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

ARTHUR E. SCHELL,	:	
Plaintiff,	:	
	:	
v.	:	**Civ. No. 22-2500**
	:	
R2 TAPE INC. d/b/a PRESTO TAPE,	:	
Defendant.	:	

O R D E R

Plaintiff Arthur E. Schell, who is 78 years old, alleges that his former employer, Presto Tape, discriminated against him in violation of the Age Discrimination in Employment Act. (Compl.; Doc. No. 1); 29 U.S.C. § 621 et. seq. Defendant contends that Plaintiff's termination was the result of Plaintiff's poor work performance, and moves for summary judgment. (Doc. No. 18.) I will deny Defendant's Motion.

I. Discussion

The Parties are familiar with the facts and procedural history of this case. I have construed the record most favorably to Plaintiff and resolved all factual disputes in his favor. See Hugh v. Butler Cnty. Fam. YMCA, 418 F.3d 265, 267 (3d Cir. 2005); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Fed. R. Civ. P. 56(c).

To make out an ADEA claim, Plaintiff "must prove by a preponderance of the evidence (which may be direct or circumstantial) that age was the 'but-for' cause of the challenged employer decision." Gross v. FBL Fin. Servs., Inc., 557 U.S. 167, 177–78 (2009). Here, Plaintiff relies on circumstantial evidence, and proceeds under the McDonnell Douglas burden-shifting framework. (Doc. No. 19-1 at 16); see Smith v. City of Allentown, 589 F.3d 684, 691 (3d Cir. 2009) (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)).

Defendant concedes that Plaintiff has made out a *prima facie* of age discrimination, and Plaintiff concedes that Defendant has proffered a legitimate, nonretaliatory reason for his termination—poor work performance. (Doc. No. 18-2 at 16; Doc. No. 19-1 at 21–22); Potence v. Hazelton Area Sch. Dist., 357 F.3d 366, 370 (3d Cir. 2004); Smith, 589 F.3d at 691. The Parties dispute whether Defendant's stated reason for Plaintiff's termination was pretextual. See Power v. Lockheed Martin Corp., 419 F. Supp. 3d 878, 889 (E.D. Pa. 2020).

To show pretext, Plaintiff "must point to some evidence, direct or circumstantial, from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." Burton v. Teleflex Inc., 707 F.3d 417, 427 (3d Cir. 2017) (citing Fuentes v. Peskie, 32 F.3d 759, 764 (3d Cir. 1994)). "[P]laintiff 'may satisfy this standard by demonstrating, through admissible evidence, that the employer's articulated reason was not merely wrong, but that it was so plainly wrong that it cannot have been the employer's real reason.'" Frankhouser v. Horst Grp., Inc., No. 5:20-CV-03741-JMG, 2022 WL 580509, at *7 (E.D. Pa. Feb. 25, 2022) (citing DeCicco v. Mid-Atl. Healthcare, LLC, 275 F. Supp. 3d 546, 557 (E.D. Pa. 2017)). If Plaintiff presents evidence allowing a fact finder to discredit Defendant's stated reason, Plaintiff need not present additional evidence beyond his *prima facie* case to survive summary judgment. See Burton, 707 F.3d at 427.

There is sufficient evidence to allow a reasonable jury to disbelieve Defendant's stated reason for Plaintiff's termination. Plaintiff testified that Defendant's president Richard Speeney denied that Plaintiff's termination was for performance reasons. (Schell Dep. Vol. 1 (Doc. No. 18-4) 156:14–24, 159:10–160:24); see also Frankhouser, 2022 WL 580509, at *7 (inconsistent reasons given for termination precluded summary judgment). Although Speeney and former

Company president Michael Speeney both testified that Plaintiff was "inept" for the entire period of his employment, there is, at best, scant contemporaneous evidence of his poor performance. (R. Speeney Dep. (Doc. No. 18-7) 56:15–24, 73:16–20; M. Speeney Dep. (Doc. No. 18-6) 12:9–12, 13:5–14, 20:8–16, 22:13–17, 25:7–13.) Speeney and Defendant's Vice President and General Manager Thomas Godonis testified inconsistently respecting Defendant's practice of conducting employee performance evaluations; to the extent that they occurred the Company, there is no evidence concerning any performance evaluation or performance improvement plan for Plaintiff. (R. Speeney Dep. 66:14–68:2; Godonis Dep. (Doc. No. 18-10) 21:1–10, 20:20–23:9, 21:17–22:6, 23:2–9.)

Moreover, construing the record in Plaintiff's favor, there is evidence that Defendant valued Plaintiff's skill and experience. Michael and Richard Speeney testified that they gave Plaintiff raises every year without Plaintiff asking for them. (M. Speeney Dep. 12:9–12, 13:5–14, 20:8–16, 22:13–17, 25:7–13; R. Speeney Dep. 57:9–19; Schell Dep. Vol. 1. 74:14–22.) Plaintiff testified that in 2019, Richard Speeney remarked that it would be difficult for Presto to replace him should he retire. (Def.'s Statement of Undisputed Facts (DSOF) (Doc. No. 18-3) ¶ 33; Pl.'s Responsive Statement of Facts (PRSOF) (Doc. No.19-19) ¶ 33.) At the time of Plaintiff's termination, Defendant's website featured an employee biography of Plaintiff describing him as "undeniably the right person to lead the sales efforts of Presto." (R. Speeney Dep. 82:3–14; Doc. 19-13 at 2.) Finally, despite claiming that Plaintiff was "inept," Richard Speeney asked him to stay to train his replacement. (Schell Dep. Vol. 1 167:17–168:21; Schell Dep. Vol. 2 (Doc. No. 18-5) 7:23–8:5; R. Speeney Dep. 113:4–13; DSOF ¶ 28; PRSOF ¶ 28.)

These facts, if proven, would undermine the credibility of Defendant's stated reason for Plaintiff's termination. "Such questions of credibility are precisely the sort of issues courts are

precluded from making in considering motions for summary judgment." Howell v. Raymours Furniture Co., Inc., 26 F. Supp. 3d 366, 373 (E.D. Pa. 2014).

* * *

AND NOW, this 7th day of April, 2023, it is hereby **ORDERED** that Defendant's Motion for Summary Judgment (Doc. No. 18) is **DENIED**.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.