HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELLEN GRIFFIN,

Plaintiff,

v.

THE BOEING COMPANY,

Defendant.

CASE NO. 13-38 RAJ

ORDER

## I. INTRODUCTION

This matter comes before the court on defendant, The Boeing Company's ("Boeing") motion for summary judgment. Dkt. # 49. Plaintiff, Ellen Griffin, worked at Boeing as an engineer for approximately seven years until Boeing terminated her in March 2013. Boeing seeks dismissal of her complaint, which alleges: (1) gender discrimination with respect to pay, (2) gender discrimination with respect to an alleged failure to give plaintiff sufficiently challenging work assignments, and (3) discriminatory and/or retaliatory discharge.

Having reviewed the memoranda, declarations, exhibits, and the record herein, the court GRANTS defendant's motion for summary judgment.[1]

## II. BACKGROUND

Boeing hired plaintiff to work as a college intern-student engineer in June 2005. (Vigeland Dec.) Dkt. # 51, ¶ 2. She was promoted to an Engineer 1 position in January 2006 and then promoted again in August 2008 to an Engineer 2 position. *Id.*, ¶ 3. Throughout her employment with Boeing, plaintiff worked in the Electromagnetic Effects ("EME") Group. *Id.*, ¶ 2.

In 2009-2010, plaintiff received a performance evaluation that indicated she met expectations in most performance categories and exceeded expectations in the area of technical skills and knowledge. She received below average scores, however, with respect to her communication skills. Her supervisor remarked that she "continue[d] to struggle [with] working together and effectively communicat[ing] with other engineers, senior engineers, and management." (Doherty Decl.) Dkt. # 52-1, pp. 2-6.

In 2011, plaintiff received a performance evaluation that was similar to her previous evaluation. She exceeded expectations in the area of technical skills and knowledge, but continued to struggle with her communication skills. *Id.*, p. 21-25. Plaintiff received "thank you" emails from suppliers, customers and coworkers, some of which expressly acknowledge that plaintiff performed good work. (Plf. Ex.) Dkt. # 61-7,

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[1] The court notes that plaintiff failed to file and serve her opposition brief within the time frame provided by the local rules and that Boeing has asked the court to strike her untimely submission. *See* LCR 7(d)(3); Dkt. # 63, p. 4. Because plaintiff is *pro se*, the court has chosen to consider her opposition and related exhibits. Dkt. ## 59, 61. The court will not, however, address the series of letters plaintiff sent to the court after the deadline to oppose this motion had passed. Dkt. ## 83-90. Plaintiff was aware, prior to sending these letters, that the rules do not allow for a second opposition to the motion or a reply to the movant's reply. *See* Order at Dkt. # 82. Although the court has granted plaintiff some leeway, her *pro se* status does not entitle her to ignore court rules and deadlines.

pp. 9, 17, 20, 29. Several of plaintiff's coworkers, however, complained to Human Resources that plaintiff was often disrespectful, condescending, hurtful and difficult to work with. (Vigeland Dec.) Dkt. # 51, ¶¶ 5, 6; Dkt. # 51-1, pp. 8-9, 13, 16. Indeed, plaintiff admits to making certain remarks to her coworkers that Boeing deemed culturally insensitive. (Plf. Decl.) Dkt. # 59-1, ¶ 29; (Vigeland Decl.) Dkt. # 51-1, p. 9. These culturally insensitive remarks caused Boeing to suspend plaintiff, without pay, on two separate occasions. (Doherty Decl.) Dkt. # 52-1, pp. 8, 10.

In March 2012, plaintiff was placed on a Designated Employee Improvement Plan ("Improvement Plan"). The Improvement Plan listed several performance deficiencies, most of which involved plaintiff's communication and working together skills. (Doherty Decl.) Dkt. # 52-1, pp. 30-31. Plaintiff refused to sign the plan. *Id.*

In June 2012, a few months after plaintiff had been placed on the Improvement Plan, she filed a charge with the Equal Employment Opportunity Commission ("EEOC"). She alleged that her supervisors unfairly criticized her work and prevented her from advancing in her career because of her sex. The EEOC made a "no cause" dismissal of plaintiff's charge. (Vigeland Decl.) Dkt. # 51-1, p. 17.

In January 2013, Boeing gave plaintiff a Notice of Remedial Action ("NORA"), which is a type of "last chance" improvement plan. (Doherty Decl.) Dkt. # 52-2, pp. 28-29. Plaintiff was given 45 days to improve her performance. *Id.* At the conclusion of this probationary period, Boeing determined that plaintiff had failed to improve and terminated her on March 4, 2013.

Plaintiff generally disputes the allegations of her coworkers and supervisors. She claims that she is more qualified than most, if not all of them, and that they have lied, defamed, harassed and bullied her. (Plf. Decl.) Dkt. # 59-1, ¶¶ 48-51. She alleges that Boeing assigned desirable jobs only to male employees (*id.*, ¶ 11), that Boeing encouraged male employees to develop new ideas (*id.*, ¶ 18), that Boeing only allowed

men to join special teams (*id.*, ¶ 21), and that Boeing denied advancement opportunities to plaintiff and other women (*id.*, ¶¶ 23, 29).

## III. LEGAL STANDARD

Summary judgment is appropriate if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Where the moving party will have the burden of proof at trial, it must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party. *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir. 1986). On an issue where the nonmoving party will bear the burden of proof at trial, the moving party can prevail merely by pointing out to the district court that there is an absence of evidence to support the non-moving party's case. *Celotex Corp.*, 477 U.S. at 325. If the moving party meets the initial burden, the opposing party must set forth specific facts showing that there is a genuine issue of fact for trial in order to defeat the motion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The court must view the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150-51 (2000).

However, the court need not, and will not, "scour the record in search of a genuine issue of triable fact." *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996); *see also, White v. McDonnel-Douglas Corp.*, 904 F.2d 456, 458 (8th Cir. 1990) (the court need not "speculate on which portion of the record the nonmoving party relies, nor is it obliged to wade through and search the entire record for some specific facts that might support the nonmoving party's claim"). The opposing party must present significant and probative evidence to support its claim or defense. *Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991). Uncorroborated allegations and "self-serving testimony" will not create a genuine issue of material fact. *Villiarimo v. Aloha Island*

*Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002); *T.W. Elec. Serv. V. Pac Elec. Contractors Ass'n*, 809 F. 2d 626, 630 (9th Cir. 1987).

## IV. ANALYSIS

### A. Gender Discrimination With Respect To Pay

#### 1. WLAD and Title VII

In employment discrimination cases where, as here, plaintiff has not attempted to submit direct evidence of discriminatory intent, the *McDonnell Douglas* burden-shifting analysis augments the familiar summary judgment standard. *Aragon v. Republic Silver State Disposal, Inc.*, 292 F.3d 654, 658 (9th Cir. 2002) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)). Although the *McDonnell Douglas* analysis evolved to address employment discrimination claims invoking federal law, Washington courts apply substantially the same standard to claims invoking the Washington Law Against Discrimination ("WLAD"). *Kastanis v. Educ. Emps. Credit Union*, 122 Wash. 2d 483, 490 (1993). Under the *McDonnell Douglas* framework, plaintiff must offer evidence supporting a prima face case of unlawful discrimination. *Id.* If she succeeds, the burden shifts to Boeing to produce evidence of a lawful motive for terminating her. *Id.* at 491. If Boeing succeeds, plaintiff is obligated to produce evidence that Boeing's stated lawful motive is pretext. *Id.* If there is sufficient evidence of pretext, the case must go to the jury. *Id.*

"The requisite degree of proof necessary to establish a prima facie case for Title VII ... on summary judgment is *minimal* and does not even need to rise to the level of a preponderance of the evidence." *Aragon*, 292 F.3d at 659 (quoting *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 889 (9th Cir. 1994)). To avoid summary judgment, however, plaintiff "must do more than establish a prima facie case and deny the credibility of the [defendant's] witnesses." *Bradley v. Harcourt, Brace & Co.*, 104 F.3d 267, 270 (9th Cir. 1996). Plaintiff must produce "specific, substantial evidence of pretext." *Id.* An employee's subjective personal judgments of her competence alone do not raise a

genuine issue of material fact. *Id.* (citing *Schuler v. Chronicle Broadcasting Co., Inc.*, 793 F.2d 1010, 1011 (9th Cir. 1986)).

Plaintiff contends that Boeing paid her less than male employees and that they did so because she is a woman. Am. Coml. ¶ 3.37. To make out a prima facie case of disparate treatment, she must show that: (1) she belonged to a protected class; (2) she was qualified for her job; (3) she was subjected to an adverse employment action; and (4) similarly situated employees not in her protected class received more favorable treatment. *Kang v. U. Lim Am., Inc.*, 296 F.3d 810, 818 (9th Cir. 2002); *Chuang v. Univ. of Cal. Davis*, 225 F.3d 1115, 1123 (9th Cir. 2000).

Boeing contends that plaintiff cannot meet the fourth prong of her prima facie case because she has failed to identify any proper comparators. The court agrees. An adequate comparator in this case would be a male coworker who is similarly situated to plaintiff "in all material respects," including that the plaintiff and the comparator were doing substantially the same work. *Vasquez v. Cnty. of L.A.*, 349 F.3d 634, 641 (9th Cir. 2003) ("[I]ndividuals are similarly situated when they have similar jobs and display similar condiuct."). Plaintiff has identified no such comparator.

In her opposition to plaintiff's motion, plaintiff attempts to compare herself to the following individuals: Giorgio Caioli, Joe Bazaldua, Bruce Dunlap, Pazion Cherinet, Jay Griffin and Elia Fehme. (Plf.'s Decl.) Dkt. # 59-1, ¶ 48. These individuals, however, were higher level engineers who were paid on a higher pay scale than plaintiff. (Vigeland Decl.) Dkt. # 51, ¶¶ 24-29. Mr. Caioli joined Boeing nine years before plaintiff and became a level 4 engineer -- two levels higher than plaintiff -- five years before plaintiff was hired as an entry level engineer (*id.* at ¶ 26); Mr. Bazaldua was a level 3 engineer who joined Boeing fifteen years before plaintiff (*id.* at ¶ 25); Mr. Dunlap originally started at Boeing in 1976 and, after an absence from the company, rejoined Boeing as a level 4 engineer (*id.* at ¶ 28); Mr. Cherinet was a level 3 engineer who also joined Boeing before plaintiff (*id.* at ¶ 29); Mr. Griffin was a level 4 engineer who joined

Boeing fourteen years before plaintiff (*id.* at ¶ 27); and Mr. Fehme was plaintiff's lead and acted as her supervisor, not her peer. (Second Vigeland Decl.) Dkt. # 65, ¶ 8. Plaintiff does not dispute these critical facts.

Because plaintiff fails to identify any similarly situated male coworkers who received more favorable treatment, she fails to carry her prima facie burden and her claim fails as a matter of law. Nevertheless, even if plaintiff could establish a prima facie case of pay discrimination, Boeing has provided a legitimate nondiscriminatory reason for paying the above referenced individuals more than plaintiff – namely, higher level engineers, with more years of experience, were paid according to higher pay scales. (Vigeland Decl.) Dkt. # 51, ¶¶ 19-23.[2]

Thus, to make it to the jury, plaintiff must produce "specific, substantial evidence" that Boeing's stated reason for the difference in pay is actually a pretext for gender discrimination. *Bradley*, 104 F.3d at 270. She has failed to do so. Although she appears to argue that Boeing should not have categorized the aforementioned male employees as "higher level" engineers (Dkt. # 59-1, ¶¶ 47-50), she fails to provide any evidentiary support for this contention. Plaintiff's argument is based entirely on her subjective opinion of her own competence as compared to her coworkers. Such bare assertions, even if taken as true, do not meet the "specific and substantial" evidence standard. *See, e.g.*, Dkt. # 51-1, p. 19 (plaintiff's bare assertion that Mr. Bazadula is "not qualified for the job"); Dkt. # 59-1, ¶ 48 (plaintiff's unsupported belief that Mr. Caioli, Mr. Bazadula, Mr. Dunlap, and Mr. Cherinet are not engineers). Indeed, the Ninth Circuit has reiterated time and again that an employee's subjective personal judgments of her competence do not raise a genuine issue of material fact. *Bradley*, 104 F.3d at 270 ; *see also Aragon*, 292 F.3d at 660 (finding that employee's self-assessment may be sufficient at the initial

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[2] The court has performed a full *McDonnell Douglas* analysis only for the sake of completeness. All of plaintiff's claims fail at the prima facie stage.

prima facie stage, but would be insufficient at the final stage of the *McDonnell Douglas* analysis).

Accordingly, Boeing is entitled to summary judgment on these claims.

**2. State and Federal Equal Pay Acts**

Plaintiff's claims under the Equal Pay Act fail for the same reason -- she fails to identify a proper comparator. [3]

The principle of the Equal Pay Act is that employees doing equal work should be paid equal wages, regardless of sex. *E.E.O.C. v. Maricopa Cnty. Cmty. Coll. Dist.*, 736 F.2d 510, 513 (9th Cir. 1984). "To establish a prima facie case of wage discrimination, a plaintiff must show that the employer pays different wages to employees of the opposite sex for substantially equal work." *Id.* "The Equal Pay Act creates a type of strict liability; no intent to discriminate need be shown." *Maxwell v. City of Tucson*, 803 F.2d 444, 446 (9th Cir. 1986) (quoting *Strecker v. Grand Forks Cnty. Soc. Serv. Bd.*, 640 F.2d 96, 99 n. 1 (8th Cir. 1980)). Once the plaintiff establishes a prima facie case, the burden of persuasion shifts to the employer to show that the wage disparity is permitted by one of the four statutory exceptions to the Equal Pay Act: "(i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex." 29 U.S.C.§ 206(d)(1). It then becomes plaintiff's burden to demonstrate "a material fact regarding pretext in order to survive summary judgment." *Baron v. Arizona*, 270 F. App'x 706, 713 (9th Cir. 2008).

As discussed above, plaintiff has failed to show that her male coworkers were paid higher wages for equal work and that their jobs were substantially equal to hers. All of the comparators she identified were higher level engineers and, indeed, one of them was

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[3] Because Washington's EPA is virtually identical to its federal counterpart, Washington courts have relied upon decisions interpreting the federal act. *Hudon v. W. Valley Sch. Dist.*, 123 Wash. App. 116, 124 (2004).

the team lead and her direct supervisor. Thus, her claim fails at the first step of the burden shifting analysis. Nevertheless, even if she could make out a prima facie case under the state and federal EPAs, Boeing has presented evidence that the pay differentials were based on factors other than sex, including seniority and merit. *See* Dkt. # 51, ¶¶ 19-23 (explaining Boeing's performance evaluation process); Dkt. # 52-1, pp. 1-6, 21-25 (evaluations showing that employees were evaluated systematically according to predetermined criteria). In response, plaintiff has presented no material facts that might show that Boeing's explanation is pretextual.

Accordingly, Boeing is entitled to summary judgment as to these claims.

**B. Gender Discrimination with Respect to Work Assignments**

**1. WLAD and Title VII**

Plaintiff also contends that Boeing assigned her "routine, non-challenging jobs" that did not give her sufficient "opportunity to grow," and that Boeing did so because she is a woman. Am. Compl. ¶¶ 3.23-24, 4.2.

The *McDonnell Douglas* burden shifting framework applies to these claims as well. To make out a prima facie case, plaintiff must show that: (1) she belonged to a protected class; (2) she was qualified for her job; (3) she was subjected to an adverse employment action; and (4) similarly situated employees not in her protected class received more favorable treatment. *Kang*, 296 F.3d at 818; *Chuang*, 225 F.3d at 1123.

Plaintiff alleges that Boeing assigned desirable jobs only to male employees (Dkt. # 59-1, ¶ 11), that Boeing encouraged male employees to develop new ideas (*id.*, ¶ 18), that Boeing only allowed men to join a special team to analyze lightening protection for fuel tanks (*id.*, ¶ 21), and that Boeing denied advancement opportunities to other women, including Laura Johnston, Linda Tran, and Nana Ohira (*id.*, ¶¶ 23, 29).

Contrary to the plethora of non-binding authority cited by Boeing, disparate training and work assignments can indeed constitute an "adverse employment action." *See e.g., Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089-90 (9th Cir. 2008); *Sischo–*

*Nownejad v. Merced Cmty. Coll. Dist.*, 934 F.2d 1104, 1112 (9th Cir. 1991), *superseded by statute on other grounds as recognized by Dominguez–Curry v. Nev. Transp. Dep't*, 424 F.3d 1027 (9th Cir. 2005). Nevertheless, plaintiff once more fails to identify adequate comparators and thus fails to meet the fourth prong of her prima facie burden. She broadly contends that she and other women were denied the opportunity to advance, but again directs the court to the higher level engineers discussed above.

Nonetheless, even if plaintiff could make out a prima facie case, Boeing has submitted sufficient evidence of a legitimate non-discriminatory reason for any difference in work assignments – namely, that plaintiff was assigned work based upon her work load, skill, and experience level. (Dufour Decl.) Dkt. # 50, ¶ 4; (Doherty Decl.) Dkt. # 52, ¶ 26. Plaintiff, however, has offered no material facts that might show that this explanation is pretextual. Again, bald speculation of discriminatory motive and her subjective opinion of her own competence are insufficient. *See Bradley*, 104 F.3d at 270 (finding that an employee's subjective personal judgments of her competence do not raise a genuine issue of material fact); *see also Steckl v. Motorola, Inc.*, 703 F.2d 392, 393 (9th Cir. 1983) ("[M]ere assertions that [an employer] had a discriminatory motivation and intent…[are] inadequate.").

Accordingly, Boeing is entitled to summary judgment as to these claims.

**C. Discriminatory Discharge Based Upon Gender**

Next, plaintiff contends that she was discharged because she is a woman. Am. Compl. ¶ 4.2. To establish a prima facie case of discriminatory discharge under Title VII or the WLAD, a plaintiff must show that she "(1) belongs in a protected class, (2) was discharged, (3) was doing satisfactory work, and (4) was replaced by someone not in the protected class." *Campbell v. Obyashi Corp.*, 2009 WL 1393222, at *2 (W.D. Wash. May 18, 2009), aff'd, 424 F. App'x 657 (9th Cir. 2011); *see also Chen v. State*, 86 Wash. App. 183, 189 (1997).

The parties do not dispute that Plaintiff is a member of a protected class (female) and that she was subject to an adverse employment action -- termination. To make out a prima facie case of disparate treatment, however, plaintiff must also show that she was performing her job in a satisfactory manner and that she was replaced by someone not in her protected class. *Id*. Although Boeing contends that plaintiff's performance was inadequate, plaintiff's personal observations of her own performance coupled with the positive statements in her evaluations (Dkt. #52-1, pp. 1-6, 21-25) and positive emails from suppliers, customers and coworkers (Dkt. # 61-7) are sufficient to meet the minimal showing required to meet the third element of her prima facie case. *See Aragon*, 292 F.3d at 660 (finding employee's self-assessment coupled with minimal additional evidence sufficient to meet prima facie burden). She does not, however, make any attempt to show that she was replaced by a male employee and thus fails to meet the fourth element of her prima facie case.

Again, however, even if plaintiff could make out a prima facie case, Boeing has presented ample evidence of a legitimate non-discriminatory reason for terminating her. A number of plaintiff's coworkers expressed significant concerns regarding plaintiff's ability to work well with others. For example, Nina Ohira, one of plaintiff's female coworkers, advised her superiors that plaintiff had disrespected her educational background and often behaved in a manner that was disrespectful, unpleasant and hurtful.

Dkt. # 52-1, p. 13. Another coworker, Ronald Griffin, stated that plaintiff was often condescending toward him and hurtful. *Id.*, p. 16. Mr. Griffin further stated, "Sometimes I wonder why I stay here. I hate to come to work sometimes due to her negative influence on me and others, she makes life miserable." *Id.* Plaintiff's lead, Elia Fehme, also found her difficult to work with and noted that she was a "major disruption to the group." *Id.*, p. 18. Plaintiff was also disciplined twice for inappropriate remarks and absenteeism and was subject to two successive employee improvement plans. Dkt. # 52-1, pp.8-10, 20-26, 28-29. This evidence is sufficient to show a legitimate non-discriminatory reason for her termination. Accordingly, the burden shifts back to plaintiff.

To survive summary judgment, plaintiff must "do more than establish a prima facie case and deny the credibility of the [defendant's] witnesses." *Bradley*, 104 F.3d at 270. She must produce "specific, substantial evidence of pretext." *Id.* Plaintiff has failed to do so here. Rather than put forth specific evidence showing that she was discriminated against because of her sex, she simply denies that her performance was deficient and claims that Boeing overreacted in each of the documented instances of her absenteeism, inappropriate remarks and friction with her coworkers. She fails, however, to submit evidence that supports her position.

For example, on one hand she denies that she made derogatory remarks to her lead, Elia Fehme, but then admits in a written statement that she "made a comment one time to [Mr. Fehme] about his culture" and that she mentioned to Mr. Fehme that she "was aware of women in Saudi Arabia not being allowed to drive." (Vigeland Decl.) Dkt. # 51-1, p. 9. She also admitted that she asked Mr. Fehme if he was a Christian and later realized that she "should not have made those comments." *Id.* In response to a corrective action memo issued by Boeing, she hand wrote that "[t]he comment was only two sentences said during a private conversation" and that "[i]t was wrong to make the statement." (Doherty Decl.) Dkt. # 52-1, p. 8.

Another one of plaintiff's coworkers, Albert Nguyen, advised Human Resources that she had insulted him. Mr. Nguyen is Vietnamese. Plaintiff admits that she told Mr. Nguyen that she was "a native of this country" and, therefore, could make any necessary grammatical changes to documents. (Plf. Decl.) Dkt. # 59-1, ¶ 29.

Plaintiff's opinion that such comments do not qualify as "derogatory" is irrelevant. Boeing felt that her comments were inappropriate and pointed to those comments as part of its stated reason for terminating her. *See Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1063 (9th Cir. 2002) ("[C]ourts only require that an employer honestly believed its reason for its actions, even if its reason is foolish or trivial or even baseless."). To survive summary judgment, plaintiff must submit specific evidence that shows that this stated reason was "unworthy of credence." *Davis*, 520 F.3d at 1089. She has simply failed to come forward with any such evidence.

Accordingly, Boeing is entitled to summary judgment as to this claim.

**D. Retaliation**

To establish a prima facie case of retaliation, plaintiff must demonstrate that (1) she engaged in statutorily protected activity; (2) defendants took some adverse employment action against her; and (3) there is a causal connection between the protected activity and the discharge. *Corville v. Cobarc Servs., Inc.*, 73 Wash. App. 433, 439 (1994); *Steiner v. Showboat Operating Co.*, 25 F.3d 1459, 1464 (9th Cir. 1994).

Plaintiff insists that her work was "wonderful" and Boeing's witnesses lied about her job performance. (Plf.'s Decl.) Dkt. # 59-1, p. 26. Thus, she argues, there could not have been any legitimate basis for her termination and Boeing's decision to fire her must have been an act of retaliation. *Id.*

Such unsupported speculation is insufficient to show retaliation. *See Miller v. State of California*, 212 F. App'x 592, 593 (9th Cir. 2006); *Steckl v. Motorola*, 703 F.3d 392, 393 (9th Cir. 1983). Plaintiff simply fails to meet her burden of demonstrating a causal connection between any protected activity and her termination.

Accordingly, Boeing is entitled to summary judgment as to this claim.

## V. CONCLUSION

For all the foregoing reasons, the court GRANTS Boeing's motion for summary judgment. The Clerk is directed to enter judgment in favor of Boeing and against plaintiff.

Dated this 25th day of June, 2015.

The Honorable Richard A. Jones
United States District Judge