

**HCLE 9<sup>TH</sup> ANNUAL EMPLOYMENT LAW UPDATE & MOTION WORKSHOP**  
**APRIL 18, 2006 – EAST PEORIA**  
**APRIL 28, 2006 – CHICAGO**

**DEFENDING AGAINST THE SUMMARY JUDGMENT MOTION-  
ESTABLISHING PRETEXT**

Recent 7<sup>th</sup> Circuit decisions which provide guideposts to success and failure:

1. Walker v. Board of Regions, 410 F.3<sup>rd</sup> 387 (7<sup>th</sup> Cir. 2005)

**Plaintiff argued:** University official terminated her employment based on gender discrimination in violation of Title VII.

**Defendant's response:** Employee refused to carryout employer's directives, had antagonistic management style, made poor choices with respect to staff selection and supervision.

**Trial Court decision:** Judge Crabb of the Western District of Wisconsin granted defendant's motion for judgment as a matter of law at trial.

**7<sup>th</sup> Circuit decision:** Affirmed.

**Quotable quotes:**

- In the instant case-as with most employment discrimination cases in this day and age-there appears to be no direct evidence of discrimination whatsoever.
- We have identified three types of circumstantial evidence relevant to Title VII discrimination cases. The first is "suspicious timing, ambiguous statements oral or written, behavior toward or comments directed at other employees in the protected group, and other bits and pieces from which an inference of discriminatory intent might be drawn." The key consideration is the totality of these "pieces of evidence, none conclusive in itself but together composing a convincing mosaic of discrimination against plaintiff".
- The second type is evidence, whether or not rigorously statistical, that employees similarly situated to the plaintiff other than in the characteristic (i.e. sex, race or whatever) on which an employer is forbidden to base a difference in treatment received systematically better treatment.
- Third is evidence that the plaintiff was qualified for the job in question but passed over in favor of (or replaced by) a person not having the forbidden characteristic and that the employer stated reason for the difference in treatment is unworthy of belief, a mere pretext for discrimination.
- Nothing in the litany of factual quibbles points toward gender based discrimination. Even assuming, *arguendo*, that (the supervisor's) behavior was strange and inconsistent, nothing in the records supports an inference of sexism.

**Additional comments:**

2. Culver v. Gorman & Co., 416 F.3<sup>rd</sup> 540 (7<sup>th</sup> Cir. 2005)

**Plaintiff argued:** Termination and retaliation for threatening to bring a sex discrimination complaint.

**Defendant's response:** She was fired for insubordination and refusal to perform work tasks.

**Trial Court decision:** Judge Crabb of the Western District of Wisconsin granted defendant's motion for summary judgment.

**7<sup>th</sup> Circuit decision:** Reversed and remanded for trial.

**Quotable quotes:**

- The evidence of the non-movement is to be believed, and all justifiable inferences are to be drawn in her favor.
- The persuasiveness of the defendant's explanation is normally for the finder of fact to assess, unless the court can say without reservation that a reasonable finder of fact would be compelled to credit the employer's case on this point.
- Summary judgment should be granted only if the defendant presents un rebutted evidence that he would have taken the adverse employment action against the plaintiff even if he had no retaliatory motive.
- We have never said that temporal proximity is dispositive in providing or disproving a causal link.
- Suspicious timing is thus "often an important evidentiary ally of the plaintiff". Lalvani v. Cook County, 269 F.3<sup>rd</sup> 785, 790 (7<sup>th</sup> Cir. 2001).
- Culver's satisfactory performance review together with Schroeder's insistence that he harbored no desire to fire her at the time of her annual review, establish that she was in no danger of losing her job until after she made her allegations of gender discrimination.
- A reasonable fact finder could conclude that the radical reversal of Gorman's perception of Culver's fitness as an employee was closely associated with her protected activity, and thus contributes to an inference of causation.
- Insubordination is defined as "willful disregard of an employer's instructions" or an "act of disobedience to proper authority". Black's Law Dictionary (8<sup>th</sup> Edition 2004). Culver's undisputed refusal to answer Schroeder's request for information appears to qualify as

disobedience or defiance even about a relatively trivial matter. Gorman, however, did not refer to this incident as an example of insubordination until filing its summary judgment motion. This was only after Culver mentioned the matter in her deposition. Schroeder failed to mention any specific instances of insubordination at the time of the firing; he later at his deposition, when asked to identify all incidents of Culver's insubordination, failed to mention this matter. This failure to earlier mention the incident as a reason for termination is evidence of pretext.

- The basic question is whether Schroeder *honestly believed* that Culver's refusal to answer his question ... justified her termination. In that respect, his failure to discuss these incidents when provided with opportunities to do so is troubling. Schroeder identified none of these incidents either when he fired Culver or during his deposition.
- An inconsistent employer explanation may help to support a finding of pretext. Zaccagnini v. Chas. Levy Circulating Co., 338 F.3<sup>rd</sup> 672, 678 (7<sup>th</sup> Cir. 2003). If Culver's attitude did indeed fall off the cliff of acceptable workplace behavior in the three days prior to her termination, we find it surprising that Schroeder did not specifically refer contemporaneously to this recent period of substandard behavior.
- While the relevant time for determining the effectiveness of an employee is the time of discharge, "previous employment history may be relevant and probative in assessing performance at the time of termination." Fortier v. Ameritech Mobile Communications, 161 F.3<sup>rd</sup> 1106, 1113 (7<sup>th</sup> Cir. 1998). CF. Giacoletto v. Amax Zinc Co., 954 F.2d 424, 426-27 (7<sup>th</sup> Cir. 1992).
- Although Gorman argued that it is not discriminatory for an employer to take preemptive action against an employee who has announced her intention to leave at the first opportunity (Miller v. American Family Mut. Ins. Co., 203 F.3<sup>rd</sup> 997, 1009 (7<sup>th</sup> Cir. 2000)), Culver did not announce her intention to leave Gorman at the first available opportunity and asserted that she never threatened to quit her job. We are extremely reluctant to extend the holding of Miller to include situations where an employee does not explicitly indicate her intention to leave at the first available opportunity, thus it is a genuine issue of material fact as to whether Schroeder honestly believed Culver was about to leave Gorman.

**Additional comments:**

3. Rozskowiak v. Village of Arlington Heights, 4015 F.3<sup>rd</sup> 608 (7<sup>th</sup> Cir. 2005)

**Plaintiff argued:** Police officer of Polish decent sued Village under Title VII for National Origin Discrimination.

**Village asserted:** Sergeant who allegedly made derogatory remarks had no influence over decision makers who chose to fire officer and that there was no circumstantial evidence that the decision to terminate officer was based on anything but legitimate analysis of officer's performance and several citizen complaints.

**District Court's decision:** Judge Gettleman, Northern District of Illinois granted Village's motion for summary judgment.

**7<sup>th</sup> Circuit decision:** Affirmed.

**Quotable quotes:**

- Derogatory statements made by someone who is not involved in making the employment decision at issue are not evidence that the decision was discriminatory. Gorence v. Eagle Food Center, Inc., 242 F.3<sup>rd</sup> 759, 762 (7<sup>th</sup> Cir. 2001). However, if the person who made the derogatory remarks provided input into the employment decision-and the remarks were made around the time of and in reference to that decision-"it *may* be possible to infer that the decision making was influenced by those (discriminatory) feelings." Hunt v. City of Markum, 219 F.3<sup>rd</sup> 649, 652-53 (7<sup>th</sup> Cir. 2000); see also Gorence, 242 F.3<sup>rd</sup> at 762. Discriminatory remarks are actionable only if they injure the plaintiff; "There must be a real link between the bigotry and an adverse employment action."
- There is no evidence that Chief Kath met with Commander Kinsey to discuss matters pertaining to Rozskowiak.
- Rozskowiak was unable to produce any statistics or other evidence that non-Polish officers who performed similar to him were retained.

**Additional comments:**

4. Hague v. Thompson Distrib. Co., 436 F.3<sup>rd</sup> 816 (7<sup>th</sup> Cir. 2006)

**Plaintiff argued:** After a small company was purchased by an African American, certain white employees were initially hired but eventually fired.

**Defendant's response:** All employees were fired during 90 day trial period because they did not meet business expectations or other legitimate non-discriminatory reasons.

**District Court decision:** Judge Young, of Southern District of Indiana, granted employer's motion for summary judgment.

**7<sup>th</sup> Circuit decision:** Affirmed.

**Quotable quotes:**

- It is well settled that the protections of Title VII are not limited to members of historically discriminated against groups.
- A white male plaintiff can establish background circumstances sufficient to demonstrate that the particular employer has reason or inclination to discriminate invidiously against whites or evidence that there is something “fishy” about the facts at hand.
- The defendant's expectations are not legitimate if they are phony; so if they are argued to be phony, the issue of legitimate expectations and the issue of pretext seem to merge.
- Discrimination laws serve only to prevent consideration of forbidden characteristics-like race-but they are not, as we have repeatedly noted, court enforced merit selection programs.
- Simply sifting the blame for a problem does not establish pretext.
- In Dunn v. Nordstrom, Inc., 260 F.3<sup>rd</sup> 778, (7<sup>th</sup> Cir. 2001), one would expect a large corporation to document the decision to demote so many employees. Conversely, with small businesses, one would not expect the owner to spend the time, or incur the expense, to document individual employment decisions. Moreover, in arguing that a lack of documentation supports a finding of pretext, the plaintiffs confuse (the employer's) burden with their own burden. An employer's burden is a burden of production (not the burden of proof).
- Plaintiffs cite Wilson v. AM General Corp., 167 F.3d 1114, 1116, 1121 (7<sup>th</sup> Cir. 1999) for the proposition that failure to provide a reason for a termination constitutes evidence of pretext. *Wilson*, however, involved an employee fired after 13 years of service, as opposed to a probationary employee. Moreover, unlike the plaintiffs in this case, *Wilson* had passed exemplary performance evaluations. Thus, *Wilson* is distinguishable.

**Additional comments:**

5. Ashman v. Bd. Of Regents Of The Univ. Of Wis. System, 438 F.3d 781 (7<sup>th</sup> Cir. 2006)

**Plaintiff argues:** University retaliated against her for speaking out in violation of her First Amendment rights.

**Defendant's response:** Employee's First Amendment protected speech was not a motivating factor or did not play a substantial part in her rejection and termination.

**District Court decision:** Judge Shabaz of the Western District of Wisconsin granted the University's motion for summary judgment.

**7<sup>th</sup> Circuit decision:** Reversed and remanded for trial as the record was replete with incidents that were open to interpretation and required factual finding.

**Quotable quotes:**

- We are particularly leery of resolving issues involving a state of mind on summary judgment. Alexander v. Wis. Dep't. Of Health & Family Servs., 263 F.3<sup>rd</sup> 673 (7<sup>th</sup> Cir. 2001).
- Summary judgment is notoriously inappropriate for determination of claims in which issues of intent, good faith and other subjective feelings play dominant roles. McGreal v. Ostrov, 368 F.3<sup>rd</sup> 657, 677 (7<sup>th</sup> Cir. 2004).
- Significantly, there are the observations of *Ashman's* co-workers that (a decision maker) was very angry with her.
- After setting out to create the position, why did they change course? Are the reasons they give convincing? The record contains no indication that *Ashman* was incompetent and, in fact, she continues to be employed by the University... There are too many unanswered questions about motivation and intent.

**Additional comments:**

6. Mattenson v. Baxter Healthcare Corp., 438 F.3d 763 (7<sup>th</sup> Cir. 2006)

**Plaintiff argues:** *Mattenson*, a patent lawyer, age 51, was fired in 2001 having worked for Baxter for 14 years. He was fired 10 days before his early retirement benefits vested and was replaced by a much younger man at a higher salary. He asserted that he was meeting expectations based upon years of meets expectations performance reviews and asserted that the supervisors who pretended his termination was voluntary were unworthy of belief.

**Defendant's response:** *Mattenson* had quit but there was a history of performance failures that would have justified firing him.

**District Court decision:** Judge Darrah, Northern District of Illinois, granted judgment on jury verdict in favor of plaintiff and doubled verdict as willful violation of ADEA. Judge Darrah refused to award front pay.

**7<sup>th</sup> Circuit decision:** Judgment was reversed and remanded for retrial on the issue of liability. Refusal to award front pay was affirmed.

**Quotable quotes:**

- The judge on his own initiative gave a *McDonnell-Douglas* instruction despite tireless repetition by Appellate Courts that the burden-shifting formula of that case is not intended for the guidance of jurors; it is intended for the guidance of the judge when asked to resolve a case on summary judgment.
- A related error was to instruct the jury that it “must determine whether or not *Mattenson’s* determination is legitimate or only a pretext for age discrimination,” the implication being that proof of pretext compels, rather than merely permits, an inference of discriminatory intent.
- One of the three fired employees testified that he was fired on the verge of being entitled to a full pension, which is what happened to *Mattenson*. And in this day and age, for executives at the vice-presidential level of a major business enterprise to be talking openly about the desirability of getting rid of old employees is at least some evidence of the discriminatory workplace culture of which we spoke... Testimony based on the personal knowledge of the testifying employees can provide a basis for an inference that discriminatory attitudes permeate a firm’s employment policies and practices.
- Language in some judicial opinions suggest that prejudicial remarks are always to be excluded unless they are made by someone who had an input into the decision to terminate (or take other challenged adverse employment action against) the plaintiff... This language should not be taken literally, however. Hunter v. Allis-Chalmers Corp., 797 F.2d 1417, 1423 (7<sup>th</sup> Cir. 1986). The admissibility of “stray remarks” as to cases call them, is governed by Rule 403 of the Evidence Rules, which establishes a standard rather than a rule-and a standard that tilts in favor of admissibility; the probative value of the evidence must not merely be outweighed, it must be substantially outweighed, by its negative consequences, to be excludable. And that will depend on context-the circumstances in which the remarks were made, such as the number of similar remarks, when they were made, and by whom and to who they were made.

**Additional comments:**

2003) 7. Appelbaum v. Milwaukee Metro. Sewerage Dist., 340 F. 3<sup>rd</sup> 573 (7<sup>th</sup> Cir.

**Plaintiff argues:** Employee alleged age discrimination in her termination.

**Defendant response:** Breach of confidentiality by plaintiff warranted termination.

**District Court decision:** Judge Curran, Eastern District of Wisconsin, entered judgment on jury verdict.

**7<sup>th</sup> Circuit decision:** Judgment for Plaintiff affirmed.

**Quotable quotes:**

- At trial, not only did MMSD abandon their prior charge of poor work performance, a supervisor stated it played “zero role” in *Applebaum’s* termination. One can reasonably infer pretext from an employer’s shifting or inconsistent explanations for the challenged employment decision. Zaccagnini v. Chas. Levy Circulating Co., 338 F. 3<sup>rd</sup> 672 (7<sup>th</sup> Cir. 2003); Schuster v. Lucent Techs., Inc., 327 F.3d 569, 577 (7<sup>th</sup> Cir. 2003).
- The fact that MMSD had chosen to lay off someone on the verge of retirement eligibility rather than somewhat substantially younger and so evidently less qualified supports the inference that its decision making (at least as to *Applebaum*) was tainted by considerations of age, and along with other circumstances supports the inference that she was later discharged based on her age.
- The jury could have inferred pretext from the disparate way in which (the manager) had disciplined *Applebaum* as compared to (another younger employee). Disparate discipline of an employee who is situated similarly to plaintiff but is outside of the protected class may support an inference of age discrimination. Radue v. Kimberly-Clark Corp., 219 F. 3<sup>rd</sup> 612, 617-18 (7<sup>th</sup> Cir. 2000). Such a showing normally entails establishing that the two employees dealt with the same supervisor, were subject to the same standards, and had engaged in similar conduct without such differentiating or mitigating circumstances as would distinguish their conduct or the employer’s treatment of them. Snipes v. Illinois Dep’t. of Corrections, 291 F. 3<sup>rd</sup> 460, 463 (7<sup>th</sup> Cir. 2002).

**Additional comments:**

8. Loughman v. Malnati Org., Inc., 395 F.3d 404 (7<sup>th</sup> Cir. 2005)

**Plaintiff argued:** sexual harassment arising primarily out of three physical confrontations at a Lou Malnati’s restaurant from the cooking staff.

**Defendant’s response:** The company had an effective sexual harassment policy in place and made reasonable efforts to prevent future occurrences.

**District Court decision:** Judge Leinenweber granted summary judgment in favor of defendant finding that “Malnati’s not only had a sexual harassment policy in place but had an effective one.”

**7<sup>th</sup> Circuit decision:** Reversed and remanded.

**Quotable quotes:**

- “When it comes to remedying a bad situation, greater vigor is necessary when the harassment is physically assaultive”. (The manager) testified that she talked to the kitchen workers between 10 and 20 times about how to treat female employees, often in response to complaints from the female employees about inappropriate comments to them. While a reasonable jury could view such diligence as evidence of Malnati’s commitment to preventing harassment, it might also think the frequency of the discussions suggests that a different approach was needed. A jury could determine that, at some point, the management at Malnati’s needed to stop merely issuing warnings and start taking disciplinary action against the offending employees.”
- (The manager’s) comments to Loughman suggesting that the harassment was inevitable because it is the “culture” of Hispanic workers do not help the restaurant’s case, either.
- While Malnati’s sexual harassment policy allowed employees to report incidents to upper management, a reasonable jury could find that Loughman took adequate steps by reporting the incidents to her supervisors.

**Additional comments:**

9. Washington v. Illinois Department of Revenue, 420 F.3<sup>rd</sup> 658 (7<sup>th</sup> Cir. 2005)

**Plaintiff argued:** I was moved to a “9 to 5” schedule in retaliation for my prior sex discrimination charge.

**Defendant’s response:** Plaintiff was not subjected to “adverse employment action”.

**Trial Court decision:** Magistrate Judge Cudmore of the Central District of Illinois granted defendant's motion for summary judgment because a change of work hours, while salary and duties remain the same, is not an "adverse employment action".

**Quotable quotes:**

- An employer's action is not material under Section 2000(e)-3(a) if it would not have dissuaded a reasonable worker from making or supporting a charge of discrimination. By and large a reassignment that does not effect pay or promotion opportunities lacks as potential to dissuade an thus is not actionable. But "by and large" differs from "never".
- Catbert, the evil director of human resources in the comic strip *Dilbert*, delights in pouncing on employees idiosyncratic vulnerabilities. Perverse cleverness that is funny when limited to newsprint readily could be seen as discrimination when used to discomfort real people.
- What the Department effectively did, was assign her a new supervisor and change her hours. Again, this would not be materially adverse for a normal employee-but Washington was *not* a normal employee, and Catbert knew it, she has a vulnerability: her son's medical condition. Working "9 to 5" was a materially adverse change for her, even though it would not have been for 99% of the staff.
- At this stage of the litigation a court must indulge all reasonable inferences in Washington's favor. A jury could find that the Department set out to exploit a known vulnerability and did so in a way that caused a significant (and hence an actionable) loss.

**Additional comments:**

**ONE HITTERS AND LINE DRIVES**

- It may be a violation of the Age Discrimination In Employment Act to replace an older worker with a younger one for the purpose related to age, such as eliminating a worker's pension. Alzona v. Mid-States Corp. Fed., 1995 U.S. Dist. Lexus 3848 (Judge Castillo, 1995).
- The task of disambiguating ambiguous utterances is for trial, not for summary judgment. Huff v. Uarco, Inc., 122 F. 3<sup>rd</sup> 374 (7<sup>th</sup> Cir. 1997).
- To show pretext in reduction in force (RIF) case, employee must establish that improper motive tipped balance in favor of discharge or that employer did not

honestly believe in reasons it gave for firing employee. Schuster v. Lucent Technologies, Inc., 327 F. 3<sup>rd</sup> 569 (7<sup>th</sup> Cir. 2003).

- In evaluating Title VII discrimination claim, court does not have to take an employer at its word, and if good reason and common sense belie the employer's assessment of employee's conduct, then pretext may have been shown. Peters v. Renaissance Hotel Operating Co., 307 F. 3<sup>rd</sup> 535 (7<sup>th</sup> Cir. 2002).
- Treating one person's application more favorably than another can in some contexts support a finding that the employer's proffered reason is a pretext for discrimination. Ahuja v. Danzig, 14 Fed. Appx. 653 (7<sup>th</sup> Cir. 2001).
- Merely showing that the employer is or has a bad manager does not demonstrate pretext for discrimination. Liner v. Dontron, Inc., 9 Fed. Appx. 523 (7<sup>th</sup> Cir. 2001), cert. denied, 534 U.S. 1021.
- Evidence supported race discrimination when testimony by supervisor and employee suggested that supervisor was uncomfortable with employee's interaction in predominately white community and that it would be a problem if her performed his former tasks on a white college campus. Collins v. Kibort, 143 F. 3<sup>rd</sup> 331 (7<sup>th</sup> Cir. 1998).
- Although discrimination law does not ban use of subjective evaluation criteria, use of subjective criteria may leave it more vulnerable to finding of discrimination, when plaintiff can point to some objective evidence indicating that subjective evaluation is a mask for discrimination. Sattar v. Motorola, Inc., 138 F. 3<sup>rd</sup> 1164 (7<sup>th</sup> Cir. 1998).
- Under *McDonnell-Douglas* burden shifting scheme, firing employee for failure to meet expectations that employer never actually had is firing for a phony reason. Coco v. Elmwood Care, Inc., 128 F. 3<sup>rd</sup> 1177 (7<sup>th</sup> Cir. 1997).
- In a reduction in force (RIF) case, a plaintiff can show pretext either by establishing that the riff itself was pretextual or by showing that the employer's reason for including her in the riff were pretextual. Riley v. UOP LLC, 244 F. Supp.2d 928 (N.D. Ill. 2003).
- Where an employer has proffered more than one reason for a challenged action, the employee must address all suggested reasons. Hudson v. Chicago Transit Authority, 375 F.3d 552 (7<sup>th</sup> Cir. 2004).
- To prove pretext for discrimination, an employee may show:
  1. The proffered reasons are factually baseless,
  2. The proffered reasons were not the actual motivation for the discharge or
  3. The proffered reasons were insufficient to motivate the discharge.Gusewelle v. City of Wood River, 374 F.3d 569 (7<sup>th</sup> Cir. 2004).

- Employees are similarly situated so as to establish discriminatory discipline. If both deal with the same supervisor, are subject to the same workplace rules and engage in similar conduct. Richardson v. Chicago Transit Authority, 328 F.Supp. 2d 870 (N.D. Ill. 2004).
- The most common type of circumstantial evidence is “ambiguous statements, suspicious timing, discrimination against other employees and other pieces of evidence not conclusive in itself but together composing a convincing mosaic. Troupe v. May Dept. Stores Co., 20 F. 3<sup>rd</sup> 734, 736 (7<sup>th</sup> Cir. 1994). The second type of circumstantial evidence is evidence that similarly situated employees were treated better. The third type is evidence showing that the employer’s stated reason is merely a pretext. Each type of evidence can be sufficient by itself to defeat summary judgment, or the types can be used in combination, as long as the evidence “points directly to a discriminatory reason for employer’s action”. Adams v. Walmart Stores, Inc., 324 F. 3<sup>rd</sup> 935, 939 (7<sup>th</sup> Cir. 2003). When material facts regarding the alleged similarity are genuinely disputed, the court cannot usurp the jury’s function by making the determination of similarity or non-similarity on its own. McDonald v. Village of Winnetka, 371 F.2d 992, 1002 (7<sup>th</sup> Cir. 2004). The law does not impose a requirement that the comparable employee be a mirror image of the plaintiff in order for evidence about him to be admissible, rather the comparable worker must have committed similar, but not necessarily identical, infractions. Ezelle v. Potter, 400 F. 3<sup>rd</sup> 1041, 1049-50 (7<sup>th</sup> Cir. 2005).
- Earlier versions of the defendant’s answer to the complaint are admissible under FRE 801(d) as they are relevant because an employer’s shifting reasons for a challenged employment action constitutes evidence that the reasons it relied on at the time of termination, or at trial, is pretextual. Skelton v. Amer. Intercontinental Univ. Online, 03C9009-Judge Kennelly; (11/21/2005); see Zaccagnini v. Chas. Levy Circulating Co., 338 F. 3<sup>rd</sup> 672, 676-77 (7<sup>th</sup> Cir. 2003).

The fact that LLCC did not follow its own internal procedures with respect to the hiring process for the position also points to a discriminatory motivation. At summary judgment the plaintiff is not required to establish pretext *and* provide evidence of a discriminatory motive by the defendant... This level of proof is only required when a plaintiff’s case is submitted to a finder of fact. Mills v. Healthcare Serve Corp., 171 F. 3<sup>rd</sup> 450, 458 (7<sup>th</sup> Cir. 1999). Rudin v. Lincoln Land Community College, 420 F. 3<sup>rd</sup> 712 (7<sup>th</sup> Cir. 2005). In another words, if there is a question of fact as to the believability of an employer’s purported reasons for an employment decision then, even if the evidence presented by the plaintiff does not compel the conclusion that her employer discriminated against her when making his decision, at a bear minimum it suffices to defeat the employer’s summary judgment

- motion. Courtney v. Bio Sound, Inc., 42 F. 3<sup>rd</sup> 414, 423 (7<sup>th</sup> Cir. 1994).