**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF OHIO**
**WESTERN DIVISION**

**SHERI I. BLANEY,**

**Plaintiff**

**v.** **Case No. 1:09-cv-934-HJW**

**CENGAGE LEARNING, INC.,**

**Defendant**

**ORDER**

**This matter is before the Court upon the defendant's motion for summary judgment (doc. no. 17). Plaintiff opposes the motion. Defendant has filed proposed findings of fact and conclusions of law, which plaintiff has highlighted as true, false, or irrelevant (doc. no. 26). Having considered the entire record, including the parties' briefs and related filings (doc. nos. 17, 26-29), the Court will grant the motion for the following reasons:**

**I. Factual Allegations and Procedural History**

**On December 23, 2009, plaintiff filed a four-count complaint alleging employment discrimination and retaliation under federal and Ohio law (doc. no. 1). Specifically, she alleges that 1) her employer discriminated against her on account of her age by "terminating her employment, harassing her, treating her less favorably than similarly-situated, substantially younger employees, and replacing her with a less qualified, substantially younger person" in violation of the Age Discrimination in Employment Act ("ADEA") and Ohio Rev. Code §§ 4112 ( ¶¶ 32-43);**

**and that 2) after she "engaged in protected activity by complaining to defendant about her concern that she was being discriminated against on the basis of her age, her employer retaliated against her by terminating her employment," in violation of Title VII of the Civil Rights Act of 1964 and Ohio Rev. Code §§ 4112 (¶¶ 44-53).**

**In her complaint, plaintiff indicates that she began working for Cengage Learning, Inc. ("Cengage") in 2001 (¶ 13). In March of 2007, plaintiff's manager, Linda Ellis, took early retirement and left the company (¶ 16). Plaintiff sought promotion to that position ("Manager of Rights Acquisition for Image and Media"), but Audrey Pettengill ("Ms. Pettengill") was hired instead (¶ 19). Since 2001, plaintiff asserts that she had consistently received "positive performance reviews, merit-based salary increases, and was never disciplined" (¶ 20).**

**According to plaintiff's complaint, Ms. Pettengill denied plaintiff "advancement opportunities" and "consistently treated plaintiff less favorably than plaintiff's younger similarly situated peers" ( ¶¶ 22-23). In August of 2008, Ms. Pettengill rated plaintiff's overall performance as "Inconsistent" (¶ 24). Plaintiff informed Ms. Pettengill that she disagreed with this and that she felt Ms. Pettengill was "harassing her, singling her out, and discriminating against her on the basis of her age" (¶ 26). Plaintiff alleges she also told Benita Spight, the Executive Director of the department, the same thing regarding Pettengill (¶ 27). Plaintiff indicates she was later fired on September 29, 2008 (¶ 28). Plaintiff was age 62 and working in the position of "Senior Image Acquisitions Manager" at the time of her discharge.**

**After the parties conducted discovery regarding the specific facts underlying**

**plaintiff's claims, defendant moved for summary judgment (doc. no. 17). Defendant asserts that plaintiff has failed to make a prima facie case at the fourth step, and moreover, plaintiff was fired for a legitimate reason. Defendant asserts that plaintiff was terminated because of her inappropriate behavior (i.e. openly hostile and defiant toward her new supervisor, Ms. Pettengill). Defendant asserts that Ms. Pettengill, based on instructions from her own supervisor (Ms. Maslin-Cooper), had reasonably and repeatedly insisted that all acquisition employees, including plaintiff, have contracts in place before allowing independent contractors to perform work for the company.[1] Defendant points out that while Ms. Pettengill was again discussing matters with plaintiff, plaintiff angrily turned her back on her supervisor, walked out of the meeting, and slammed the door. Defendant asserts that plaintiff's termination for inappropriate behavior toward her supervisor had nothing to do with age discrimination or retaliation.**

**II. Issues Presented**

**In determining whether the defendant is entitled to summary judgment, the main issues before this Court are: 1) whether this case is based on direct or indirect (i.e. circumstantial) evidence of age discrimination; 2) if the case is based on circumstantial evidence, whether plaintiff has established a prima facie case of age discrimination through the fourth step; 3) if so, whether the plaintiff has shown that**

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[1]**Defendant indicates that Blaney reports to Pettengill (born 1967), who reports to Mari Maslin-Cooper (born 1954), who reports to Benita Spight, Executive Director (doc. no. 27 at 1).**

**her employer's stated non-discriminatory reason for her termination was a pretext for age discrimination; and 4) whether plaintiff has made a prima facie showing of retaliation.**

**III. Analysis**

**A. Summary Judgment Standard**

**Rule 56(a) of the Federal Rules of Civil Procedure, as recently amended on December 1, 2010, provides in relevant part that:**

> **A party may move for summary judgment, identifying each claim or defense--or the part of each claim or defense--on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(a).**

**Rule 56(c)(1) further provides that:**

> **A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:**
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> **(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or**
>
> **(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact. Fed.R.Civ.P. 56(c)(1).**

**Finally, Rule 56(e) provides in relevant part that "[i]f a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may . . . consider the fact undisputed for purposes of the motion. . . [and] grant summary judgment if the motion and**

**supporting materials--including the facts considered undisputed--show that the movant is entitled to it." Fed.R.Civ.P. 56(e).**

**The Committee Notes explain that the "standard for granting summary judgment remain unchanged" and that the recent amendment of the rule "will not affect continuing development of the decisional law construing and applying" the standard. Fed.R.Civ.P. 56, Committee Notes at 31. Under Rule 56, the moving party bears the burden of proving that no genuine issue of material fact exists. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (l986). The district court must construe the evidence and draw all reasonable inferences in favor of the nonmoving party. Id. at 587.**

**B. Relevant Law**

**The ADEA forbids an employer from discharging an employee "because of such individual's age." 29 U.S.C. § 623(a)(1). Similarly, Ohio state law makes it unlawful "[f]or any employer, because of the . . . age of any person . . . to discharge . . . 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." Ohio Rev.C. § 4112.02. Given the similarity to federal law, courts apply Title VII precedent to interpret § 4112.02. Hampel v. Food Ingredients Specialties, Inc., 729 N.E.2d 726, 731 (Ohio 2000); Hawkins v. Anheuser-Busch, Inc., 517 F.3d 321, 333 (6th Cir. 2008). This Court's analysis under Title VII therefore applies to plaintiffs' claims under Ohio Rev.C. § 4112. See Minadeo v. ICI Paints, 398 F.3d 751, 763 (6th Cir. 2005) ("Age discrimination claims brought under Ohio law are**

**analyzed under the same standards as federal claims brought under the . . . ADEA").**

**Absent direct evidence, the plaintiff must make her case with indirect (i.e. circumstantial) evidence under the burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); see also, Spengler v. Worthington Cyclinders, 615 F.3d 481, 491 (6th Cir. 2010) (applying the burden-shifting framework to claims of age discrimination and retaliation); Godfredson v. Hess & Clark, Inc., 173 F.3d 365, 371 (6th Cir. 1999) (age); Barnett v. Dep't of Veterans Affairs, 153 F.3d 338, 343 (6th Cir. 1998) (retaliation).**

**Although the United States Supreme Court has not specifically held that the McDonnell Douglas framework applies to ADEA cases, see Gross v. FBL Fin. Servs. Inc., 129 S.Ct. 2343, 2349 (2009), the Court of Appeals for the Sixth Circuit has held that ADEA claims based on circumstantial evidence are analyzed under the McDonnell Douglas test. See Spengler, 615 F.3d at 491-492 ("When a plaintiff presents only circumstantial evidence of retaliation, we examine ADEA retaliation claims under the same McDonnell Douglas/ Burdine framework used to assess discrimination claims.").[2]**

**To put forth a prima facie case of discrimination based on circumstantial evidence, plaintiff must show that (1) she was a member of a protected class; (2) she suffered an adverse employment action; (3) she was qualified for the position; and (4) she was replaced by someone outside the protected class or was treated differently than similarly-situated, non-protected employees. Geiger v. Tower**

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[2] **See Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981).**

**Automotive, 579 F.3d 614, 622 (6th Cir. 2009); DiCarlo v. Potter, 358 F.3d 408, 414 (6th Cir. 2004). A court may not consider the employer's alleged nondiscriminatory reason for firing the employee when it analyzes the plaintiff's prima facie case. Wexler v. White's Fine Furniture, Inc., 317 F.3d 564, 574 (6th Cir. 2003) (en banc).**

**If a plaintiff makes a prima facie case, the burden shifts to the employer to "articulate a nondiscriminatory reason for its action." Harris v. Metro. Gov. of Nashville & Davidson Cnty., Tenn., 594 F.3d 476, 485 (6th Cir. 2010). An employer who provides a legitimate, non-discriminatory reason for its decision will be entitled to summary judgment unless plaintiff rebuts the employer's explanation by showing that it was a pretext for discrimination. Id.; Schoonmaker v. Spartan Graphics Leasing, LLC, 595 F.3d 261, 264 (6th Cir. 2010).**

**A plaintiff can rebut the stated explanation by showing: (1) that the articulated reason had no basis in fact, (2) that the stated reason did not actually motivate the termination, or (3) that the reason was insufficient to motivate the employer's action. Chen v. Dow Chemical Co., 580 F.3d 394, 400 (6th Cir. 2009). If plaintiff fails to carry this burden, summary judgment is appropriate. The ultimate question in every employment discrimination case is whether the plaintiff was the victim of intentional discrimination. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 153 (2000). Although the burden of production shifts, the plaintiff retains the ultimate burden of persuasion at all times to demonstrate "that age was the 'but-for' cause of their employer's adverse action." Schoonmaker, 595 F.3d at 264 (quoting Gross, 129 S.Ct. at 2351 fn. 4).**

**B. Plaintiff's Age Discrimination Claim**

**1. Alleged Direct Evidence**

**Plaintiff initially contends that she has offered direct evidence of age discrimination. The Court finds no merit in this contention.**

**Direct evidence is "evidence that proves the existence of a fact without requiring any inferences." Blair v. Henry Filters, Inc., 505 F.3d 517, 523 (6th Cir. 2007). For example, an actual statement by an employer "proclaiming his or her…animus" constitutes direct evidence of age discrimination. Smith v. Chrysler Corp., 155 F.3d 799, 805 (6th Cir. 1998) (quoting Robinson v. Runyon, 149 F.3d 507, 512-14 (6th Cir. 1998)). However, an "isolated, ambiguous, or abstract" comment will not suffice. See, e.g., Coburn v. Rockwell Automation, Inc., 238 Fed.Appx. 112, 117-118 (6th Cir. 2007).**

**Courts evaluate alleged statements of age bias by considering: "(1) whether the statements were made by a decision-maker or by an agent within the scope of his employment; (2) whether the statements were related to the decision making process; (3) whether the statements were more than merely vague, ambiguous or isolated remarks; and (4) whether they were made proximate in time to the act of termination." Morgan v. New York Life Ins. Co., 559 F.3d 425, (6th Cir. 2009) (quoting Peters v. Lincoln Elec. Co., 285 F.3d 456, 478 (6th Cir. 2002)).**

**Plaintiff alleges that her supervisor (Ms. Pettengill) made a lone comment to plaintiff to the effect that she set a higher standard for plaintiff and expected more of her "as a senior person, compared to the younger employees" (doc. no. 1 at ¶ 20).**

**Neither plaintiff's complaint nor her deposition testimony indicate when this comment was allegedly made. Although plaintiff characterizes this as a comment about her age, defendant aptly points out that plaintiff was in fact a Senior Rights Acquisition Account Manager, and not surprisingly, was properly expected to perform at a higher standard than lower-level employees. Plaintiff's own deposition testimony reflects that she referred to herself and others with such job titles (including one person in her 30's) as being "seniors," meaning managers at a higher level with more experience (Blaney Dep. 24-25, 43, 48). "[I]solated and ambiguous comments are too abstract, in addition to being irrelevant and prejudicial, to support a finding of age discrimination." Phelps v. Yale Sec., Inc., 986 F.2d 1020, 1025 (6th Cir. 1993). The alleged comment would require an inference in order to have the meaning suggested by plaintiff, and thus, is not "direct" evidence of discriminatory motive.**

**Despite taking extensive notes of her workdays and interactions with co-workers and supervisors, none of plaintiff's notes reflect any other age-related comments by her employer. Plaintiff acknowledged at deposition that nobody had told her that she was being disciplined or terminated because of her age. Plaintiff's testimony establishes that the single alleged statement by Ms. Pettengill (as paraphrased by plaintiff) was not made as part of the decision-making process that culminated in plaintiff's termination (Blaney Dep. 33-34). The lone comment by Ms. Pettengill is insufficient to raise any reasonable inference of age-related animus and does not constitute direct evidence of age discrimination.**

**2. Claim of Age Discrimination Based on Circumstantial Evidence**

**Turning to the burden-shifting framework, the parties do not dispute that the first three prongs are met: 1) plaintiff was over forty and a member of a protected class;[3] 2) her employment was terminated which is an adverse employment action; and 3) she was qualified for her position. At the fourth prong, defendant asserts that plaintiff's prima facie case fails because plaintiff has not shown that she was replaced by someone outside the protected class or treated differently than similarly-situated employees outside the protected class. See Mitchell v. Vanderbilt Univ., 389 F.3d 177, 181 (6th Cir. 2004). "[T]he plaintiff and the employee with whom the plaintiff seeks to compare . . . . herself must be similar in all of the relevant aspects." Ercegovich v. Goodyear Tire and Rubber Co., 154 F.3d 344, 352 (6th Cir.1998); and see, Perry v. McGinnis, 209 F.3d 597, 601 (6th Cir. 2000) (explaining that courts should look at "relevant similarity").**

**Plaintiff does not dispute that she was fired, that she was not replaced, and that her duties were divided up among existing employees (ages 41, 31, 37, 51, 58, 38, 47 and 51) (doc. nos. 17 at 2; 26 at ¶ 31). "Spreading the former duties of a terminated employee among the remaining employees does not constitute replacement." Lilley v. BTM Corp., 958 F.2d 746, 752 (6th Cir. 1992).**

**To the extent she alleges disparate treatment, plaintiff has not shown any evidence of similarly-situated employees outside the protected class, much less shown that she was treated differently from them. Plaintiff does not point to any**

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[3]**Plaintiff was born in 1947 (doc. no. 27 at 1).**

**co-workers who were "similarly situated" in the way that is fundamental here, i.e., no employee violated company instructions to obtain contracts before authorizing work and then became angry and defiant toward a supervisor who sought to ensure compliance with the company's directive. For example, in her written "Performance Summary and Discussion," plaintiff was informed she had not followed "GRPA best practices workflow" and as a result, "a number of projects have been published without the proper permissions being obtained . . . exposing Cengage to possible legal action." Three such projects were specifically identified. The document further indicates that Blaney had 1) acknowledged hiring at least one independent contractor ("IC") and improperly allowed the IC to work on projects without a contract in place, and 2) authorized payment for incomplete work. Plaintiff has not identified any employees with the same performance issues who were treated more favorably.**

**Plaintiff makes conclusory statements that she was treated less favorably than similarly-situated younger employees and replaced with a less qualified, substantially younger person. However, her brief contains no specific facts or an analysis that would support these conclusions. Plaintiff merely points to her own conclusory allegation that her supervisor "treated [her] differently in many way by criticizing [her] work when other people had made the same errors . . or had done similar things" (doc. no. 27, citing Blaney Dep. 49). However, when asked at deposition who else had failed to have independent contractors sign contracts or go through training, plaintiff immediately retracted her assertion.**

**A. Did I say I knew someone?**

**Q. You said "younger employees did the same thing as I did and nothing was done to them."**

**A. That's a misunderstanding.**

**Blaney Dep. 50.**

**Defendant points out that Ms. Pettengill had insisted, pursuant to the employer's directive (and the instructions of Pettengill's own supervisor), that <u>all</u> employees responsible for acquisition of rights, including plaintiff, obtain contracts from independent contractors before those individuals performed work on any projects for the company (see Blaney Dep. 50, reading from supervisor's email to plaintiff: "You are not being singled-out Sheri. I am asking all of the Mason group for this information."). At her deposition, plaintiff acknowledged the contents of this email. When asked "do you have any evidence to support that she [Ms. Pettengill] wasn't asking the other people in your group for this" – plaintiff responded "No" and then merely complained that Ms. Pettengill had asked her "at least twice" for certain information (Blaney Dep. 50). This falls quite short of demonstrating any "disparate treatment."**

**Plaintiff apparently perceived her supervisor's various requests to comply with the company's contract requirement as "criticism" of her work and did not react well, i.e. ignored the instructions, indicated they were "ridiculous," argued that some of her accounts (i.e. such as the Belmont location) did not have to comply, improperly issued payment for incomplete work on the notion that the independent**

**contractors were "good for it," and became openly angry with her supervisor when asked about it. Plaintiff points to no other employees who repeatedly failed to obtain contracts as instructed and who insisted it was not necessary in their opinion to obtain those contracts. Plaintiff acknowledges she is "unaware" of any other employees who reacted inappropriately to a supervisor's instructions (see Blaney Dep. 75, indicating she knew of noone else who had turned her back on her supervisor, walked out of a meeting while the supervisor was discussing company requirements, and slammed the door).**

**In sum, plaintiff has not shown any disparate treatment and has not set forth a prima facie case at the fourth prong. See, e.g., Sperber v. Nicholson, 342 Fed.Appx. 131 (6th Cir. 2009) (observing that employee failed to establish prima facie case of age discrimination, absent evidence that similarly situated non-protected individuals were treated differently).**

**Even assuming arguendo that plaintiff had made a prima facie case of age discrimination, the defendant has advanced a legitimate non-discriminatory reason for plaintiff's termination, namely, plaintiff's inappropriate behavior toward her supervisor. See Gant v. Genco, Inc., 274 Fed. Appx. 429 (6th Cir. 2008) (observing that an employer's decision to terminate an employee for belligerent behavior and disrespect towards management and company policies was a legitimate, nondiscriminatory reason). For example, at a meeting with plaintiff, her employer had addressed specific short-comings in her work that plaintiff needed to improve (see doc. no. 17, Exhibit SB000182-183, listing objective criteria). Rather than**

**remedying these problems, plaintiff reacted badly toward her supervisor. Although plaintiff spends much time arguing that her prior work performance was good and attempting to justify her reasons for her defiance toward her new supervisor, plaintiff essentially admits the inappropriate behavior.[4]**

**Defendant emphasizes that plaintiff was fired for inappropriate behavior toward her supervisor. Plaintiff has not shown that this articulated reason has no basis in fact. Plaintiff also has not shown that the stated reason did not actually motivate her termination or that the reason was insufficient to motivate the employer's action. Chen, 580 F.3d at 400.**

**"At the summary judgment stage, the issue is whether the plaintiff has produced evidence from which a jury could reasonably doubt the employer's explanation." Chen, 580 F.3d at 400 n. 4. The plaintiff "need only produce enough evidence ... to rebut, but not to disprove, the defendant's proffered rationale." Grizzell v. City of Columbus Div. of Police, 461 F.3d 711, 719 (6th Cir. 2006). Here, plaintiff has not presented evidence from which a jury could reasonably infer that her discharge was a pretext for discrimination. Schoonmaker, 595 F.3d at 264 -265; Sybrandt v. Home Depot, U.S.A., Inc., 560 F.3d 553, 558 (6th Cir. 2009). Although the summary judgment standard requires that evidence of record be viewed in the light most favorable to the nonmoving party, it does not require that all bald assertions and subjective unsupported opinions asserted by the nonmoving party be adopted**

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[4]**Plaintiff tries to downplay her slamming of the door by indicating that the glass door made a slamming noise, but that she didn't mean to slam it.**

**by a court.**

**To the extent plaintiff alleges that she felt "harassed" by her supervisor's requests for contracts, plaintiff's deposition testimony makes it abundantly obvious that plaintiff merely mischaracterizes any criticism or oversight by her manager as "harassment" (see, e.g., Blaney Dep. 78). Plaintiff does not assert harassment as an actual separate claim, and as defendant correctly asserts, such a claim would not withstand summary judgment in light of the evidence of record. Plaintiff indicated that when Ms. Pettengill asked her whether work was completed in order to justify payment of a researcher's invoice, it constituted "harassment." (Blaney Dep. 68-69, 72-73, Q: So she was verbally harassing you by asking for whether work was completed or not? A. Right.).**

**Plaintiff also testified that she considered the April 25, 2008 performance counseling memorandum that Ms. Pettengill discussed with her to be harassment because Ms. Pettengill was questioning whether Blaney was working outside of company procedures (Blaney Dep. 78-79 & Exh. 14). She further alleged that her annual performance review was a form of harassment to the extent that it contained anything but positive comments on her work (Blaney Dep. 83 & Exh. 15). Significantly, there are no references whatsoever to "age" in any of this purportedly "harassing" conduct. Plaintiff's displeasure at being criticized provides no basis for any claims of harassment. Her subjective belief that this amounts to harassment due to age discrimination is unavailing.**

**C. Plaintiff's Claims of Retaliation**

**Plaintiff's federal and state claims of retaliation fare no better. To establish a prima facie case of retaliation, plaintiff has the initial burden to show that: (1) she engaged in protected activity; (2) defendant knew about her exercise of protected activity; (3) defendant then took adverse employment action against her; and (4) there was a causal connection between the protected activity and the adverse employment action. Nguyen v. City of Cleveland, 229 F.3d 559, 563 (6th Cir. 2000); Fox v. Eagle Distrib. Co., 510 F.3d 587, 591 (6th Cir. 2007); Spengler, 615 F.3d at 491-92. If plaintiff presents a prima facie case, the burden of production shifts to defendant to "articulate some legitimate, nondiscriminatory reason for [its action]." McDonnell Douglas, 411 U.S. at 802. If defendant does so, the burden shifts back to plaintiff to show that defendant's "proffered reason was not the true reason for the employment decision." Spengler, 615 F.3d at 496.**

**At the first step, plaintiff alleges protected activity based on the following: The day after the incident on April 8, 2008 where plaintiff turned her back on Ms. Pettengill, angrily walked out, and slammed the door, plaintiff received a written warning about her conduct. The same day, plaintiff sent emails to Ms. Pettengill, to Ms. Pettengill's supervisors, and to the Human Resources director. In the email, plaintiff complains that: "I feel like I am being singled out by you and being discriminated against - why I do not know." (Blaney Dep. 60-61 & Exh. 9; Bonomini Dep. at 30). Thus, her alleged "protected activity" consists only of vague internal correspondence that followed her own admitted misconduct.**

**Although plaintiff contends that her emails constitute protected activity, the**

**HR Director indicated at deposition that "in all my interactions with [plaintiff], she was complaining about her manager following up with her on work concerns. She never said she felt like she was being discriminated against on the basis of some protected status. It was more that her manager was talking to her about concerns she had with [plaintiff's] work" (Bonomini Dep. at 30).**

**Although plaintiff claims the generalized reference to unfair treatment in her April 9, 2008 emails amounts to "protected activity," the Court of Appeals for the Sixth Circuit has explained that "[a]n employee may not invoke the protects of the Act by making a vague charge of discrimination." Booker v. Brown & Williamson Tobacco Co., 879 F.2d 1304, 1313 (6th Cir. 1989). Defendant correctly points out that plaintiff does not even refer to "age" in the emails, much less indicate any opposition to violation of a specific law or statute. Id. at 312. Plaintiff is clutching at straws. See Fox, 510 F.3d at 592 (holding the plaintiff's statements did not amount to protected activity because there was no evidence that plaintiff informed his employer that he was being discriminated against because of his age).**

**Additionally, plaintiff has failed to show any causal link between the alleged protected activity and her termination six months later. "[A] plaintiff must proffer evidence sufficient to raise the inference that [the] protected activity was the likely reason for the adverse action." Dixon v. Gonzales, 481 F.3d 324, 333 (6th Cir. 2007). Proof of temporal proximity between the protected activity and the adverse employment action, "coupled with other indicia of retaliatory conduct," may support a causal connection. Id at 333; and see, Wade v. Knoxville Utils. Bd., 259 F.3d 452,**

**463 (6th Cir. 2001) (observing that the evidence must be sufficient to raise an inference that the protected activity was the likely reason for the adverse action).**

**Plaintiff was not terminated until September of 2008, and cannot rely on timing alone for causation. Plaintiff has not shown other evidence sufficient to create an inference of causation. Although plaintiff complains that she was given a warning about her conduct of April 8, 2008, plaintiff admits engaging in the conduct that generated the warning.**

**Regarding timing, defendant points out that Ms. Pettengill had previously expressed concern about plaintiff's attitude and insubordinate conduct on February 14, 2008 in an email to HR. Director Bonomini, well before plaintiff's after-the-fact emails on April 9, 2008 (doc. no. 17, citing Pettengill Affidavit, Exhibit 1). Absent a sufficient showing of causation between her alleged "protected activity" and her eventual termination, plaintiff has not established a prima facie case of retaliation.**

**Finally, defendant argues that even if plaintiff had made a prima facie showing of retaliation, it has articulated a legitimate, nondiscriminatory reason for terminating plaintiff's employment, i.e. her inappropriate behavior. See Dixon, 481 F.3d at 333. Plaintiff inaccurately characterizes the reasons for her dismissal as "inconsistent" (doc. no. 27 at 19). On the contrary, the references to "a pattern of unprofessional behavior with her manager" (Bonomini Dep. at 27) and "insubordination" (Masalin-Cooper Dep. at 82) are consistent. Plaintiff has not pointed to any evidence that would tend to rebut the stated reason for her termination.**

**IV. Oral Argument Not Warranted**

**Local Rule 7.1(b)(2) provides that courts have discretion whether to grant requests for oral argument. The Court finds that the pleadings and exhibits are clear on their face and that oral argument is not warranted here.**

**V. Conclusion**

**Viewing the evidence in the light most favorable to plaintiff, plaintiff has failed to present a prima facie case of age discrimination at the fourth step. Moreover, the defendant has articulated a legitimate, nondiscriminatory reason for the termination of the plaintiff's employment, which plaintiff has failed to rebut. Additionally, plaintiff has failed to set forth sufficient evidence creating a genuine dispute of material fact as to whether the defendant discharged her in retaliation for complaining of age discrimination. Defendant is entitled to summary judgment on plaintiff's claims.**

**In accordance with the foregoing, the defendant's "Motion for Summary Judgment" (doc. no. 17) is GRANTED; this case is DISMISSED with prejudice; costs shall be born by plaintiff.**

**This case is TERMINATED on the docket of this Court.**

**IT IS SO ORDERED.**

s/Herman J. Weber
**Herman J. Weber, Senior Judge**
**United States District Court**