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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

BOBBY SANDERS,	)	Case No.: 5:11-CV-04391-EJD
	)	
Plaintiff,	)	<b>ORDER GRANTING DEFENDANT’S</b>
	)	<b>MOTION FOR SUMMARY</b>
v.	)	<b>JUDGMENT</b>
	)	
RAYMOND LAHOOD, SECRETARY,	)	
UNITED STATES DEPARTMENT OF	)	
TRANSPORTATION,	)	[Re: Docket Item No. 52]
	)	
Defendant.	)	

In this employment-related action brought by Plaintiff Bobby Sanders (“Plaintiff” or “Sanders”), presently before the court is Defendant Raymond LaHood’s (“Defendant” or “LaHood”) Motion for Summary Judgment. See Docket Item No. 52. Having fully reviewed the parties’ papers and after hearing oral arguments, the Court will grant Defendant’s motion in its entirety.

**I. BACKGROUND**

Plaintiff is an African-American male at least forty years of age during the relevant time period. On or around January 12, 2003, Defendant, through the Federal Aviation Administration (“FAA”), began to employ Plaintiff as an Air Traffic Control Specialist in the Oakland Air Route

1 Traffic Control Center (“Oakland Center”), which is an En Route facility where controllers manage  
2 aircrafts traveling at high altitudes. See Compl. ¶ 11, Docket Item No. 1; Atkinson Decl. ¶ 4,  
3 Docket Item No. 52-10. On or about October 2004, Randy Park (“Park”) became the Air Traffic  
4 Manager at Oakland Center and Michael Muhl (“Muhl”) became the Assistant Air Traffic  
5 Manager. Compl. ¶ 12.

6 Plaintiff, a retired Air Traffic Controller, was hired as an Air Traffic Control Specialist  
7 developmental (“trainee”) under the Employment of Retired Military Controllers Program, which  
8 authorized time-limited appointments. Compl. ¶ 11. To become a Certified Professional  
9 Controller, Plaintiff was required to undergo extensive training, consisting of four stages. Id. ¶ 13;  
10 see also Cormier Decl. Ex. 10, Docket Item No. 54. Plaintiff was placed in the domestic track  
11 training program. See Sanders Dep. 82:20-24, Docket Item No. 53.

12 Plaintiff asserts that throughout his training he was inadequately trained and treated  
13 differently than other trainees. Compl. ¶ 13. As a result of inadequate training and differential  
14 treatment, in or around November 2004, Plaintiff filed a discrimination complaint with the FAA’s  
15 Equal Employment Opportunity (“EEO”) office. Id. On or about February 17, 2005, Plaintiff and  
16 the FAA reached a settlement agreement, which the FAA later revoked, and Plaintiff was removed  
17 from his position on or about May 6, 2005. Id. ¶ 15. On or about May 9, 2005, Plaintiff contacted  
18 the EEO regarding his discrimination complaint. Id. ¶ 16. In or about August 2005, Plaintiff and  
19 the FAA entered into a written agreement, whereby the FAA agreed to return Plaintiff to his  
20 position and expunge his prior negative training record and Plaintiff agreed to withdraw his EEO  
21 claims with prejudice. Id. ¶ 17; Sanders Dep. 78:4-79:2, 238:6-19; Cormier Decl. Ex. 5.

22 Plaintiff returned to Oakland Center as a controller on or about August 22, 2005, in the  
23 oceanic track, rather than re-entering the domestic track. Compl. ¶ 17; Sanders Dep. 79:3-18.  
24 Plaintiff asserts that he was subject to race, sex, and age discrimination, as well as reprisal action.  
25 Compl. ¶ 19. In January 2006, Plaintiff began Oceanic Manual Classroom Training with instructor  
26 Bejie Aweau (“Aweau”). Plaintiff asserts that Aweau incorrectly trained Plaintiff, made statements  
27 that trainees were being “watched,” asked Plaintiff in front of other trainees if he was “picking this  
28 stuff up,” and said to him, “they told me to be careful of what I say around you because you write

1 everything down, and what I said might come back and bite me in the ass when you wash out of  
2 the program.” Id. ¶¶ 22-23. Plaintiff further asserts that he was not given the same training and  
3 instructional opportunities as other trainees, who were not African-American, and that he was  
4 unjustly given failing scores in some of his evaluations. Id. ¶¶ 24-26, 29, 35-36. Additionally,  
5 Plaintiff asserts that during the Stage III / Data-Side Training, which he began on or about October  
6 9, 2007, he was treated less favorably than a fellow female trainee who was younger than Plaintiff  
7 and not African-American. Id. ¶ 30. Plaintiff asserts that he was asked to perform additional  
8 requirements and evaluated unjustly as compared with other trainees. Id. ¶¶ 31-32.

9 On or about December 3, 2007, Plaintiff failed a simulation-phase evaluation, was assigned  
10 skill enhancement training, and was required to take a second evaluation on December 7, 2007,  
11 which he failed. See Kroger Decl. ¶¶ 5-9, Docket Item No. 52-6. Plaintiff asserts that he should  
12 not have failed the evaluation.

13 On or about December 11, 2007, Valerie Koger (“Koger”), Oakland Center Training  
14 Manager, suspended Plaintiff’s training and initiated a review of Plaintiff’s training history.  
15 Compl. ¶ 37. Koger prepared a final document reviewing Plaintiff’s training in which she  
16 recommended upholding his training suspension and referring him to a lower-level facility. Koger  
17 Decl. Ex. F, Docket Item No. 52-7.

18 On January 9, 2008, Muhl wrote a letter to Plaintiff on behalf of Park, notifying Plaintiff  
19 that his five-year term was ending. See Park Decl. ¶ 7 and Ex. C, Docket Item No. 52-11. In  
20 response, Plaintiff replied with a letter to Muhl on January 10, 2008 requesting an extension of his  
21 appointment and transfer to a lower-level facility. Compl. ¶ 40; Cormier Dec. Ex. 19 and B.  
22 Although Plaintiff had made prior verbal requests to extend his five-year appointment, this was the  
23 first formal written request. Muhl forwarded the letter to the Employee / Labor Relations Office,  
24 since he did not have the authority to extend temporary appointments. See Muhl Interrog. 4,  
25 Docket Item No. 52-4. Nadine Grundy, manager at the Hayward Air Control tower, spoke with  
26 Andy Richards (“Richards”), District Manager for Terminal Operations, requesting that he  
27 consider transferring Plaintiff to Hayward Airport. See Richards Decl. Ex. A ¶ 2, Docket Item No.  
28 52-12. Richards contacted Muhl regarding the proposed transfer. Compl. ¶ 42. Richards was

1 notified that Plaintiff's employment was expiring and relayed to Grundy that it was too late to  
2 complete the proposed transfer and extension, which Defendant asserts generally takes several  
3 weeks to process. Atkinson Decl. ¶¶ 8-11. FAA Human Resources has no record of receiving the  
4 specific forms requesting an extension or transfer. Id. Plaintiff's employment ended on January  
5 12, 2008.

6 On September 2, 2011, Plaintiff filed his Complaint, which alleged four causes of action  
7 against Defendant. Three of the claims assert violations of Title VII of the Civil Rights Act of  
8 1964, U.S.C. § 2000(e) et seq.: discrimination based on race and gender, disparate treatment, and  
9 retaliation. One claim is based on the Age Discrimination in Employment Act: age discrimination  
10 and disparate treatment.

11 On June 26, 2013, Defendant filed this Motion for Summary Judgment, which is presently  
12 before the Court. See Docket Item No. 52. The Court heard oral arguments on this motion on  
13 August 23, 2013. See Minute Entry, Docket Item No. 58.

## 14 II. LEGAL STANDARD

15 A motion for summary judgment should be granted if "there is no genuine dispute as to any  
16 material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a);  
17 Addisu v. Fred Meyer, Inc., 198 F.3d 1130, 1134 (9th Cir. 2000). The moving party bears the  
18 initial burden of informing the court of the basis for the motion and identifying the portions of the  
19 pleadings, depositions, answers to interrogatories, admissions, or affidavits that demonstrate the  
20 absence of a triable issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

21 If the moving party meets this initial burden, the burden then shifts to the non-moving party  
22 to go beyond the pleadings and designate specific materials in the record to show that there is a  
23 genuinely disputed fact. Fed. R. Civ. P. 56(c); Celotex, 477 U.S. at 324. The court must regard as  
24 true the opposing party's evidence, if supported by affidavits or other evidentiary material.  
25 Celotex, 477 U.S. at 324. The court must draw all reasonable inferences in favor of the party  
26 against whom summary judgment is sought. Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,  
27 475 U.S. 574, 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d 1551, 1558  
28 (9th Cir. 1991). However, the mere suggestion that facts are in controversy, as well as conclusory

1 or speculative testimony in affidavits and moving papers, is not sufficient to defeat summary  
2 judgment. See Thornhill Publ'g Co. v. GTE Corp., 594 F.2d 730, 738 (9th Cir. 1979). Instead, the  
3 non-moving party must come forward with admissible evidence to satisfy the burden. Fed. R. Civ.  
4 P. 56(c); see also Hal Roach Studios, Inc. v. Feiner & Co., Inc., 896 F.2d 1542, 1550 (9th Cir.  
5 1990).

6 A genuine issue for trial exists if the non-moving party presents evidence from which a  
7 reasonable jury, viewing the evidence in the light most favorable to that party, could resolve the  
8 material issue in his or her favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986);  
9 Barlow v. Ground, 943 F.2d 1132, 1134-36 (9th Cir. 1991). Conversely, summary judgment must  
10 be granted where a party “fails to make a showing sufficient to establish the existence of an  
11 element essential to that party’s case, on which that party will bear the burden of proof at trial.”  
12 Celotex, 477 U.S. at 322.

### 13 III. DISCUSSION

14 Plaintiff’s claims are grounded in theories of gender-, age-, and race-based discrimination  
15 and disparate treatment, as well as retaliation. Defendant moves for summary judgment of  
16 Plaintiff’s claims on the grounds that Plaintiff (1) offered no or insufficient evidence to support his  
17 claims and (2) Plaintiff’s claims are time-barred.

18 Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer to  
19 “discriminate against any individual . . . because of such individual’s race, color, religion, sex, or  
20 national origin.” 42 U.S.C. § 2000e-2. The Age Discrimination in Employment Act of 1967  
21 (“ADEA”) prohibits an employer from discriminating against an employee because of the  
22 employee’s age. 29 U.S.C. § 623(a). To establish a prima facie case for discrimination, a plaintiff  
23 must offer evidence that “give[s] rise to an inference of unlawful discrimination,” either using  
24 “direct circumstantial evidence of discriminatory intent,” Vasquez v. County of Los Angeles, 349  
25 F.3d 634, 640 (9th Cir. 2003), or by using the McDonnell Douglas burden-shifting framework  
26 showing that “(1) he is a member of a protected class, (2) he was qualified for his position, (3) he  
27 experienced an adverse employment action, and (4) similarly situated individuals outside of his  
28

1 protected class were treated more favorably.” Peterson v. Hewlett–Packard Co., 358 F.3d 599, 603  
2 (9th Cir. 2004); see McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

3 After reviewing the evidence, the Court finds that Plaintiff has failed to meet his burden of  
4 showing race-, age-, or gender-based discrimination or disparate treatment sufficient to withstand a  
5 motion for summary judgment. As such, summary judgment with regard to these types of  
6 claims—the First, Second, and Third Causes of Action of the Complaint—will be granted.

7 To establish a prima facie case for the remaining claim—unlawful retaliation for engaging  
8 in protected activity—a plaintiff must show “(1) involvement in a protected activity, (2) an adverse  
9 employment action and (3) a causal link between the two.” Brooks v. City of San Mateo, 229 F.3d  
10 917, 928 (9th Cir. 2000). If a plaintiff meets this burden, the defendant must put forth a legitimate,  
11 non-discriminatory reason for the adverse employment action; if that is accomplished, the plaintiff  
12 must then show that the stated reason is pretext. Id.; see also Crown v. Wal–Mart Stores, Inc., 8  
13 Fed. App’x 776, 778 (9th Cir. 2001) (holding that a plaintiff to a retaliation complaint has the  
14 burden of proving—in addition to the engagement in protected activity and the causal link between  
15 that activity and the retaliatory conduct—that the employer’s explanation for the action was a  
16 pretext for the illegal consequence).

17 An employee-plaintiff seeking to avoid the granting of summary judgment, as Plaintiff is in  
18 this case, cannot rely on the prima facie showing alone; rather he or she must “must adduce  
19 substantial additional evidence from which a trier of fact could infer the articulated reasons for the  
20 adverse employment action were untrue or pretextual.” Loggins v. Kaiser Permanente Int’l, 151  
21 Cal. App. 4th 1102, 1113 (2007); Barefield v. Bd. of Trustees of Cal. State Univ., Bakersfield, 500  
22 F. Supp. 2d 1244, 1272 (E.D. Cal. 2007) (“[T]o survive summary judgment, Plaintiff must provide  
23 sufficient facts that the alleged adverse actions materially affect the conditions of her employment,  
24 including performance or opportunity for advancement.”); Yanowitz v. L’Oreal USA, Inc., 36 Cal.  
25 4th 1028, 1046 (2005). In a summary judgment motion, the non-moving party may not rest upon  
26 mere allegations or denials of the moving party’s evidence, but instead must point to admissible  
27 evidence that shows there is a genuine issue of material fact for trial. Nissan Fire & Marine Ins.  
28 Co. v. Fritz Cos., Inc., 210 F.3d 1099, 1102-03 (9th Cir. 2000); Nelson v. Pima Cmty. College

1 Dist., 83 F.3d 1075, 1081-82 (9th Cir. 1996) (“[M]ere allegation and speculation do not create a  
2 factual dispute for the purposes of summary judgment.”); Arpin v. Santa Clara Valley Transp.  
3 Agency, 261 F.3d 912, 922 (9th Cir. 2001) (“[The plaintiff’s] conclusory allegations unsupported  
4 by factual data are insufficient to defeat [the defendant’s] summary judgment motion.”).

5 Plaintiff contends that the facts demonstrate a prima facie case of unlawful retaliation. He  
6 asserts that his employment was terminated as a direct result of prior EEO complaints, which  
7 constituted a protected activity. Plaintiff further asserts that Defendant’s refusal to extend his  
8 appointment and transfer him to a lower-level facility amounts to an adverse employment action  
9 and that a causal link exists between the two. Furthermore, Plaintiff argues that Defendant’s given  
10 reason for not extending his appointment is pretext for the retaliatory action.

11 In response, Defendant articulates legitimate non-discriminatory reasons for the termination  
12 of Plaintiff’s employment, unrelated to Plaintiff’s EEO complaints. Defendant asserts that  
13 Plaintiff’s employment was not terminated; rather the 5-year term for which he was originally hired  
14 was always set to expire on January 12, 2008 and Plaintiff was aware of that fact when he was  
15 hired. The letter from Muhl to Plaintiff written on January 9, 2008 was simply a reminder of this.  
16 Defendant notes that Plaintiff’s employment was not extended because he had not completed his  
17 training; his training was suspended in December 2008 because he had failed his simulation-phase  
18 evaluation twice, even after being given remedial training. Even had he passed his evaluation,  
19 Plaintiff would still not have been fully certified as he had not yet passed Stage IV training.  
20 Furthermore, Defendant notes that Plaintiff was not transferred to a lower-level facility because  
21 there was not enough time to effectuate such a transfer between the date a written request for  
22 transfer was received—January 10, 2008—and the date his employment was due to expire, which  
23 was two days later. Defendant contends that it takes at least more than two days, if not several  
24 weeks to effectuate a transfer.

25 The Court agrees with Defendant that Plaintiff has not met his burden to establish a prima  
26 facie case. Plaintiff has not presented sufficient evidence to show that the termination of his  
27 employment was as a result of his EEO complaints. Plaintiff does not provide statements or  
28 conversations among the terminating parties that refer to his termination in the same context as his

1 complaints, let alone that those complaints were the reason for his termination. The evidence that  
2 Plaintiff presents — the statement made by Aweau, the fact that two evaluators were present at his  
3 evaluation, and his opinion that he was incorrectly failed in his evaluation — simply do not add up  
4 to establish a connection between his EEO complaints and the ending of his five-year appointment  
5 in January 2008. In sum, Plaintiff has failed to present sufficient evidence to satisfy the causal link  
6 requirement.

7 In cases where summary judgment was denied, the plaintiff was able to point to specific  
8 direct and circumstantial evidence that suggested or showed that the adverse employment action  
9 was motivated by the plaintiff's engaging in a protected activity like complaining of discrimination  
10 or harassment. For example, in Walker v. Brand Energy Services, LLC, a plaintiff presented  
11 evidence showing that he received an angry reaction from his supervisor after complaining about  
12 racial discrimination. 726 F. Supp. 2d 1091, 1102 (E.D. Cal. 2010). The plaintiff in that case was  
13 also able to present testimonial evidence from a co-worker that the plaintiff's supervisor said he  
14 was going to terminate the plaintiff because the plaintiff had complained about the supervisor's  
15 harassing conduct. Id. at 1098. In Reeves v. Safeway Stores, Inc., the court reversed the granting  
16 of summary judgment because there remained a triable issue of fact as to the reasoning behind the  
17 plaintiff's termination. 121 Cal. App. 4th. 96 (2004). In that case, the plaintiff presented  
18 affirmative evidence that the cause-in-fact of his termination was his complaining about sexual  
19 harassment in the workplace. Id.

20 In this case, Plaintiff has presented no similar direct or circumstantial evidence pointing to a  
21 link between the protected activity and the decision not to extend his appointment or transfer him.  
22 Accordingly, Plaintiff has failed to satisfy his burden. Summary judgment with regard to  
23 Plaintiff's claim of retaliation will therefore be granted.

#### 24 IV. CONCLUSION AND ORDER

25 For the aforementioned reasons Defendant's Motion for Summary Judgment is GRANTED  
26 in its entirety.



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Since this order effectively resolves this case, all previously-set deadlines and hearings, including the trial dates, are VACATED. Judgment shall be entered in favor of Defendant and the clerk shall close this file.

**IT IS SO ORDERED**

Dated: September 10, 2013

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EDWARD J. DAVILA  
United States District Judge