that of the employer and may not second-guess the business judgments of employers regarding personnel decisions. See, e.g., *Watson v. Kent State University* (Aug. 8, 1994), Court of Claims No. 91-06627, unreported; *Dotson v. Wright State Univ.* (Dec. 3, 1997), Court of Claims No.

{¶12} 93-03196, unreported; *Washington v. Central State Univ.* (April 24, 1998), Court of Claims No. 96-08849, unreported. The testimony and evidence established that Pence was selected based upon her prior work experience with defendant, her knowledge of the corrections system and her job skills.

{¶13} However, even if plaintiff were to prove a prima facie case of discrimination, the court finds that there were legitimate nondiscriminatory reasons to hire Pence rather than plaintiff. The evidence showed that defendant valued Pence's experience working in a correctional institution and had legitimate concerns regarding plaintiff's job history.

{¶14} Once a defendant-employer has carried the burden of articulating a legitimate, nondiscriminatory reason for the employee's discharge, plaintiff has an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by defendant were not its true reasons but, rather, were a pretext for discrimination. *McDonnell Douglas, supra*. The court finds that plaintiff did not meet that burden.

{¶15} The evidence established that defendant did not hire plaintiff because the interview panel had determined that she was not the best qualified applicant for the secretarial position. Therefore, the court concludes that plaintiff has not carried the ultimate burden of proving discrimination by a preponderance of the evidence.

{¶16} Plaintiff's final claim is for negligence. However, plaintiff has not pointed the court to any common law, statute or rule that would support a claim for negligence under the circumstances of this case. Plaintiff's complaint refers to an alleged employment offer by Deputy Warden Ignazio; however, Ignazio testified that he suggested only that plaintiff apply for a position but that he had no authority to hire plaintiff or to otherwise influence the hiring process. Even if plaintiff's complaint were construed to state a claim of promissory estoppel, the court finds that Ignazio's statements were not a clear and

unambiguous promise of employment. *Cohen & Co. v. Messina* (1985),
24 Ohio App.3d 22, 26.

{¶17} For the foregoing reasons, judgment is rendered in favor
of defendant.

FRED J. SHOEMAKER
Judge

Entry cc:

Raymond J. Masek Attorney for Plaintiff
183 West Market Street
Suite 300
Warren, Ohio 44481

Tracy M. Greuel Assistant Attorney General
65 East State St., 16th Fl.
Columbus, Ohio 43215

AMR/cmd
Filed 4-19-2002
Jr. Vol. 702, Pg. 134/To S.C. reporter 6-26-2002