

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KEVIN T. LAMB,	)	CASE NO. 5:25-cv-1847
	)	
Plaintiff,	)	CHIEF JUDGE SARA LIOI
	)	
vs.	)	
	)	MEMORANDUM OPINION
	)	AND ORDER
2020 COMPANIES,	)	
	)	
Defendant.	)	

Before the Court is the motion of defendant 2020 Companies (“2020”) for summary judgment. (Doc. No. 17 (MSJ).) Plaintiff Kevin Lamb (“Lamb”) opposes the motion (Doc. No. 18 (Memorandum in Opposition)), and 2020 has filed a reply. (Doc. No. 20 (Reply).) For the reasons that follow, the motion is granted and the case is dismissed.

I. BACKGROUND

Lamb is a 54-year-old individual who began working for Samsung Electronics America (“Samsung”) in April 2022, as a Field Sales Manager (“FSM”). (Doc. No. 16-1 (Deposition of Kevin Lamb), at 4(10)¹ (DOB 7-20-1972), 5(16), 8(26); Doc. No. 1-1 (Complaint) ¶ 9.) As a Samsung FSM, Lamb was responsible for sales support within the territory comprising Akron and Canton, Ohio. (*See* Doc. No. 16-1, at 8(26–27).) His duties included making regular visits to stores

¹ Unless otherwise noted, all page number references are to the consecutive page numbers applied to each individual document by the Court’s electronic filing system. Because the deposition transcripts appear in a multi-page format, citations to the depositions also include in parentheses the page number assigned to each individual page by the court reporter.

carrying the Samsung brand, during which he provided store employees with training on Samsung products and encouraged them to promote and recommend Samsung products to their customers. (*Id.*) Samsung FSMs used a software application called Health Tracker to record and document the details from their store visits. (*Id.* at 8(28–29).)

On October 18, 2024, Samsung announced that it would no longer employ FSMs but would outsource the position to 2020. (*Id.* at 13(49)–14(50); Doc. No. 16-2 (Deposition of Eric Che Lopez), at 10(30).) 2020 is a third-party sales and marketing company that “partners with major consumer brands to promote retail sales, manage product launches, and provide in-store merchandising, field marketing, brand advocacy and product training services.” (Doc. No. 17-1 (Declaration of Matthew McDonald) ¶ 4.) All FSMs were advised in a mandatory conference call that those who wished to continue working in the Samsung field program would need to apply for employment with 2020. (Doc. No. 16-1, at 14(53)–15(54).)

The application process was streamlined. All Samsung FSMs were provided a link where they could apply to 2020. (*Id.* at 15(54–56).) The link took applicants to the 2020 website where they were asked a limited number of questions. (*Id.* at 75 (Ex. B (Webpage)).) Beyond the applicant’s name and phone number, the website did not ask for any additional personal information, such as age, education, years of service, or employment history. (*Id.* at 15(57).) Lamb testified that he also remembered supplying his then-current rate of pay, but agrees he was never asked his age or any other personal information at any time during the application process. (*Id.* at 16(59).) Lamb also testified that he was advised no fewer than five times by his Samsung manager, Mark Campese (“Campese”), that Samsung management would not be interacting with anybody at 2020 regarding the hiring process. (*Id.* at 8(26), 13(47–48).) Moreover, it is undisputed that 2020

received no personnel records, including performance reviews or disciplinary documentation, from Samsung. (*Id.* at 16(60); *see* Doc. No. 16-2, at 13(43–44), 14(48).) Indeed, Lamb testified that he “remember[ed] being surprised at the time that [2020] didn’t want to know anything about us as far as our prior work history or our career.” (Doc. No. 16-1, at 15(57).)

Lamb immediately used the link to express his interest in working with 2020 and received an automated confirmation email response from 2020 that advised that someone from the company would reach out to him directly with details regarding the next steps in the process. (*Id.* at 76 (Ex. C (Confirmation Email, 10/18/2024)).) The following Monday (October 21, 2024), Lamb received an email from Eric Che Lopez (“Lopez”) advising that Lopez wished to interview him and supplying him with a separate link where he could sign up for a telephone interview slot. (*Id.* at 77–78 (Ex. D (Email, 10/21/2024)).) Lamb signed up for and participated in a telephone interview with Lopez later that same day (October 21, 2024). (Doc. No. 18, at 5; Doc. No. 16-2, at 11(36–37); *see* Doc. No. 6 (Answer) ¶ 15.)

Lopez, who was 51² at the time of the telephone interview, was employed by 2020 as a Field Operations Manager responsible for overseeing the Cleveland/Pittsburgh district. (Doc. No. 16-2, at 5(12).) In this role, Lopez was responsible for overseeing the FSMs within his assigned territory. (*Id.* at 6(15).) With respect to the Samsung outsourcing from Samsung, Lopez was advised that he would need to hire “roughly 20” new FSMs for his territory. (*Id.* at 10(30).) It is undisputed that Lopez had sole authority to decide whether candidates in his territory would be hired, and he was the hiring manager for the position Lamb sought. (*Id.* at 8(23–25), 23(84).)

² 2020 represents in its motion, without citing to the record, that Lopez was 51 at all times relevant to the present action. (Doc. No. 17, at 8–9.) While Lamb does not dispute Lopez’s age (*see* Doc. No. 16-1, at 23(89)), the Court need not rely on this fact in its analysis.

Lopez followed the same procedure for each Samsung applicant. He conducted a 15-to-30-minute telephone interview wherein he asked each applicant the same four questions. (*See* Doc. No. 16-1, at 18(67–68); Doc. No. 16-2, at 12(41)–13(42), 17(59).) Lopez testified that he was looking for individuals who could plan and focus their activities so that they aligned with the needs of the company and its clients, and he made his hiring decisions based on the answers he received to these questions. (Doc. No. 16-2, at 14(49)–15(50).) He confirmed that he was not given any personal information on the candidates, such as resumes or employment history, and he did not communicate with any employees at Samsung regarding the candidates. (*Id.* at 13(43–44), 18(65), 19(67).) In fact, Samsung’s report from the Health Tracker application was one of the few documents that was made available to Lopez. (*Id.* at 16(55); *see id.* at 114–119 (Ex. 7 (Health Tracker Data)).) With respect to Lamb, the notes section of that report included a single line which read, in full: “minimum performer—won’t go into metro—borderline insubordinate—brand fit[.]”³ (*Id.* at 118 (Ex. 7).)

Prior to Lamb’s telephone interview on October 21, 2024, Lamb and Lopez had never met or interacted with one another. (Doc. No. 16-1, at 16(61); Doc. No. 16-2, at 5(12); *see id.* at 21(74).) During the interview, Lopez asked Lamb his pre-set list of questions and recorded Lamb’s responses. (Doc. No. 16-1, at 80 (Ex. F (Interview Notes)).) Lamb agrees that Lopez’s notes accurately reflect his responses to Lopez’s questions. (*Id.* at 21(78–79).)⁴

³ In his deposition, Lopez interpreted the reference to “minimum performer” to indicate that Lamb’s performance was “not [] up to par for the expectations” of his district manager. (Doc. No. 16-2, at 19(68–69).) He interpreted “won’t go into metro” to refer to an unwillingness to visit Metro PC stores (*id.* at 19(69)), and the “borderline insubordinate” comment to indicate that Lamb’s manager “struggled to get the candidate to follow directions.” (*Id.* at 20(70).)

⁴ In his deposition, Lamb indicated that he also thought he would have shared with Lopez his belief that the Health Tracker application was not always accurate—something that is not reflected in Lopez’s notes—but Lamb admitted that he had no specific recollection of such discussion. (Doc. No. 16-1, at 19(71–72), 21(79–81).)

In response to the first question—“how do you manage multiple priorities at once[?]”—Lamb indicated that he liked to make checklists using digital tools. (*Id.* at 80 (Ex. F).) Because this response did not really address the question of balancing priorities, Lopez asked the follow up question: “how do you adjust to a new ask with little or no time to prepare[?]” (*Id.*) Lopez’s notes reflect the following answer:

It boils down to what put[s] money in the bank for Samsung. Perfect example is the Lettermark survey when we got it and for me to figure out where we want to be at the end of the month. What does my schedule look like, how urgent is the request. Not everything is a drop everything that you [are] doing right now. My priority is building revenue. I’ve led the district multiple quarters. Staying true to the [] north star. Is a [L]ettermark survey going to put money in the bank today? Probably not.

(*Id.*) Lopez testified that Lamb’s response caused him immediate concern because he believed Lamb was suggesting that he would make his own independent determination as to whether a particular assignment was a priority, and would allocate his time accordingly, regardless of the wishes of 2020 or its client. (Doc. No. 16-2, at 15(52)–16(54).) Lopez stated that he was aware of the Lettermark survey Lamb referenced and knew it was a very high priority non-negotiable assignment issued by Samsung. (*Id.* at 15(52)–53).) He explained that this was the very type of urgent “ask” that an FSM had to be willing to switch gears and address immediately, and Lamb’s apparent unwillingness to adjust his schedule to meet the needs of his employer was troubling. (*Id.* at 15(52)–16(54).)

Lopez also asked Lamb about his goals as an FSM and what tools and resources he utilized to achieve these goals. (Doc. No. 16-1, at 80 (Ex. F).) In responding to this question, Lamb identified a number of tools, including the Health Tracker application, which he said he utilized for every store visit. (*Id.*) After the interview, Lopez reviewed the Health Tracker application report to validate Lamb’s representation that he used the application during every store visit. The

report indicated that, in the month of October, Lamb visited 21 stores but only accessed the Health Tracker application once. (Doc. No. 16-2, at 16(55–56).)

Based on these responses, Lopez decided that he would not move forward with Lamb's candidacy. (*Id.* at 22(80).) Lopez testified that his decision was grounded in Lamb's interview responses, and that age played no role in the decision. (*Id.* at 21(74), 22(80), 23(83–84).) On October 28, 2024, in response to an email from Lamb following up on the interview, Lopez advised Lamb:

Thanks for reaching out. Our team(s) are working through the task of trying to work through several hundred applications and positions. I don't have access to an ETA on any individual position being fully processed, but you will hear from us as soon as possible.

(Doc. No. 16-1, at 81 (Ex. G (Email)).) Lopez testified that, while he had already submitted his selections from the Samsung applicants by October 28, 2024, and knew that Lamb would not receive an offer, he was not responsible for notifying the candidates of the hiring decisions and, therefore, was not at liberty to inform Lamb regarding the status of his particular candidacy. (Doc. No. 16-2, at 20(72–73).) It was Lopez's understanding that other 2020 personnel would announce the hiring decisions to all the candidates. (*Id.*)

Lamb was subsequently informed that he did not receive the FSM position with 2020 and was ultimately separated from his employment with Samsung. (*See* Doc. No. 16-1, at 83–86 (Ex. H (10/30/24 Email)).) Lamb believes he was the oldest of his Samsung peers (within a particular geographic territory and, thus, interviewed by Lopez) to not receive an offer. (*Id.* at 14(50–52)⁵, 25(95–96).)

⁵ In his deposition, Lamb estimated that his peers ranged in ages from early thirties to mid-forties, though he admitted that he did not know their exact ages. (Doc. No. 16-1, at 14(50–52).)

The position for which Lamb applied was ultimately filled by Craig Barnard, who was 54 years of age and was already employed by 2020. (Doc. No. 16-2, at 21(76); Doc. No. 17-1 ¶ 8 (Barnard DOB 10-15-1970).) Lopez also hired 61-year-old Michael Berardone (“Berardone”) (born July 29, 1964) to fill another of the new FSM positions. (Doc. No. 16-2, at 21(77); Doc. No. 17-1 ¶ 10.) Like Barnard, Berardone was already employed by 2020. (Doc. No. 16-2, at 21(77).)

On August 1, 2025, Lamb filed suit against 2020 in the Summit County Court of Common Pleas, raising a single claim of age discrimination under Ohio Rev. Code § 4112. (Doc. No. 1-1 (Complaint).) On September 5, 2025, 2020 removed this action to federal court on the basis of diversity jurisdiction. (Doc. No. 1 (Notice of Removal) ¶ 5.)

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where “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). “[N]ot every issue of fact or conflicting inference presents a genuine issue of material fact[.]” *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1477 (6th Cir. 1989). A fact is material if its resolution affects the outcome of the lawsuit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* If a reasonable jury could return a verdict for the nonmoving party, then summary judgment is not appropriate. *Id.* at 249–50.

The moving party must provide evidence to the court that demonstrates the absence of a genuine dispute as to any material fact. Once the moving party meets this initial burden, the opposing party must come forward with specific evidence showing that there is a genuine issue

for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); *Anderson*, 477 U.S. at 250. It is the nonmoving party’s duty to point out specific facts in the record that create a genuine issue of material fact; the trial court does not have a duty to search the record “to establish that it is bereft of a genuine issue of material fact.” *Street*, 886 F.2d at 1479–80 (citing *Frito-Lay, Inc. v. Willoughby*, 863 F.2d 1029, 1034 (D.C. Cir. 1988)); *Fulson v. City of Columbus*, 801 F. Supp. 1, 4 (S.D. Ohio 1992) (citation omitted).

The nonmoving party may oppose a summary judgment motion “by any of the kinds of evidentiary material listed in Rule 56(c), except the mere pleadings themselves[.]” *Celotex*, 477 U.S. at 324. The Court must view all facts and evidence, and inferences that may be reasonably drawn therefrom, in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962). General averments or conclusory allegations of an affidavit do not create specific fact disputes for summary judgment purposes. *See Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888–89, 110 S. Ct. 3177, 111 L. Ed. 2d 695 (1990); *see Monette v. Elec. Data Sys. Corp.*, 90 F.3d 1173, 1177 (6th Cir. 1996) (Mere speculation will not suffice to “defeat a properly supported motion for summary judgment. A genuine dispute between the parties on an issue of material fact must exist to render summary judgment inappropriate.” (citation omitted)).

“Summary judgment requires that a plaintiff present more than a scintilla of evidence to demonstrate each element of a prima facie case.” *Garza v. Norfolk S. Ry. Co.*, 536 F. App’x 517, 519 (6th Cir. 2013) (citing *Van Gorder v. Grand Trunk W. R.R.*, 509 F.3d 265, 268 (6th Cir. 2007)). ““The mere existence of a scintilla of evidence in support of the [nonmoving party’s] position will

be insufficient; there must be evidence on which the jury could reasonably find for the [nonmoving party].” *Street*, 886 F.2d at 1477 (quoting *Anderson*, 477 U.S. at 252).

The district court’s review on summary judgment is a threshold inquiry to determine whether there is the need for a trial due to genuine factual issues that must be resolved by a finder of fact because those issues may reasonably be resolved in favor of either party. *Anderson*, 477 U.S. at 250. Put another way, this Court must determine “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Id.* at 251–52; *see also Wexler v. White’s Fine Furniture, Inc.*, 317 F.3d 564, 578 (6th Cir. 2003).

[Summary judgment is required] against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial. In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial. The moving party is entitled to judgment as a matter of law because the nonmoving party has failed to make a sufficient showing of an essential element of [his] case with respect to which [he] has the burden of proof.

Celotex, 477 U.S. at 322–23 (internal quotation marks and citation omitted).

III. DISCUSSION

Like its federal counterpart, the Age Discrimination in America Act (“ADEA”), 29 U.S.C. § 621, *et seq.*, Ohio Revised Code § 4122.02, *et seq.* makes it unlawful for an employer to discriminate against an applicant for employment on the basis of age. Specifically, Ohio Rev. Code § 4112.14(A) provides, in part: “No employer shall discriminate in any job opening against any applicant . . . aged forty or older who is physically able to perform the duties and otherwise meets the established requirements of the job and laws pertaining to the relationship between employer

and employee.” In addition, “analysis of claims made pursuant to the Americans with Disabilities Act applies to claims made pursuant to Ohio Revised Code § 4112.02[.]” *Jakubowski v. Christ Hosp., Inc.*, 627 F.3d 195, 201 (6th Cir. 2010) (citations omitted).

A plaintiff bringing an age discrimination claim under federal or Ohio statutory law “must prove that age was a determining factor in the adverse action that the employer took against him or her.” *Phelps v. Yale Sec., Inc.*, 986 F.2d 1020, 1023 (6th Cir. 1993) (citing *Kraus v. Sobel Corrugated Containers, Inc.*, 915 F.2d 227, 299–30 (6th Cir. 1990)). Because mixed-motive age discrimination claims may not be brought under federal or Ohio law, the plaintiff has the burden to prove by a preponderance of the evidence “that age was the ‘but-for’ cause of [his] employer’s adverse action.” *Geiger v. Tower Auto.*, 579 F.3d 614, 620 (6th Cir. 2009) (citation modified); see *Miller v. Potash Corp. of Sask, Inc.*, No. 1:09-cv-58, 2010 WL 3529248, at *5 (Ohio Ct. App. 2010) (quotation marks and citations omitted).

In the absence of direct evidence of age discrimination, the Court applies the evidentiary framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), to analyze age discrimination based on circumstantial evidence.⁶ To set forth a *prima facie* case of age discrimination in a failure-to-hire case, a plaintiff must show that: (1) he is over the age of 40; (2) he applied for and was qualified for the position; (3) he was rejected despite his qualifications; and (4) that he was replaced someone significantly younger. See *Deleon v. Kalamazoo Cnty. Rd. Comm’n*, 739 F.3d 914, 918 (6th Cir. 2014) (citation omitted); *Grosjean v. First Energy Corp.*, 349 F.3d 332, 335 (6th Cir. 2003) (explaining that, in an age discrimination

⁶ Both sides utilize the *McDonnell Douglas* burden shifting method for consideration of circumstantial evidence to address Lamb’s age discrimination claim. (See Doc. No. 17, at 18–19; Doc. No. 18, at 8–13.)

case, the fourth element requiring replacement by someone outside the protected class is changed to someone “significantly younger” (citation omitted)); *Wagner G.A. Gray Co.*, 872 F.2d 142, 145 (6th Cir. 1989); *Coryell v. Bank One Trust Co. N.A.*, 803 N.E.2d 781, 785 (Ohio 2004) (citations omitted); *Ceglia v. Youngstown State Univ.*, 38 N.E.3d 1222, 1230 (Ohio Ct. App. 2015) (citations omitted).

Once the plaintiff establishes a *prima facie* case, a presumption of discrimination arises and “the burden of production shifts to the defendant to articulate a non-discriminatory reason for its action.” *Burzynski v. Cohen*, 264 F.3d 611, 622 (6th Cir. 2001) (citation omitted). If the defendant articulates a nondiscriminatory reason, the presumption is rebutted, and the burden shifts back to the plaintiff to show that the reason was a pretext for age discrimination. *Id.* (citation omitted). At all times during this burden shifting process, the plaintiff retains the ultimate burden of producing “sufficient evidence from which the jury could reasonably reject the defendants’ explanation and infer that the defendants intentionally discriminated against him.” *Johnson v Kroger Co.*, 319 F.3d 858, 866 (6th Cir. 2003) (alteration in original).

A. *Prima Facie* Case

As an initial matter, 2020 argues that Lamb cannot establish that age was the “but-for” cause of the failure of 2020 to hire him as an FSM because there is no evidence that the sole decisionmaker, Lopez, was aware of Lamb’s age. (Doc. No. 17, at 19.) It is well settled that a decisionmaker cannot take an adverse action “because of” membership in a protected class if the decisionmaker is unaware of such membership. *See Nilles v. Givaudan Flavors Corp.*, 521 F. App’x 364, 368 (6th Cir. 2013) (“an employee cannot be considered to have been fired ‘on the basis of disability’ unless the decision-maker who fired the individual had knowledge of that

disability” (citation omitted)); *Prebilich-Holland v. Gaylord Ent. Co.*, 297 F.3d 438, 444 (6th Cir. 2002) (no *prima facie* case of pregnancy discrimination where employer did not know employee was pregnant (citation omitted)); *Hopkins v. Canton Cty. Bd. of Educ.*, 477 F. App’x 349, 361–62 (6th Cir. 2012) (decisionmaker was unaware of employee’s protected activity).

The Court appreciates that a plaintiff’s burden to establish a *prima facie* case is low, *see Willard v. Huntington Ford, Inc.*, 952 F.3d 795, 808 (6th Cir. 2020) (citation omitted), and it is true that it is often possible for a decisionmaker to glean an applicant’s approximate age from interactions with the applicant or background information on their education or years of service. *See, e.g., Kean v. Brinker, Int’l, Inc.*, No. 3:22-cv-885, 2024 WL 1815346, at *22–23 (M.D. Tenn. Apr. 25, 2025) (rejecting argument that decisionmaker was unaware employee was over 40 years of age where the decisionmaker had spent a “substantial amount of time” with the employee in meetings and could have guessed employee’s approximate age), *rev’d, in part, on other grounds by* 140 F.4th 759 (6th Cir. 2025). The present case, however, is unusual in that Lamb and Lopez never met in person (Doc. No. 16-1, at 16(61); Doc. No. 16-2, at 5(12)), and only interacted for 30 minutes or less during a single phone interview. (Doc. No. 16-1, at 18(66–67), 20(76) (no “visual” component to the phone interview)); *see* Doc. No. 16-2, at 11(37), 17(59).) The interview process was also somewhat unique in that applicants were not asked to supply a resume, employment records, or other information relating to education or employment history. (Doc. No. 16-1, at 15(57) (Lamb surprised he was not asked about his “prior work history or [] career”); Doc. No. 16-2, at 13(43), 14(48).) Further, Lopez did not speak with Samsung management about the candidates, he asked each applicant the same age-neutral questions, and Lamb agrees he has no evidence to suggest that Lopez knew his age. (Doc. No. 16-1, at 20(76), 21(80).) Lopez testified

that he was provided with no information from which he could have determined the age of his Samsung candidates—or that he knew Lamb’s age or that age played any role in his decision not to offer Lamb a position—and Lamb cannot point to any evidence to the contrary. (Doc. No. 16-1, at 21(80); Doc. No. 16-2, at 21(74–75).) Because the undisputed facts demonstrate that the decisionmaker was unaware of Lamb’s age, Lamb cannot prove that age was the reason for the decision. *See, e.g., Johnson v. Sec’y of Veterans Affrs.*, No. 2:17-cv-915, 2020 WL 5797863, at *7–8 (S.D. Ohio Sept. 29, 2020) (plaintiff could not establish “but for” age discrimination where employer’s undisputed evidence demonstrated that it was unaware of plaintiff’s age at the time of the adverse employment decision).

Nevertheless, in his deposition,⁷ Lamb testified to his speculation that 2020 may have been aware of his age because he complained to his Samsung FSM peers during the interview process that he believed he was being discriminated against because of his age. (Doc. No. 16-1, at 24(90–91).) Lamb also assumes that 2020 must have heard about these comments because he suspects one of the FSMs he told—Rich Paul—told their manager, Camplese, who must have, in turn, told someone at 2020. (*Id.* at 24(92).) He concedes, however, that he has no personal knowledge that Paul told Camplese or that Camplese conveyed this information to anyone at 2020. (*Id.* at 24(92)–25(94) (noting that “[t]hat’s something that I am assuming. I don’t have any concrete information”); *id.* at 24(92–93) (“I don’t have any particular, knowledge of what [Camplese]

⁷ In his opposition brief, Lamb fails to address 2020’s argument that he cannot make out a *prima facie* case because the decisionmaker was unaware of Lamb’s age. “When a plaintiff fails to address [an argument] in response to a motion for summary judgment,” the argument is deemed conceded. *Alexander v. Carter for Byrd*, 733 F. App’x 256, 261 (6th Cir. 2018) (citation modified); *see Wilkins v. Jackson*, 750 F. Supp. 2d 160, 162 (D.D.C. 2010) (“It is well established that if a plaintiff fails to respond to an argument raised in a motion for summary judgment, it is proper to treat that argument as conceded.” (citations omitted)) In an abundance of caution, however, the Court considers Lamb’s deposition testimony where he offers his suspicion that 2020 learned he was over 40 by virtue of his complaints to coworkers at Samsung.

conversed with 2020. I have to assume *he did not converse* because we were told he was not allowed to, but, again, I just don't know. I don't have any concrete proof that he had that conversation.” (emphasis added)); *id.* at 24(93)–25(94) (acknowledging Paul did not say he would discuss Lamb's age discrimination suspicions with anyone).) Given Lamb's concessions that Camplese advised him *multiple times* that he would not be communicating with 2020 regarding any of the candidates (*see* Doc. No. 16-1, at 8(26), 13(47–48)), Lamb's unsupported speculation to the contrary cannot generate a genuine issue of material fact on the threshold question of whether age was the “but for” reason for his failure to secure the FSM position at 2020. *See Ross v. Duggan*, 402 F.3d 575, 588 (6th Cir. 2004) (a plaintiff may not rely on “naked speculation, conjecture, hunches, hypothesizing, intuitions, innuendo, insupportable ‘inferences’, empty theorizing, creative guesswork, [or] wishful thinking” (citation omitted)); *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 584–85 (6th Cir. 1992) (“rumors, conclusory allegations and subjective beliefs [] are wholly insufficient evidence to establish a claim of discrimination as a matter of law” (collecting cases)).

Lamb also fails to establish the fourth element of the *prima facie* case: that the position he sought was filled by a “significantly younger” person. *See Grosjean*, 349 F.3d at 335; *Coryell*, 803 N.E.2d at 787–88. Lopez testified that the position for which Lamb interviewed was ultimately filled by Barnard, an internal 2020 employee. (Doc. No. 16-2, at 21(76–77).) At the time of Lamb's interview, Lamb was 52 and Barnard was 54. (Doc. No. 16-1, at 4(10); Doc. No. 17-1 ¶ 8.) As Barnard was two years older than Lamb, there is no question that the position was not filled by someone “significantly younger” than Lamb. *See Bolander v. BP Oil Co.*, 128 F. App'x 412, 416 (6th Cir. 2005) (replacement by someone older or insignificantly younger does not support the required inference for the fourth element of the *prima facie* case); *see, e.g., Grosjean*, 349 F.3d at

336 (51-year-old plaintiff was not replaced by significantly younger individual, who was 54 years of age).

There is likewise no material dispute that Barnard received the position Lamb sought. While Lamb underscores that he believes he was the oldest of his Samsung peers to not receive a position (Doc. No. 18, at 10; Doc. No. 16-1, at 25(96)), such a showing would not be enough to demonstrate age discrimination. *See Almond v. ABB Indus. Sys., Inc.*, 56 F. App'x 672, 678 (6th Cir. 2003) (finding the fact that the terminated employee was the oldest in the department insufficient to establish a *prima facie* case under the ADEA (collecting cases)). Rather, the relevant question is who was hired to assume the position for which Lamb applied. *See Willard*, 952 F.3d at 809 (the relevant inquiry is who was hired to assume the plaintiff-employee's responsibilities (citation omitted)); *Mittler*, 2013 WL 1749697, at *5 ("In order to prove under [Ohio Rev. Code §] 4112.02 that a person of substantially younger age replaced her, a plaintiff cannot merely recite that the defendant hired new employees, but instead must present evidence that another employee actually replaced her by assuming a substantial portion of her duties." (quotation marks and citation omitted)). The record is clear that Lamb was interviewing for a particular position within a specific territory, and that this position was ultimately filled by Barnard who was two years older than himself. (Doc. No. 16-1, at 23(89); Doc. No. 16-2, at 18(65), 21(76); Doc. No. 17-1 ¶ 8.)

Lamb does not resist the conclusion that the position he sought went to an older worker. Rather, in his deposition, he testified that this "*solidifies*" his belief that he was the victim of age discrimination because he maintains that the hiring of Barnard was a cover-up. (Doc. No. 16-1, at 24(90) (emphasis added).) Lamb again referenced the conversations he had with his Samsung peers about his suspicions that he was being discriminated against. (*Id.*) Noting that Barnard was

already an employee of 2020—and 2020, therefore, would know Barnard’s age—he surmises that “it would be a logical conclusion that 2020 goes out and hires somebody purposefully older that they know his age for a fact . . . and, therefore, [2020 would] hire him to hide the fact that I was discriminated against for age.” (*Id.* at 24(90–91).) Yet, once again, Lamb points to no record evidence to support his speculation that Barnard’s hiring was designed to insulate 2020 from a discrimination claim, and, as already observed, he offers no evidence that *anyone* at 2020 was aware of Lamb’s suspicions. As the Court has already observed, Lamb cannot support his *prima facie* case with speculation and conjecture.

Because Lamb cannot establish either that the decisionmaker was aware that he was over the age of forty, or that he was replaced by a significantly younger individual, he has failed to demonstrate the existence of a *prima facie* case of age discrimination, and 2020 is entitled to summary judgment. *Mitchell*, 964 F.2d at 582–84. And because of this, further analysis is unnecessary. Nonetheless, as explained below, the Court will continue with its analysis.

B. Legitimate Non-Discriminatory Reason

Absent a *prima facie* case of discrimination, the Court is not required to continue with the *McDonnell Douglas* burden shifting analysis. *See Gantt v. Wilson Sporting Goods Co.*, 143 F.3d 1042, 1048 (6th Cir. 1998) (noting that because the plaintiff did not establish a *prima facie* case, there is no need to address pretext). Assuming *arguendo*, however, that Lamb had established a *prima facie* case, the Court will consider the record evidence and the parties’ arguments relative to the asserted reason for the employment decision and pretext.

Beginning with the legitimate non-discriminatory reason, the Court notes that the employer bears a burden of production only; there is no obligation to prove or persuade the court that the

employer was actually motivated by that reason. *Galbraith v. N. Telecom, Inc.*, 944 F.2d 275, 280 (6th Cir. 1991); *see Bd. of Trs. of Keene State Coll. v. Sweeney*, 439 U.S. 24, 24, 99 S. Ct. 295, 58 L. Ed. 2d 216 (1978) (the employer need only articulate a legitimate non-discriminatory reason). Moreover, “[s]o long as its reasons are not discriminatory, an employer is free to choose among qualified candidates.” *Wrenn v. Gould*, 808 F.2d 493, 502 (6th Cir. 1987) (citations omitted).

According to 2020, Lopez made the decision not to extend Lamb an offer because of his answers to Lopez’s interview questions. (Doc. No. 17, at 22; *see* Doc. No. 16-2, at 22(80).) Specifically, Lopez testified that he believed Lamb’s answer to the question—how do you respond to an unexpected assignment by your employer or its client—suggested that he would not be responsive to a new assignment if he did not personally believe it was a priority. (Doc. No. 16-2, at 15(52–53)–16(54).) Lopez also testified that he believed that Lamb had not been entirely truthful in his interview because the Health Tracker report did not support his representation that he always used the application to document his retail store visits. (*Id.* at 16(56).) According to 2020, Lamb’s answers to these questions caused Lopez to decide that he was not going to hire Lamb. (Doc. No. 17, at 22; Doc. No. 16-2, at 22(80).)

Because 2020’s burden is “merely a burden of production, not of persuasion . . . it does not involve a credibility assessment.” *Upshaw v. Ford Motor Co.*, 576 F.3d 576, 585 (6th Cir. 2009) (citations omitted). For this reason, 2020’s proffered legitimate, nondiscriminatory reason for Lamb’s non-hire satisfies its burden of production. Thus, the burden shifts back to Lamb to demonstrate pretext.

C. Pretext

In order to avoid summary judgment on this final prong of the *McDonnell Douglas* analysis, Lamb must show that there is a genuine dispute of material fact from which a jury could reasonably find that 2020's stated reasons for its employment decision are pretextual, and that the real reason was unlawful age discrimination. In the Sixth Circuit, "a plaintiff can show pretext in three interrelated ways: (1) that the proffered reasons had no basis in fact, (2) that the proffered reasons did not actually motivate the employer's action, or (3) that they were insufficient to motivate the employer's action." *Chen v. Dow Chem. Co.*, 580 F.3d 394, 400 (6th Cir. 2009) (citation omitted); see *Seeger v. Cincinnati Bell Tel. Co., LLC*, 681 F.3d 274, 285 (6th Cir. 2012). These three categories are not rigid or limiting factors for determining pretext, but rather guidelines for focusing on the ultimate inquiry: did the employer make up those reasons to conceal unlawful age discrimination. *Tingle v. Arbors at Hilliard*, 692 F.3d 523, 530 (6th Cir. 2012) (citing *Chen*, 580 F.3d at 400 n.4). Lamb attempts to establish pretext through each of the three enumerated methods. "Whichever method the plaintiff employs, he always bears the burden of producing sufficient evidence from which the jury could reasonably reject the defendant's explanation and infer that the defendant intentionally discriminated against him." *Seeger*, 681 F.3d at 285 (quotation marks and citation omitted).

a. *No Basis in Fact*

The first avenue for establishing pretext—no basis in fact—requires a showing that "the proffered bases for [the employment decision]" did not actually happen. *Santiago v. Meyer Tool Inc.*, No. 22-3800, 2023 WL 3886405, at *5 (6th Cir. June 8, 2023) (citation omitted); see *Alberty*

v. Columbus Twp., 730 F. App'x 352, 356 (6th Cir. 2018) (a plaintiff is required to present evidence that shows that the reasons given by the defendant for the discharge “simply did not happen” (quotation marks and citation omitted)). Here, Lamb admits that Lopez’s notes accurately reflect the answers he gave to the age-neutral interview questions. (Doc. No. 16-1, at 21(78).)

Lamb argues, however, that Lopez’s reasons are “false or incomplete” because “Lopez also admitted that before the interview he reviewed a document with negative descriptors about [Lamb]—‘minimum performer,’ ‘won’t go into metro,’ ‘borderline insubordinate,’ and ‘brand fit.’” (Doc. No. 18, at 11 (quoting Doc. No. 16-2, at 19(68)–20(70)).) Lamb suggests that Lopez’s explanation that he based his decision on Lamb’s interview questions “do[es] not sit comfortably” with the reality that Lopez was also aware before the interview of the one-line note regarding Lamb in the Health Tracker report. (*Id.* at 11.) (*Id.*) Lamb argues that “[i]f a jury believes Lopez saw and absorbed those negative notes before the interview, it can reasonably conclude that the interview was not a blank-slate evaluation and the ‘interview only’ explanation did not actually motivate the decision.” (*Id.*)

While this argument is more appropriately considered under the second avenue for proving pretext—not actually motivated by the proffered reason—the Court finds no internal inconsistency. While Lopez testified that he did not receive any personal-identifying information regarding the candidates prior to the interviews (such as resumes, personnel records, work histories (*see* Doc. No. 16-2, at 13(43), 14(48))), he did not testify that he had access to absolutely no information prior to the interviews. Rather, Lopez acknowledged that the Health Tracker report was one of the few documents he received from Samsung, and that he would have read the short age-neutral note regarding Lamb before the interview. (*Id.* at 16(55).)

More to the point, the fact that Lopez selected from among several non-age related reasons for not hiring Lamb does not somehow equate to unlawful age discrimination. A plaintiff asserting age discrimination must “do more than merely cast doubt on the employer’s rationale; a plaintiff must create a permissible inference that . . . age was the actual motivation for the employer’s decisions.” *Felder v. Nortel Networks Corp.*, 187 F. App’x 586, 594 (6th Cir. 2006) (citing *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 515, 113 S. Ct. 2742, 125 L. Ed. 2d 407 (1993) (“[A] reason cannot be proved to be a pretext for discrimination unless it is shown both that the reason was false, and that discrimination was the real reason.”)); *Seeger*, 681 F.3d at 285 (to prevail on an age discrimination claim a plaintiff must prove that “the reason was false, and that discrimination was the real reason” (quoting *St. Mary’s Honor Ctr.*, 509 U.S. at 515)). That these two non-discriminatory pieces of evidence “do not sit comfortably” with Lamb simply does not establish age discrimination. *See St. Mary’s Honor Ctr.*, 509 U.S. at 519 (“It is not enough . . . to *dis* believe the employer; the fact finder must *believe* the plaintiff’s explanation of intentional discrimination.” (emphasis in original)).

b. *Not Actually Motivated By*

A plaintiff can also prove pretext under the second method by showing that the asserted reason did not actually motivate the defendant. *See Manzer v. Diamond Shamrock Chems. Co.*, 29 F.3d 1078, 1084 (6th Cir. 1994). This line of attack “admits that the [proffered] reason could motivate the employer but argues that the illegal reason is more likely than the proffered reason to have motivated the employer.” *Joostberns v. United Parcel Serv., Inc.*, 166 F. App’x 783, 791 (6th Cir. 2006) (citing *Manzer*, 29 F.3d at 1084). Under this method, the plaintiff must show “that the

sheer weight of the circumstantial evidence of discrimination makes it ‘more likely than not’ that the employer’s explanation is a pretext, or coverup.” *Manzer*, 29 F.3d at 1084.

Lamb points to what he believes are several inconsistencies that collectively make it more likely than not that 2020’s reason was a pretext for unlawful age discrimination. First, Lamb offers the October 28, 2024 post-interview email, wherein Lopez responded to Lamb’s request for an update by advising that the company was still working through “several hundred applications” but that Lamb would hear from the company “as soon as possible.” (Doc. No. 18, at 11 (citing Doc. No. 16-1, at 81 (Ex. G)).) Because Lopez testified that he had already decided by October 28, 2024, not to extend a job offer to Lamb, he argues that “[a] reasonable jury may treat that inconsistency as more than clerical sloppiness. It may interpret it as evidence that [2020’s] narrative about how and when the decision was made is unreliable.” (*Id.* at 11–12.)

The fundamental problem with this argument is that there exists no inconsistency between the email and Lopez’s testimony. In the email, Lopez merely laid out the company’s process for notifying applicants of its decisions. The email says nothing about Lamb’s candidacy or whether a decision had been made regarding his particular application. (*See* Doc. No. 16-1, at 81 (Ex. G).) Further, Lopez’s uncontested testimony establishes that he was not responsible for advising the Samsung candidates of 2020’s employment decisions, and that it was, therefore, not his duty to inform Lamb of the decision. (Doc. No. 16-2, at 20(72)–21(74).) Consistent with this unrefuted evidence, Lamb was eventually advised by someone other than Lopez that 2020 would not be moving forward with his candidacy. (Doc. No. 16-1, at 22(83) (Lamb indicating that he received a phone call the following week from an individual he believed was Lopez’s supervisor advising him of the adverse employment decision).) While Lamb cites *Wexler* for the proposition that

“[p]retext often lives in inconsistencies,” there is nothing inconsistent about the email, rendering it immaterial to the pretext analysis.⁸ (Doc. No. 18, at 12 (citing *Wexler*, 317 F.3d at 576–77).)

Lamb also points to the fact that Barnard, the individual who eventually filled the position, was an internal 2020 candidate who “was not part of the process” used to consider the Samsung FSMs. (*Id.* (citation modified).) He suggests that a reasonable jury could find that 2020 is “pointing to a later, different-process placement to obscure what happened during the actual transition process challenged here: [Lamb,] the oldest team member, was the only timely-applying peer not selected.” (*Id.*)

Lamb’s argument has no teeth. There is no evidence that 2020 was obligated to accept every Samsung FSM who applied. The evidence merely demonstrates that those Samsung employees affected by the company’s elimination of this position “had to reapply for [their] positions” (Doc. No. 16-1, at 15(54)), and that their compensation would remain the same “[i]f [they] were hired[.]” (*Id.* at 15(55) (emphasis added).) Nothing in the record supports a finding that transition from Samsung to 2020 was guaranteed.

Nor is there any record evidence to support finding that 2020 was not permitted to look outside the pool of Samsung employees who had expressed an interest in working for 2020. Rather, the record reflects that 2020 was tasked with filling 250–300 positions company-wide, that Lopez had to fill 20 FSM positions within his territory, and that any Samsung employee who wished to

⁸ Lamb’s reliance on *Wexler* is misplaced for an additional reason. In *Wexler*, the Sixth Circuit determined that a jury could infer pretext from an employer’s stated reason where the unreasonableness of the decision was “combined with the age-related statements” by the employer and the disparate treatment of individual employees outside the protected class. 317 F.3d at 577. Here, Lamb has not offered any evidence of statements showing age-related animus, more favorable treatment of similarly-situated individuals outside the protected class (beyond his belief that he was the oldest employee in his group to not receive an offer), or any other evidence showing that age was the real reason for the employment decision. See *Mittler*, 2013 WL 1749697, at *10 (distinguishing *Wexler* on similar grounds); *Hausler v. Gen. Elec. Co.*, No. 02-cv-754, 2003 WL 25734285, at *12 (S.D. Ohio Nov. 20, 2003) (similar).

be considered for the same job at 2020 had to apply to 2020. (*Id.* at 14(53); Doc. No. 16-2, at 8(24).) When Lopez decided that Lamb was not the right fit for 2020, he opted to fill the position with Barnard, an internal candidate. (Doc. No. 16-2, at 21(76).) While Lamb might have been the oldest person from Samsung interviewed by Lopez who did not receive a job offer, it does not change the fact that Lopez ultimately selected an individual older than Lamb to fill the role. This fact no more establishes pretext for unlawful age discrimination than it supports a finding of a *prima facie* case. *See also Dabrowski v. Warner-Lambert Co.*, 815 F.2d 1076, 1078–79 (6th Cir. 1987) (stating that the Sixth Circuit “has long recognized that the mere fact that a younger employee or applicant receives better treatment than an older one is insufficient to carry the burden of proof” in an age discrimination case; holding that such evidence showed little more than that the employer hired persons younger than plaintiff (citations omitted)). Moreover, Lopez also hired 61-year-old Berardone to fill one of the other new FSM positions. (Doc. No. 16-2, at 21(77); Doc. No. 17-1 ¶ 10.) The hiring of Berardone, another internal 2020 candidate who like Barnard was older than Lamb, is consistent with the undisputed record that 2020 was not limited to considering Samsung’s FSMs, and lends further support for the Court’s finding that 2020’s reason was not pretextual.

c. *Insufficient to Motivate*

This leaves the third method for proving pretext, which, similar to the first method, represents an attack on the credibility of the employer’s proffered reason. *Manzer*, 29 F.3d at 1084. And like the second method, the third avenue for establishing pretext “admits that the employer’s proffered reason has a basis in fact but denies that it created sufficient cause for the adverse employment action.” *Joostberns*, 166 F. App’x at 791 (citing *Manzer*, 29 F.3d at 1084). “It

‘ordinarily consists of evidence that other employees . . . were not fired [or not hired] even though they engaged in substantially identical conduct to that which the employer contends motivated its discharge of the plaintiff.’” *Id.* (quoting *Manzer*, 29 F.3d at 1084). Lamb offers no argument, beyond his representation that younger Samsung employees received job offers, that similarly-situated employees received better treatment.⁹ As the Court has determined *supra*, such a showing is insufficient. *See also Almond*, 56 F. App’x at 675; *Dabrowski*, 815 F.2d at 1078–79.

Instead, Lamb attempts to establish that 2020’s asserted reason was insufficient to motivate its decision by turning to the fact that he “was already doing the job, had no discipline, had satisfactory and above-average scores, trained peers, and was described by his supervisor as a top performer.” (Doc. No. 18, at 12 (citing multiple portions of Lamb’s deposition).) He references *Provenzano v. LCI Holdings, Inc.*, 663 F.3d 806 (6th Cir. 2011), for the proposition that “relative qualifications can create a triable issue where the plaintiff was at least as qualified as the selectee and the record contains ‘other probative evidence of discrimination.’” (Doc. No. 18, at 12 (quoting *Provenzano*, 663 F.3d at 815–16).)

Lamb’s reliance on *Provenzano* is problematic for several reasons. First, the legal proposition that relative qualifications of equally qualified candidates can create triable issues of fact only holds true where there is “other probative evidence of discrimination.” *Provenzano*, 663 F.3d at 815 (citation modified).¹⁰ Lamb suggests that his probative evidence “includes [his] status

⁹ Beyond Lamb’s testimony estimating the approximate age of his Samsung FSM peers (*see* Doc. No. 16-1, at 14(50–52)), there is nothing in the record regarding their interviews with Lopez, including their answers to Lopez’s questions, that would assist a fact-finder in determining that these other employees were actually similarly-situated in all material respects. *See Ercegovich v. Goodyear Tire & Rubber Co.*, 154 F.3d 344, 353 (6th Cir. 1998).

¹⁰ Alternatively, *Provenzano* teaches that pretext can be established through consideration of relative qualifications where the evidence shows that “the plaintiff was a plainly superior candidate, such that no reasonable employer would have chosen the later applicant over the former[.]” 663 F.3d at 815 (citation modified). Lamb does not argue that he was a *plainly superior candidate* to Barnard, nor would the record support such a representation.

as the oldest team member, the prompt offers to [his] peers, the loaded pre-interview notes, and Lopez’s October 28 inconsistency.” (Doc. No. 18, at 12 (citations omitted).) The Court has already determined that nothing in this laundry list constitutes probative evidence of age discrimination. Working from the end backward, the Court assumes that “Lopez’s October 28 inconsistency” refers to the October 28, 2024 email response to Lamb’s email requesting a status update. (Doc. No. 16-1, at 81 (Ex. G).) As the Court determined *supra*, the email response was entirely consistent and offers no probative evidence of discrimination. Likewise, Lopez’s testimony that he reviewed the age-neutral notation in the Health Tracker report referring to Lamb as, among other things, a “minimum performer,” and his testimony that he based his decision on Lamb’s interview responses, are neither contradictor nor are they suggestive of age animus. The last two items—the prompt offers to Lamb’s peers and the fact that he was the oldest team member—establish nothing more than that he did not receive an offer and younger people did (and for his position, two people older than him were hired). Again, this Court has already determined that such a showing is insufficient. *See Almond*, 56 F. App’x at 675; *Dabrowski*, 815 F.2d at 1078–79.

Second, the decisionmaker was entirely unaware that Lamb “had no discipline, had satisfactory and above-average scores, trained peers, and was described by his supervisor as a top performer.” (*See* Doc. No. 18, at 12 (citations omitted).) While Lamb questions the wisdom of making hiring decisions without taking into consideration experience, work history, and performance evaluations (*see id.* at 6–7 (calling the interview process “abnormal,” “hollow,” and “disingenuous” (quoting Doc. No. 16-1, at 18(67) (Lamb testifying that the telephone interview “didn’t feel like a traditional job interview at all.”), 26(100))), the Court does not sit as “a ‘super personnel department’ tasked with ‘second guessing employers’ business decisions.’” *Treadway*

v. Cal. Prods. Corp., 659 F. App'x 201, 210 (6th Cir. 2016) (quoting *Carter v. Toyota Tsusho Am., Inc.*, 529 F. App'x 601, 611 (6th Cir. 2013) (further citations omitted)). Lamb “may not simply substitute [his] own business judgment for that of the defendant.” *Rowan v. Lockheed Martin Energy Sys., Inc.*, 360 F.3d 544, 550 (6th Cir. 2004) (rejecting plaintiff’s argument that the decisionmakers should have considered other qualifications); *see Carter*, 529 F. App'x at 613 (a plaintiff “cannot proceed to trial based on a subjective disagreement with [the employer’s] business judgment” (citation omitted)).

While the Sixth Circuit has recognized that employment decisions based on subjective criteria (like in the present case) can provide “ready mechanisms for discrimination[,]” *Grano v. Dep’t of Dev. of Columbus*, 699 F.2d 836, 837 (6th Cir. 1983), Lamb cannot point to *any* evidence that, if believed, would show that the approach used by 2020 (and Lopez, its decisionmaker) was a subterfuge for unlawful age discrimination. *See Mittler*, 2013 WL 1749697, at *11 (noting that the court is “not to judge whether an employer made the best or fairest decision, but to determine whether the decision would not have been made but for discrimination on the basis of age” (citing *Knepper v. Ohio State Univ.*, No. 10AP-1155, 2011 WL 5873375, at *6 (Ohio Ct. App. Nov. 22, 2011)); *see, e.g., Neff v. E. Lansing*, 724 F. App'x 448, 452–53 (6th Cir. 2018) (employee’s subjective belief that the employer should have evaluated her qualifications differently was insufficient to withstand a motion for summary judgment on her claim of age discrimination).

d. *Conclusion on Pretext*

Lamb has failed to demonstrate that 2020’s stated reasons for its employment decision are not grounded in fact, did not actually motivate the company, or were insufficient to cause 2020 to deny Lamb’s application for employment. *See Manzer*, 29 F.3d at 1084 (citation omitted).

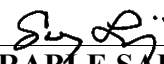
Accordingly, even if Lamb had set forth a *prima facie* case of discrimination (he did not), he could not carry his ultimate burden of identifying material questions of facts as to whether age discrimination was the “but for” reason for 2020’s decision not to extend him a job offer, and summary judgment for 2020 would be appropriate for this additional reason. *See Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 180, 129 S. Ct. 2343, 174 L. Ed. 2d 119 (2009).

IV. CONCLUSION

For the foregoing reasons, 2020’s motion for summary judgment is GRANTED on Lamb’s sole claim of age discrimination. This case is DISMISSED.

IT IS SO ORDERED.

Dated: October 19, 2026



HONORABLE SARA LIOI
CHIEF JUDGE
UNITED STATES DISTRICT COURT