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CLERK OF THE FIRST COURT
SOUTHERN DISTRICT OF IA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

DANIEL DEAN BETTS, Plaintiff, vs. STATE OF IOWA DEPARTMENT OF NATURAL RESOURCES, Defendant.	No. 4-01-CV-20009 **RULING ON MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Court on Defendant's Motion for Summary Judgment, (Clerk's No. 30), filed September 27, 2001. Plaintiff, Daniel Dean Betts, asserts claims for sexual discrimination under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e – 2000e-17 (1994 & West Supp. 1999), and under the Iowa Civil Rights Act, Iowa Code chapter 216 (1999), and for violation of the Equal Pay Act of 1963, 29 U.S.C. § 206(d). The parties consented to proceed before a United States Magistrate Judge under 28 U.S.C. § 636(c).

Defendant, the State of Iowa Department of Natural Resources (DNR), moves for summary judgment on the basis that Betts has not made a showing sufficient to establish his claims of sexual discrimination and violation of the Equal Pay Act. Defendant asserts that no genuine issues of material fact remain in dispute, and it is entitled to judgment as a matter of law.

Betts filed a Response on October 9, 2001, (Clerk's Nos. 34 and 35), and DNR filed a Reply on October 15, 2001, (Clerk's No. 39). This matter is fully submitted.

I. STANDARD FOR SUMMARY JUDGMENT

A court shall grant a motion for summary judgment only if there is no genuine issue of material fact in dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A court must consider the facts and

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the inferences to be drawn from them in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Kindred v. Northome/Indus. School Dist. No 363*, 154 F.3d 801, 803 (8th Cir. 1998), *cert. denied,* 525 U.S. 1109 (1999).

To preclude the entry of summary judgment, the nonmovant must make a showing sufficient to establish the existence of every element essential to his case, and on which he has the burden of proof at trial. *Celotex*, 477 U.S. at 322-23; *Reed v. ULS Corp.*, 178 F.3d 988, 989 (8th Cir. 1999). When a motion is made and supported as required in Federal Rule of Civil Procedure 56(a), the adverse party may not rest upon the mere allegations or denials in his pleadings, but must set forth specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *Celotex*, 477 U.S. at 324. At the summary judgment stage, the court may not make determinations about the credibility of witnesses or the weight of the evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

II. MATERIAL FACTS NOT IN DISPUTE

Unless otherwise indicated, the following facts are either undisputed or viewed in the light most favorable to Betts, the non-moving party.

DNR's Air Quality Bureau employs environmental specialists, whose duties, depending on which section they work in, include conducting inspections to determine compliance with asbestos regulations, investigating possible violations of state and federal air quality regulations, and overseeing air monitoring.

All jobs at the Bureau have a specified pay grade and salary range consisting of a minimum base salary and a maximum salary. Pete Hamlin, the Bureau's chief, stated in his affidavit that generally, newly hired employees earn the base salary for their position. (Hamlin Aff. at ¶ 18.) New employees may receive a salary higher than the base if they have education or work experience directly related to their job duties. The decision to pay a starting salary higher than the base salary is made on a case-by-case basis, and depends mainly on the fit between the job's duties and the applicant's educational and professional experience. *Id.* at ¶ 19. The Bureau has no established

formula for determining when a new employee will receive a starting salary above the base salary, or, if a new employee receives a higher salary, for determining the amount of increase above base.

The procedure for obtaining a higher-than-base salary for a new employee begins when the supervisor in charge of the section in which the applicant would work recommends to Hamlin that the applicant be hired at a wage above the base salary. If Hamlin agrees, he recommends to Michael Valde, administrator of the Environmental Protection Division, that the new employee receive the higher salary. Hamlin states that Valde makes the final decision regarding the employee's wage at the time of hire.

On September 18, 1998, the Bureau hired a male environmental specialist at a bi-weekly starting salary of $1,327.20, which exceeded the bi-weekly base salary ($1,078.40) by approximately 23.1 per cent. (Def.'s Ex. D at 2, Ex. I.) Catharine Fitzsimmons, supervisor of the Environmental Program Section, was the new employee's supervisor.

In a letter dated November 12, 1998, Allan Stokes, who was Valde's predecessor as administrator of the Environmental Protection Division, offered Lori Hanson a job as an environmental specialist II in the Compliance Assistance Section, with a starting salary of $1078.40 biweekly, the base salary for that job. (Def.'s Ex. E.) Stokes' letter described the job's duties as follows:

> Under the direction of a lead worker, serve as technical staff person responsible for evaluating and inputting facility data, and conducting air dispersion modeling of air emission sources. Modeling projects will include evaluation of major source modifications, PSD sources, Title V sources, and evaluation of single and multiple source contributions to violations of the National Ambient Air Quality Standards.
>
> Oversee intern projects including development of air increment consumption database and special research projects.
>
> Serve as section computer network representative. Duties will include representing the Compliance Assistance Section at Bureau and Department computer network meetings. Occasionally assisting section and bureau staff in computer application troubleshooting.

Def.'s Ex. E.

A 2001 description[1] of the same job states that 60 per cent of the environmental specialist's time would be spent as follows:

> Review and conduct computer generated air dispersion modeling in review of air concentration permit applications and operating permits.
>
> a. Ensure the input parameters are correct.
> b. Evaluate the output parameters to ensure proper procedures are followed.
> c. Determine if the results are within standards.
> d. Propose alternative modeling scenarios for situations where results fail to meet standards.
> e. Compile all dispersion modeling information into memo form for use by engineering staff.
> f. Organize and file dispersion modeling project documentation.

Def.'s Ex. C. According to the job description, the environmental specialist would spend another 25 per cent of the time preparing and conducting facility modeling of major sources or conducting special modeling projects, and 15 per cent of the time divided equally among the following: assisting in developing and drafting policies and internal procedures for the conduct of air dispersion modeling; completing self-instructional training materials to become familiar with all aspects of air pollution control, with special emphasis on dispersion modeling techniques, and related topics; and responding to written or telephone requests for information or technical assistance. *Id.*

Hamlin states the Bureau uses the technique of computer modeling to determine whether, or to what extent, an air pollution source will affect the surrounding environment and human population. (Hamlin Aff. at ¶ 23.) The environmental specialist enters in a computer the data about an air pollution source and its surrounding environment. The computer then produces a model showing the anticipated impact of the air pollution on the environment and human population. Hamlin estimates that new employees untrained in computer modeling usually require three to six months of on-the-job training and experience before they can proficiently use the computer-modeling program.

On November 20, 1998, Hanson responded to Valde's November 12, 1998, offer in a letter stating she would accept on condition that she receive a biweekly salary of $1,348, which fell in the

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[1] The Court assumes the 2001 job description is substantially similar to the 1999 job description.

middle of the pay range for the environmental specialist II job.[2] As a basis for her salary request, Hanson cited her educational background and work experience. Hanson's credentials included a masters degree in geology and her experience in developing data sets and analyzing environmental phenomenon, including collecting and evaluating data, and working with computer-modeling of garnet growth. Fitzsimmons wrote a memorandum to Stokes and Hamlin recommending hiring Hanson at the higher starting salary, because "she is well trained to quickly begin the job of inputting and analyzing air dispersion modeling data." (Def.'s Ex. G.)

On November 27, 1998, the Bureau hired a male environmental specialist. His bi-weekly starting salary, $1,348, exceeded the bi-weekly base salary ($1,078.40) by 25 per cent. Fitzsimmons was the new employee's supervisor.

On December 1, 1998, DNR accepted Hanson's counter offer based on her qualifications. Her starting biweekly salary of $1,348, or approximately $36,800 annually, exceeded the base salary by 25 per cent.

In July 1999, Christine Spackman, supervisor of the Operating Permits Section of the Bureau, offered to hire Betts to work as an environmental specialist II in her section, starting at the base salary of $1,132 biweekly, or approximately $29,452.80 annually. Betts knew the salary range was $29,132 to approximately $45,000. Betts, who has a master's degree, testified in his deposition that he asked Spackman for a starting salary of "$40,000 and above" based on his "experience in working in Superfund contamination sites . . . and for having a tremendous background in geophysics with the interaction of state and federal governments, local governments . . . as well as the educational experience, well above the qualifications for the position." (Betts Aff. at 23.) Betts admits that when he applied, he did not have any prior experience with EPA air quality regulations or with Title V permits, including writing such permits. *Id.* at 39-40. Betts contends that in response to his request to start at $40,000, Spackman said as follows:

That's impossible. It's not even on the table. We're not even going to discuss it. It

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[2] Betts alleges that Hanson later told him Fitzsimmons, who would be Hanson's supervisor if she were hired, prepared the letter for Hanson's signature, even though Hanson had not asked for a higher starting salary. (Def.'s Ex. F.)

> would take a legislative act to redefine the pay scale for the entire state employment system for you to have that salary. . . . The starting wage is at the lower end of the scale. We only see your bachelor of science degree. That's the only degree we desire for this position, and you either accept it now, or it goes away.

Betts Aff. at 38. Betts accepted the offer in July 1999.[3]

A 1997 job description states that an environmental specialist II in the Operating Permits Section would spend 70 per cent of his or her time reviewing Title V operating-permit applications to insure they comply with DNR air quality rules and policy, and recommend either issuance or denial of the permits; 20 per cent of the time conducting initial completeness reviews of operating permit applications; and 10 per cent of the time responding to written or telephone requests for information or technical assistance. (Def.'s Ex. B.)

In describing his job and Hanson's, Betts stated that he first identifies and defines companies' pollution emissions and performs a quantitative analysis of the emissions. Hanson then enters the data into a computer model, which includes information on topographic changes and meteorological changes, to analyze how the pollution could be expected to disperse in and affect the atmosphere. (Betts Dep. at 47-48.) Betts uses Hanson's information and his own to determine whether the companies should get a pollution permit. In comparing Hanson's qualifications to his own, Betts stated that Hanson had less math and science education, including physics and chemistry, than he did. He also stated that he had more work experience than did Hanson as a research scientist; he had worked in geophysics and gas engineering. Betts contends he does not know how Hanson's qualifications fit the duties of her new job. Betts does not believe Hanson was less qualified for the job for which she was hired, than he was qualified for the job for which DNR hired him. (Betts Dep. at 55.) Betts testified that he believed he and Hanson were equally qualified to working in the general environmental specialist position, "and I think that that statement may not reflect any more than my subjective opinion." *Id.* On November 4, 1999, Betts and Hanson attended a new-employee orientation session. One of the speakers was Larry Wilson, who was DNR's acting director. Wilson spoke on a variety of subjects, including the company's affirmative-

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[3] Betts' current supervisor is Doug Campbell.

action program. DNR's employee handbook describes the affirmative-action program in part as follows:

> The hiring process must be fair, equitable, and free from biases.
>
> In several DNR job classes, there are substantially fewer minorities, females or persons with disabilities as compared to similar occupations within Iowa's general labor force. In AA [affirmative action] program terms, these job classes are "underutilized." When filling vacancies in these classes, the DNR takes *affirmative action* to locate, recruit and encourage protected class applicants.
>
> The DNR strives to hire the best qualified applicants and to meet AA program goals. Gender-balanced interview teams are used to interview candidates. All applicants are evaluated and ranked in terms of their ability to accomplish the responsibilities assigned to the particular job vacancy.
>
> If there is a significant difference in the ranking, the top applicant, regardless of status, is offered the position. If the top ranked applicants receive similar rankings from the interview team, and if the particular job class is underutilized for protected classes, the protected class applicant is offered the position. The DNR places a high priority on hiring the best qualified candidate.

Def.'s Ex. A (emphasis in original). The affirmative-action program does not mention salaries.

Betts asserts that at the new-employee orientation session, Wilson scowled at the new employees and in an angry tone said,

> Look around you. There's nobody here of color. There's some women, but this is going to change. You're going to see women and minorities promoted, paid, and trained for positions that you will no longer have access to. You white guys are no longer going to be given access to the top rungs of the ladder. You're going to see women and minorities promoted and paid and put in positions higher and around you. We will go out of state and hire them if there aren't any available here, regardless of your qualifications.

Betts Dep. at 14-15. Betts alleges that after an employee, Jeff Farbencore, stood up and said, "That's illegal. That's reverse discrimination," Wilson said, "You better stifle that. You better not let . . . Director Paul Johnson hear you say that, or it will be a quick way out the door." *Id.* at 15.

Betts states that later, Hanson told him she had been hired at a salary at least $8,000 higher than his own[4]; she did not have to ask for the higher salary; and she was given the higher starting

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[4] In his Amended Complaint, Betts alleges Hanson told him her starting salary was $7,500 higher than his starting salary.

salary because she had a graduate degree. (Betts Dep. at 18, 45-46.) Betts did not ask any DNR supervisor why Hanson had a higher starting salary than he did.

On November 26, 1999, Spackman hired a female employee, identified by DNR as "I," as an environmental specialist II to review operating permit applications along with Betts. The new employee received a starting bi-weekly salary of $1,132.80, the same salary Betts got as a new employee. The record does not indicate the extent of "I's" education and other job qualifications. The chart below summarizes the hiring salaries for "I" and other environmental specialists hired from July 1999 through June 23, 2000.

Name	Gender	Date Hired	Biweekly Base Salary	Biweekly Starting Salary	% Salary Above Base	Supervisor
Betts	M	07-09-99	$1,132.80	$1,132.80	0	Spackman
D	M	07-23-99	$1,132.80	$1,132.80	0	Spackman
E	M	08-06-99	$1,132.80	$1,400.00	25.0%	Fitzsimmons
F	M	08-20-99	$1,132.80	$1,400.00	25.0%	Fitzsimmons
G	M	09-03-99	$1,132.80	$1,340.00	18.3%	Phelps
H	M	10-29-99	$1,132.80	$1,132.80	0	Spackman
I	F	11-26-99	$1,132.80	$1,132.80	0	Spackman
J	M	03-31-00	$1,132.80	$1,416.00	25.0%	Fitzsimmons
K	M	06-09-00	$1,132.80	$1,189.60	5.0%	Campbell
L	M	06-23-00	$1,132.80	$1,132.80	0	Campbell

See Def.'s Ex. D at 2, Ex. I at 1-2.

Betts states that sometime between December 1999 and February 2000, he went to Hamlin's office and discussed with Hamlin his experience with remote sensing, and his hopes for developing that part of his training and getting credit for it. (Betts Dep. at 33-34.) Betts testified he did not ask for a raise, and Hamlin told Betts he was not going to give him a raise. *Id.* at 34.

Betts states that approximately 40 environmental specialists work in the air quality bureau, and that the ratio of men to women is nearly equal, with a few more men than women working in

the bureau. Betts never told a supervisor that he believed he was being discriminated against in terms of salary.

III. ANALYSIS

Betts alleges that he was denied access to the same rate of starting pay as Hanson because of sex discrimination.

Title VII and the ICRA make it unlawful for an employer to discriminate against any applicant for employment or any employee with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a); Iowa Code § 216.6. Iowa courts apply Title VII analysis to discrimination claims brought under the ICRA. *See Madison v. IBP,* Inc., 257 F.3d 780, 789 (8th Cir. 2001), *petition for cert. filed*, 70 U.S.L.W. 3445 (U.S. Dec. 19, 2001) (No. 01-985); *Lynch v. City of Des Moines*, 454 N.W.2d 827, 833 (Iowa 1990). When a plaintiff alleges that his employer provides "unequal pay for equal work on the basis of sex, the standards are the same whether the plaintiff proceeds under Title VII or the Equal Pay Act." *Simmons v. New Public School Dist. No. Eight*, 251 F.3d 1210, 1215 (8th Cir. 2001) (quoting *Kindred*, 154 F.3d at 803); *Sowell v. Alumina Ceramics, Inc.*, 251 F.3d 678, 683 (8th Cir. 2001); *Hutchins v. International Bhd. of Teamsters*, 177 F.3d 1076, 1080 (8th Cir. 1999).

To prevail on his equal-pay argument, Betts must show DNR pays different wages to employees of opposite sexes "for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions." *Sowell*, 251 F.3d at 683 (quoting *Corning Glass Works v. Brennan*, 417 U.S. 188, 195 (1974)); *Hutchins*, 177 F.3d at 1080. Once the plaintiff proves a prima facie case, the burden shifts to the employer to come forward with a legitimate nondiscriminatory factor on which it based the wages paid. *Sowell*, 251 F.3d at 683. A differential based on education or experience is recognized as a factor other than sex. *Hutchins*, 177 F.3d at 1081.

Because no direct evidence indicates DNR paid Betts less than Hanson because of his gender, Betts' claim is governed by the three-stage burden-shifting analysis set forth in *McDonnell*

Douglas v. Green, 411 U.S. 792 (1973). *See Simmons*, 251 F.3d at 1217; *Kindred*, 154 F.3d at 803-04. Under *McDonnell Douglas*, "the plaintiff bears the burden of establishing a prima facie case of discrimination, which has the effect of creating a legal presumption of unlawful discrimination." *Ghane v. West*, 148 F.3d 979, 981 (8th Cir. 1998). If the plaintiff establishes a prima facie case, then the defendant bears the burden of offering a legitimate nondiscriminatory reason for the adverse employment action. *Id.* If the defendant meets this burden, the presumption created by the prima facie case is rebutted, and the burden then shifts back to the plaintiff to show the employer's nondiscriminatory reason for the employment action was a pretext for the alleged unlawful discrimination. *Id.*; *accord Erickson v. Farmland Indus., Inc.*, 271 F.3d 718, 726 (8th Cir. 2001) (stating plaintiff must present sufficient evidence to (1) raise a question of fact as to whether defendant's proffered reason was pretextual "*and* (2) create a reasonable inference that age was a determinative factor in the decision to demote him") (emphasis in original); *Cronquist v. City of Minneapolis*, 237 F.3d 920, 924 (8th Cir. 2001).

To establish his prima facie claim of disparate treatment, Betts must show that he (1) is a member of a protected group; (2) was qualified to perform the job; (3) suffered an adverse employment action; and (4) was treated differently than similarly situated persons of the opposite sex. *See LaCroix v. Sears, Roebuck, and Co.*, 240 F.3d 688, 693 (8th Cir. 2001); *McCullough v. Real Foods, Inc.*, 140 F.3d 1123, 1126 (8th Cir. 1998) (Title VII claim); *Ramirez v. Iowa Dep't of Transp.*, 546 N.W.2d 629, 632 (Iowa Ct. App. 1996) (ICRA claim).

Betts is asserting a reverse-discrimination claim. As part of his prima facie case, therefore, he must show "that background circumstances support the suspicion that the defendant is that unusual employer who discriminates against the majority." *Duffy v. Wolle*, 123 F.3d 1026, 1036 (8th Cir. 1997), *cert. denied*, 523 U.S. 1137 (1998) (quoting *Murray v. Thistledown Racing Club, Inc.*, 770 F.2d 63, 67 (6th Cir. 1985)); *Mower v. Westfall*, 177 F. Supp. 2d 940, 947 (S.D. Iowa 2001). White males must offer other particularized evidence, apart from their race and sex, that suggests some reasons why an employer might discriminate against them. *Duffy*, 123 F.3d at 1036 (citing *Bishopp v. District of Columbia*, 788 F.2d 781, 786 (D.C. Cir. 1986)). If, however, a reverse-discrimination claimant cannot show the background circumstances necessary to trigger *McDonnell*

Douglas, that "does not inexorably mean that his employer has not intentionally discriminated" against him. *Id.* (applying *McDonnell Douglas* analysis to claim under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for reverse discrimination in employment). Under such circumstances, an employee who is the victim of intentional discrimination, and who "adduces sufficient evidence of that discrimination, should be permitted to proceed beyond the prima facie case stage of litigation." *Id.* (quoting *Notari v. Denver Water Dep't*, 971 F.2d 585, 590 (10th Cir. 1992)). To support the suspicion that DNR is the unusual employer who discriminates against the majority, Betts alleges that Wilson's remarks on November 4, 1999, reflected a general policy at DNR to discrimination against white males in employment decisions, and that Hamlin denied Betts access to consideration for a raise.

DNR contends it is entitled to summary judgment in that Betts has not made a showing sufficient to establish his prima facie claim of sexual discrimination or to show his employer's explanation for its actions was a pretext for unlawful discrimination.

The Court will assume, without deciding, that Betts has established his prima facie case of equal-pay discrimination. The burden shifts to DNR to proffer a legitimate, non-discriminatory justification for its acts. To satisfy this burden, DNR asserts that Betts received the base salary for his job classification, because he had no prior work experience or educational background directly relevant to reviewing operating-permit applications and writing permits. These articulated reasons constitute a facially non-discriminatory reason for DNR's employment decision. *See McCullough*, 140 F.3d at 1127.

The burden shifts to Betts to present evidence sufficient to create (1) a fact issue as to whether DNR's proffered reasons are mere pretext, and (2) a reasonable inference that the adverse employment decision was an act of intentional gender discrimination. *See id.* Betts' allegations of pretext are the same allegations he made to support his prima facie case: (1) DNR paid Hanson a starting salary higher than his, even though they both had a master's degree and he allegedly had more work experience relevant to the general classification of environmental specialist than she did; (2) Wilson's remarks on November 4, 1999, reflected a general policy at DNR to discrimination against white males in employment decisions; and (3) Hamlin denied Betts access to consideration

for a raise.

Concerning Betts' first allegation, Betts bears the burden of proving that he was similarly situated to the employee whose treatment he compares to his own. *Lowery v. Hazelwood Sch. District*, 244 F.3d 654, 659 (8th Cir. 2001) (Americans With Disabilities Act) (citing *Harvey v. Anheuser-Busch, Inc.*, 38 F.3d 968, 972 (8th Cir. 1994) (Title VII)).

Viewing the period from September 1998 to June 2000, Betts' starting salary matched that of one female environmental specialist's starting salary, and seven male environmental specialists received higher starting salaries than did Betts. Although Betts identified one female environmental specialist (Hanson) who had a higher starting salary than he did, the Eighth Circuit has cautioned that comparisons with specifically chosen employees should be "scrutinized closely" to determine their usefulness. *Hutchins*, 177 F.3d at 1081. Betts offers no rationale for the Court to focus only on the single female employee he identified and disregard the three male environmental specialists whose starting salaries were the same as his. *See id.* Furthermore, two different supervisors hired, and had the authority to recommend starting salaries for, Betts and Hanson. *See Lowery*, 244 F.3d at 659 (the question of whether employees are similarly situated takes into account, among other factors, the relevant decision-makers). Between September 1998 and March 2000, Fitzsimmons hired and supervised five males and one female (Hanson) as environmental specialists, all of whom received starting salaries between 23 and 25 percent above base. In the same period, Spackman hired and supervised three males (including Betts) and one female as environmental specialists, all with starting salaries no higher than base.

DNR states the difference in starting salaries is attributable to the fit between Betts' and Hanson's relevant experience and education and the duties of their respective jobs. The parties do not dispute that Betts' duties differed from Hanson's, that he did not perform computer modeling, and that Hanson did not review permit applications or write permits. Betts contests neither Hanson's qualifications nor the fit between those qualifications and Hanson's duties. Betts concedes he does not know how well Hanson's qualifications fit her new duties, including computer modeling.

Betts argues that he was at least as qualified as Hanson for the general job of environmental specialist. He does not deny, however, that within DNR, jobs held by environmental specialists had

differing duties calling for different qualifications and abilities. Betts does not contend he applied for Hanson's job, or any other environmental specialist job with duties in computer modeling.

Betts does not assert that experience and education are not legitimate, nondiscriminatory factors that can be considered in formulating pay decisions. *See Hutchins*, 177 F.3d at 1081. Betts admits that when he was hired, he did not have any prior experience with EPA air quality regulations or with Title V permits, including reviewing permit applications and writing permits. (Betts Aff. at 39-40.) Betts complains that his background in chemistry, mathematics, and physics, including analysis of the atmosphere, enabled him to be trained to perform his new job duties. This is not persuasive evidence of pretext, however, because even if Spackman and DNR were mistaken in evaluating Betts' qualifications, Betts does not show the evaluation was not honestly undertaken. *Mills v. Health Care Serv. Corp.*, 171 F.3d 450, 459 (8th Cir. 1999) (holding employer's legitimate, nondiscriminatory reasons for hiring female employee instead of male employee for assistant manager job, i.e., female's alleged superior qualifications, was not pretext for gender discrimination, when male employee failed to show employer did not honestly undertake evaluation). The only exception to this rule would be if the employer's evaluation was "so egregiously mistaken that it had no basis in fact," which is far from this case. *Id.*

Betts maintains that Spackman lied to him about the possibility that he could receive a starting salary higher than the base salary for his position, and she declined to consider his graduate degree and experience in deciding whether to recommend that he receive starting pay above the base. Betts' allegation that Spackman lied is mere speculation. Betts states that Spackman told him his bachelor of science degree was "the only degree we desire for this position." (Betts Aff. at 38.) This evidence belies Betts' argument that Spackman did not consider the applicability of his graduate degree. Betts asserts nothing more than conclusionary allegations, which are insufficient to create a genuine issue of fact to survive summary judgment. *Sowell*, 251 F.3d at 683-84.

Betts cannot show that Spackman's evaluation of the fit between his qualifications and his duties at DNR, and Fitzsimmons' appraisal of the fit between Hanson's qualifications and her duties at DNR, were anything other than the supervisors' honest opinions. Absent such a showing, and even if the evaluations were wrong, the Court does not sit as a "super-personnel department" with

authority to review these business decision. *Mills*, 171 F.3d at 459. Betts' criticism of the fairness or soundness of DNR's supervision or personnel decisions does not support a finding that gender motivated the adverse employment decision. An employer may make arbitrary, ridiculous, or irrational employment decisions as long as the decisions are nondiscriminatory, and discrimination claims do not authorize federal courts to engage in examination of the wisdom of an employer's judgment in personnel matters. *See McLaughlin v. Esselte Pendaflex Corp.*, 50 F.3d 507, 512 (8th Cir. 1995); *Smith v. Monsanto Chem. Co.*, 770 F.2d 719, 723 n.3 (8th Cir. 1985), *cert. denied*, 475 U.S. 1050 (1986). Title VII does not prohibit employment decisions based on such factors as job performance, erroneous evaluations, personality conflicts, or unsound business practices. *Rose-Masto, v. NME Hospitals, Inc.*, 133 F.3d 1104, 1109 (8th Cir. 1998) (citing *Hill v. St. Louis Univ.*, 123 F.3d 1114, 1120 (8th Cir. 1997)).

As evidence of pretext, Betts next asserts that Wilson's remarks on November 4, 1999, reflected a general policy at DNR to discriminate against white males in employment decisions. Betts alleges that during his talk concerning affirmative action, Wilson told employees, "You're going to see women and minorities promoted, paid, and trained for positions that you will no longer have access to. You white guys are no longer going to be given access to the top rungs of the ladder. You're going to see women and minorities promoted and paid and put in positions higher and around you. We will go out of state and hire them if there aren't any available here, regardless of your qualifications." (Betts Dep. at 14-15.)

"An employer's affirmative efforts to recruit minority and female applicants does not constitute discrimination." *Duffy*, 123 F.3d at 1039. Wilson's comments spoke of future, as opposed to past or current, recruitment and hiring decisions, and the comments came approximately 11 months after Hanson was hired, and four months after Betts was hired. Wilson's statement allegedly concerned jobs at "the top rungs of the ladder," which Betts and other white males would no longer have access to. Betts' claim does not concern a top-level job, or a job to which he did not have access. Under these circumstances, and considering the comparison between starting salaries for female and male environmental specialists discussed above, the Court holds that Wilson's statement, taken in the light most favorable to Betts, does not support a reasonable inference that

the hiring-salary decisions concerning Hanson and Betts were influenced by a DNR policy to discriminate against white males in employment.

Betts next asserts as evidence of pretext that Hamlin, who approved requests for higher-than-base starting salaries, denied Betts access to consideration for a raise sometime between December 1999 and February 2000. But Betts admits that he did not ask Hamlin for a raise. Furthermore, Betts does not offer evidence showing his qualifications for a raise. No evidence indicates a nexus between Betts' starting salary and the decision not to give him a raise five or six months later. Betts' evidence is insufficient to establish pretext for unlawful reverse discrimination.

Viewing the summary judgment record in the light most favorable to Betts, the Court is not persuaded that Betts' evidence of pretext and improper motivation was sufficiently substantial to create a genuine issue of material fact capable of defeating summary judgment. Because DNR met its burden of proof that the differential in the starting salaries paid to Betts and Hanson was based on factors other than gender, DNR is entitled to judgment as a matter of law.[5]

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[5] In his Response to Defendant's Motion for Summary Judgment (Clerk's No. 34), Betts briefly discusses the constitutionality of affirmative action plans. He cites *Maitland v. University of Minnesota*, 155 F.3d 1013 (8th Cir. 1998) and three cases from other Courts of Appeals. Because DNR hired Betts, because his claim is for unequal pay, and because *Maitland* addresses an affirmative-action salary plan, the Court considers Betts' argument as challenging an alleged affirmative-action salary plan. The Court notes that DNR's written affirmative-action plan, as stated in the employee handbook, sets forth no affirmative-action salary plan. The Court will assume, however, for purposes of this Ruling, that the DNR salary schedule is part of an affirmative-action salary plan. The *Maitland* court held the disparity between the parties' statistical analyses of men's and women's salaries created a genuine issue of material fact, precluding summary judgment, on the question of whether there was a manifest or conspicuous imbalance in faculty salaries based on gender. *Id.* at 1018 (declining to consider remaining steps of analyses: whether salary plan unnecessarily trammeled rights of male faculty, and whether plan was designed to attain or maintain a balance (Title VII), or whether plan was narrowly tailored to meet remedial objective (equal protection)). Here, the parties agree on the statistical facts concerning the starting salaries for men and women environmental specialists. Betts offers no statistical analysis, or other evidence, to raise a genuine issue material fact on the question of whether there was a manifest or conspicuous imbalance in starting salaries based on gender, as discussed above. Betts has raised insufficient evidence to support a finding that DNR's salary plan unnecessarily trammeled the rights of male employees. Betts has not offered any evidence concerning the terms of the alleged salary plan; he has shown no evidence that the plan was

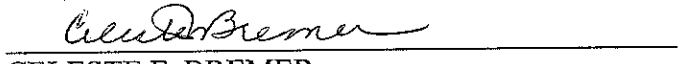
(continued...)

IV. CONCLUSION

Concerning Defendant's Motion for Summary Judgment, (Clerk's No. 30), the Court holds that Plaintiff has not made a showing sufficient to establish the existence of every element essential to his case, and on which he has the burden of proof at trial. There is no genuine issue of material fact in dispute, and Defendant is entitled to judgment as a matter of law.

IT IS SO ORDERED.

Dated this 25th day of February, 2002.



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UNITED STATES MAGISTRATE JUDGE

(...continued)
intended to maintain a balance, not to attain one. *See id.* at 1016. No evidence indicates the existing salary schedule, assuming it is part of an affirmative-action salary plan, was not narrowly tailored to meet the remedial objective.