Circuit Court for Baltimore City
Case No. 24-C-22-002485

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1527

September Term, 2023

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PATRICK WOOD

v.

UNIVERSITY OF MARYLAND MEDICAL SYSTEM CORPORATION, ET AL.

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Reed,
Leahy,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Leahy, J.

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Filed: November 19, 2024

Appellant, Patrick Wood, applied for a job as a "Research Project Coordinator" at the University of Maryland School of Medicine Center for Vaccine Development and Global Health ("CVD"). CVD did not hire Wood for the position, and Wood contends that he was not hired because of his gender. Wood filed a one-count complaint against the University of Maryland Medical Systems Corporation ("UMMS") alleging an unlawful employment practice under the Maryland Fair Employment Practices Act ("MFEPA"), Maryland Code (1984, 2021 Repl. Vol.), State Government Article ("SG"), § 20-606. Wood later amended the complaint to add the University of Maryland School of Medicine and CVD (collectively "the University") as defendants.[1] The University moved for summary judgment on Wood's claim, and the Circuit Court for Baltimore City granted the University's motion. Wood timely filed this appeal, and presents the following question for our review:

> Whether the trial court properly granted the joint motion for summary judgment filed by the University of Maryland School of Medicine and the University of Maryland School of Medicine Center for Vaccine Development and Global Health.

[1] The University of Maryland Medical System Corporation ("UMMS") is a "private, nonprofit, nonstock corporation that is independent from any State agency." Maryland Code (1978, 2022 Repl. Vol.), Education § 13-303(m). UMMS filed a motion to dismiss, which the circuit court granted on September 6, 2022. Appellant states in his brief that he does not appeal the trial court's dismissal of UMMS from the case.

The School of Medicine and CVD are both part of the University of Maryland, Baltimore, which is a constituent institution of the University System of Maryland, an independent governmental unit of the State of Maryland. Educ. §§ 12-101(b)(6)(i)(1); 12-102(a)(3).

For the reasons we explain below, we shall affirm the judgment of the circuit court.

## BACKGROUND

### Wood Applies For an Opening

On October 31, 2019, Patrick Wood was working as an independent research consultant when he received an email from Henry T. Seifert, Chief Business Officer and Interim Director of Clinical Business Operations at CVD. In the email, Seifert advised Wood of a new position opening at CVD:

> Are you still looking for a position within UMB? If so, then I may have an opportunity for you in my new department, Center for Vaccine Development & Global Health. It is a Research Project Coordinator level position that will primarily be responsible for recruiting for our vaccine related studies.
>
> If you are interested, then please send me your current resume so I can distribute to the PI & Clinical Research Manager. We will most likely interview you before the job is officially posted, but I'll send the job posting link to you as soon as it is available.

Seifert sent the email because Wood had worked for Seifert for approximately nine years, and Seifert knew that Wood was searching for a position at the University of Maryland, Baltimore.

That same day, Wood responded to Seifert's email, attaching his resume and offering "to come in as soon as tomorrow to speak with some of the team members if needed." Seifert acknowledged receiving Wood's resume, and informed Wood that he had "forwarded it to Lisa [Chrisley] and Dr. Neuzil." Lisa Chrisley was the Program Manager for the Vaccine Treatment and Evaluation Unit at CVD and the hiring manager for the Research Project Coordinator position. In his discussions with Seifert, Wood indicated

that he was seeking a salary of about $85,000 per year.

On November 11, 2019, CVD posted public advertisements for two different positions: a Research Project Coordinator, and a Clinic Coordinator. The Research Project Coordinator position was advertised as a regular exempt staff position with the primary job functions of coordinating day-to-day operations of research studies in the department and developing recruiting strategies, data collection instruments, and communications techniques, among other things. [2] Applicants for this position were required to possess a bachelor's degree in "nursing, emergency services, chemistry, biology, public health, psychology or another scientific discipline appropriate to [the] position."

The Clinic Coordinator position was advertised as a non-exempt position with primarily clerical duties, such as coordinating the clinic schedule, ordering office supplies, and performing data entry. This position required applicants to have only a high school diploma or GED equivalent and five years of clinical experience. Wood met the minimum qualifications for both positions—he has a bachelor's degree in biology, and he previously worked for over eight years as a research project coordinator at the University of Maryland, Baltimore.

Internally, CVD was seeking a single person to work on recruiting participants for

[2] "Exempt" refers to the exemption of certain categories of employees from the overtime requirements of the Fair Labor Standards Act, which generally requires that employees receive overtime pay of at least 1.5 times their regular rate for hours worked over 40 in a workweek. 29 U.S.C. §§ 207(a)(1), 213(a)(1); *see Colburn v. Dep't of Pub. Safety & Corr. Servs.*, 403 Md. 115, 130-31 (2008).

clinical trials and decided to advertise for two different positions to attract the largest possible pool of qualified candidates. The two positions had recommended salary ranges and a maximum approved compensation. The Research Project Coordinator position had a pre-approved salary range of $41,004 to $46,000, and a maximum budgeted salary of $65,000. The Clinic Coordinator position had a minimum pay of $37,157, a recommended range of $39,024.39 to $48,780.38, and a maximum budgeted salary of $50,000.

On November 22, 2019, Wood submitted an official application for the Research Project Coordinator position via Taleo, the University's online human resources portal. Wood did not apply for the Clinic Coordinator position. Wood claims that he was told that there was only one position CVD was hiring for, and that he never knew the Clinic Coordinator position existed. On December 2, 2019, the application deadlines for both the Research Project Coordinator and the Clinic Coordinator positions expired and the University stopped accepting applications. In total, the University received 46 applications for the Research Project Coordinator position and 24 applications for the Clinic Coordinator position.

**CVD Evaluates Applications**

Chrisley was the hiring manager responsible for reviewing the applications for both positions. Faith Brown, another CVD employee, stated in her affidavit that about one week after the jobs were posted, Chrisley appeared at the doorway of an office where she and Becky Boyce, also a CVD employee, were working. Chrisley asked the two women, "How

do you feel about adding some testosterone to our group?"[3] Brown asked Chrisley who she was talking about, and Chrisley responded, "Patrick Wood." Having worked previously with Wood, Brown told Chrisley that he would be a wonderful addition to their team.

Subsequently, Chrisley reviewed the applications for both positions and decided to only fill the Clinic Coordinator position. In her affidavit, Chrisley explained that she determined that the responsibilities of the Clinic Coordinator position, which were largely clerical in nature, were better suited for the recruiting job that CVD sought to fill. Chrisley believed that, based on the skills and qualifications necessary for the Research Project Coordinator position, those applicants would be overqualified and seek a higher salary than Chrisley felt was appropriate for the job. As a result, Chrisley only interviewed those candidates who applied for the Clinic Coordinator position.

Chrisley interviewed two women who applied for the Clinic Coordinator position, one of whom was Leslie Howe. Chrisley did not immediately extend an offer to either candidate because her "attention was focused on other projects and, beginning in March 2020, the Covid-19 pandemic." In early summer 2020, however, the pharmaceutical company Moderna asked CVD to conduct clinical trials for a Covid-19 vaccine, and CVD urgently needed a recruiter to facilitate those trials. As a result, Chrisley offered the Clinic

[3] Chrisley stated in her affidavit that she did not recall making this statement, and added that if she did, she would have said it enthusiastically as part of her commitment to assembling a diverse staff.

Coordinator position to Howe in June 2020. Howe accepted the position and began working as a Clinic Coordinator at CVD a month later. Howe's starting salary was within the pre-approved range for the Clinic Coordinator position.

Raymond Taylor, a senior staffing specialist in the Human Resources Department at the University, attested that on June 29, 2020, the University formally cancelled the Research Project Coordinator position, removed the posting from Taleo, and notified all those who applied for the position, including Wood, that the requisition had been canceled. The University has not reposted the Research Project Coordinator position and has not sought applicants for the position since its cancellation.

**Wood Initiates Litigation**

On January 20, 2021, Wood filed a charge of discrimination with the Maryland Commission on Civil Rights ("the Commission") and the Equal Employment Opportunity Commission (EEOC). In the charge, Wood stated his belief that he was discriminated against based on his sex when he was not hired for the Research Project Coordinator position. Wood highlighted that a friend of his related Chrisley's "testosterone" comment and alleged that Chrisley "has a reputation for not hiring male Research Project Coordinators." On June 29, 2022, the Commission sent Wood a letter concluding that there was "NO PROBABLE CAUSE to believe that the information obtained establishes a violation of the statute." In its written finding, the Commission found that "the position in which the Charging Party applied for was cancelled," and that Wood provided no evidence to substantiate his allegations against Chrisley. As a result, the Commission determined

that there was no probable cause to believe that the University discriminated against Wood based on gender.

On June 1, 2022, prior to receiving the Commission's letter, Wood filed the underlying complaint against the UMMS alleging an unlawful employment practice under MFEPA. Shortly afterward, Wood amended his complaint to add the School of Medicine and CVD (collectively "the University") as defendants. The amended complaint alleged that "Mr. Wood exceeded all the qualifications that were prerequisite for the position of Research Coordinator[,]" and that the defendants "engaged in an unlawful employment practice by failing or refusing to hire Mr. Wood because of his sex, *i.e.* because he is male."

On June 23, 2023, the University filed a motion for summary judgment on Wood's claim. Wood filed a timely opposition, and the University filed a timely reply. Evidence before the circuit court included the transcript of Patrick Wood's deposition and the affidavits of Lisa Chrisley, Faith Brown, and Raymond Taylor.

In his deposition, Wood answered a variety of questions related to the application process. When asked whether he would have accepted the Clinic Coordinator position at $45,000 per year, Wood responded: "I may have. It wasn't offered to me." Chrisley, in her affidavit, stated that since January 1, 2019, she had recommended hiring two male applicants for positions in CVD, including one who was selected over a female applicant.

Brown described the job responsibilities of Leslie Howe, the woman who was hired to fill the Clinic Coordinator position, based on her experience working with Howe. Brown stated that Howe's job responsibilities went beyond just clinical tasks, and that in Brown's

opinion, Wood was better suited for the job responsibilities Howe was hired to perform.

On September 6, 2023, the circuit court held a virtual hearing on the University's summary judgment motion. Before the circuit court, the University argued that it was entitled to summary judgment because Chrisley closed the Research Project Coordinator position for a legitimate, non-discriminatory reason, and it is undisputed that the University did not continue to seek similarly qualified applicants after the position closed. In response, Wood argued that Chrisley advertised the same job in two different ways, and that Chrisley's comment about "adding some testosterone" demonstrated that the decision not to hire Wood was discriminatory. Immediately after argument, the circuit court rendered an oral decision.

The court began by acknowledging that "a complaint may establish that gender was a factor in an employee's hiring decision" by presenting direct and circumstantial evidence in support of that claim. The court determined that the "statement that was allegedly made by Ms. Chrisley that was heard by Ms. Brown" did not rise to the level of direct evidence. Recognizing that "the fact that there is no direct evidence does not therefore lead to a motion for summary judgment[,]" the court turned to consider, in the absence of direct evidence, the "four-part burden[shifting] paradigm described in *McDonnell Douglas Corp. v. Green*," 411 U.S. 792 (1973). Applying the four-part test, the court concluded that Wood did meet the first prong because he was "in fact, a person of a protected class." The court found, however, that Wood failed to establish a *prima facia* case on the third and fourth prongs of the test, reasoning that "the University of Maryland and CVD offer[] proof that

the position was never filled and that the position was vacated." "So how does [Wood] succeed in this case when no one was hired and the position no longer existed? No one outside of the protected class was hired for the position." The court expounded:

> [T]o create an inference of discrimination, the Plaintiff must at least demonstrate that his rejection did not result from the two most common legitimate reasons on which an employe[r] might rely to reject an applicant: an absolute or relative lack of qualifications or the absence of vacancy in the job sought. This job did not exist any further. The affidavit of Ms. Brown does not make that any more a question or fact. There was no decision made on this case and that position, none of the applications were ever interviewed, no one was ever hired for the position[.]

In sum, because no candidate was ever interviewed or hired for the position to which Wood applied, he failed to establish a *prima facie* case for discrimination. As a result, the circuit court granted the University's motion for summary judgment in a signed order. Wood then noted his timely appeal to this Court.

## STANDARD OF REVIEW

When a party moves for summary judgment, the court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). In an appeal from a grant of summary judgment, this Court conducts a de novo review to determine whether the circuit court's conclusions were legally correct. *D'Aoust v. Diamond*, 424 Md. 549, 574 (2012). The standard is well known:

> When reviewing a grant of summary judgment, we determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. This Court considers

> the record in the light most favorable to the nonmoving party and construe[s] any reasonable inferences that may be drawn from the facts against the moving party.

*Blackburn Ltd. P'ship v. Paul*, 438 Md. 100, 107-08 (2014) (citations and quotation marks omitted). The "mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment[.]" *Beatty v. Trailmaster Prod., Inc.*, 330 Md. 726, 738 (1993) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)). Mere speculation is not enough to prevent summary judgment. *A.J. Decoster Co. v. Westinghouse Elec. Corp.*, 333 Md. 245, 262 (1994).

## DISCUSSION

### *A. Parties' Contentions*

*Appellant*

Wood raises two principal arguments against summary judgment. First, he argues that he presented sufficient direct evidence that discrimination motivated the University to not hire him. Wood argues that Chrisley's statement about "adding some testosterone" to the group, combined with Chrisley only interviewing women for the Clinic Coordinator position, constitutes direct evidence that he was discriminated against based on sex. Second, Wood argues that he presented evidence sufficient to establish a *prima facie* case under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Wood argues that the Clinic Coordinator job posting and the Research Project Coordinator job posting were effectively for the same position, and that he suffered discrimination when he was not considered for the Clinic Coordinator role. Wood points to *Muse-Ariyoh v. Board of*

*Education of Prince George's County*, 235 Md. App. 221, 245 (2017), in which this Court recognized an exception to the principle of "no application/no complaint" if the applicant "makes some alternative effort to convey an interest in the position that is the functional equivalent of an application."

*Appellee*

The University argues that there is no dispute of material fact, and that the circuit court properly granted summary judgment in its favor. The University argues that Chrisley's "testosterone" statement is not direct evidence of discrimination because it "fails to demonstrate discriminatory animus on its face, as it was merely a question that intimated Mr. Wood's gender." The University also points out that Chrisley hired two men for vacant positions in 2021, one of whom was selected over a female applicant. The Research Project Coordinator position was cancelled, says the University, and Wood failed to offer circumstantial evidence of discrimination because he "cannot sustain his ultimate burden of proving that the University's explanation for canceling the Research Project Coordinator position was both false and a smokescreen for sex discrimination."

### ***B. Legal Framework***

Discrimination in employment, including failure to hire, is prohibited by MFEPA. Specifically, SG § 20-606 provides that "[a]n employer may not . . . fail or refuse to hire . . . any individual because of the individual's . . . sex . . . [or] gender identity[.]" Because MFEPA was modeled after federal antidiscrimination legislation, *Molesworth v. Brandon*, 341 Md. 621, 632-33 (1996), Maryland "courts traditionally seek guidance from federal

cases in interpreting [MFEPA]," *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 482 (2007).

A plaintiff may establish that gender was a factor in an employer's hiring decision by using direct or circumstantial evidence. *Dobkin v. Univ. of Balt. Sch. of L.*, 210 Md. App. 580, 591-92 (2013); *Williams v. Md. Dep't of Hum. Res.*, 136 Md. App. 153, 163 (2000). Direct evidence "consists of statements by a decisionmaker that directly reflect the alleged animus and bear squarely on the contested employment decision." *Dobkin*, 210 Md. App. at 592 (quoting *Febres v. Challenger Caribbean Corp.*, 214 F.3d 57, 60 (1st Cir. 2000)). If a plaintiff presents direct evidence of discrimination, the employer then bears the burden to show "that its motives, intent, and actions were not tainted by discrimination." *Williams*, 136 Md. at 166.

"In the absence of direct evidence, Maryland Courts have traditionally held that in employment discrimination actions, parties must engage in the four-part burden-shifting paradigm described by the United State Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)." *Dobkin*, 210 Md. App at 592. At the first step of the *McDonnell Douglas* test, the plaintiff must establish a *prima facie* case of discrimination. *Belfiore v. Merch. Link, LLC*, 236 Md. App. 32, 45 (2018). To establish a *prima facie* case, the plaintiff must prove:

> (i) that he belongs to a [protected] minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of [plaintiff's] qualifications.

*Williams*, 136 Md. App. at 164 n.2 (2000) (quoting *McDonnell Douglas*, 411 U.S. at 802). If the plaintiff meets this burden, then a presumption arises that the employer unlawfully discriminated against the plaintiff. *Belfiore*, 236 Md. App. at 46 (citing *Tex. Dept. of Comm. Affairs v. Burdine*, 450 U.S. 248, 254 (1981)).

At the second step, "the employer can rebut the *prima facie* case by presenting evidence of 'some legitimate, nondiscriminatory reason' for the alleged disparate treatment." *Id.* at 46 (quoting *McDonnell Douglas*, 411 U.S. at 802). If the employer produces sufficient evidence to rebut the *prima facie* case, the plaintiff "must then have an opportunity to prove by a preponderance of the evidence that the reasons offered by the [employer] were not its true reasons, but were a pretext for discrimination." *Id*. (quoting *Burdine*, 450 U.S. at 253). At this stage, "the first step's presumption of discrimination 'simply drops out of the picture,' and the plaintiff . . . retains the burden of persuasion to prove, by a preponderance of the evidence, that he or she 'has been the victim of intentional discrimination.'" *Id.* (quoting *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 508, 511) (internal citations omitted).

### *C. Analysis*

*Direct Evidence of Discrimination*

Wood failed to show sufficient direct evidence that gender was a factor in the University's hiring decision. As stated above, direct evidence must "directly reflect the alleged animus and bear squarely on the contested employment decision." *Dobkin*, 210 Md. App. at 592 (quoting *Febres*, 214 F.3d at 60 (1st Cir. 2000)). In *Williams*, 136 Md. at

168, this Court found direct evidence of discriminatory intent against a male applicant when a member of the hiring panel stated that they "had to select a female." And in *Molesworth*, 341 Md. at 626, the Supreme Court of Maryland found direct evidence of discrimination where an employee "asked if she was being fired because she is a woman," to which a co-worker replied, "'Yes, that's part of it,'" and her employer "nodded in agreement and looked away."

Here, according to Faith Brown's affidavit, Lisa Chrisley said to Brown and another female co-worker, "how do you feel about adding some testosterone to our group."[4] Brown asked Chrisley who she was talking about, and Chrisley responded, "Patrick Wood." This statement reflects a consciousness of gender in the hiring process, but it does not "directly reflect the alleged animus and bear directly on the contested employment decision." *Dobkin*, 210 Md. App. at 592 (quoting Febres, 214 F.3d at 60 (1st Cir. 2000)). In *Williams*, the member of the hiring panel directly stated that he "had to select a female," which directly showed that the male applicant's gender was held against him. *See* 136 Md. at 168. Similarly, in *Molesworth*, the employer adopted a statement that directly showed that the employee's gender was a factor in her firing. *See* 341 Md. at 626. Chrisley's statement about "adding some testosterone" to the group does not directly show whether, or how, Patrick Wood's gender was ultimately considered in the hiring process.

[4] The University mentions, without further argument, that this statement is hearsay. However, Chrisley's statement is admissible under Maryland Rule 5-803(5) as "[a] statement by the party's agent or employee made during the agency or employment relationship concerning a matter within the scope of the agency or employment."

At oral argument, Wood's counsel posited that Chrisley's statement and use of the term "testosterone" is direct evidence of discrimination based on its surrounding context. However, the immediate context of the statement makes discriminatory animus less likely. Brown's affidavit does not include any information about Chrisley's tone of voice, and the affidavit suggests that the conversation ended positively, with Brown stating that Wood "would be a wonderful addition to our team." Even viewing the evidence in the light most favorable to Wood, the statement does not pronounce an intention *not* to hire a male. Indeed, the statement can just as easily be interpreted to state an intention *to hire* a male. In other words, without making inferences, the statement, on its own, is not definitive and does not "directly reflect the alleged animus and bear squarely on the contested employment decision." *Dobkin*, 210 Md. App. at 592. As a result, Wood failed to present direct evidence sufficient to raise a dispute of material fact.

Wood presses that he presented direct evidence because "Chrisley's statement combined with her subsequent decision to only interview women for the job permits a reasonable inference of unlawful discrimination based on sex." However, standing alone, Chrisley's decision to interview two women is not direct evidence of sex discrimination, and it is too attenuated from her prior statement to constitute direct evidence. Wood cannot get around *McDonnell Douglas* by framing other, circumstantial evidence as "direct evidence." Evidence outside the immediate context of Chrisley's statement, including her selection of candidates to interview, must be considered under the *McDonnell Douglas* paradigm. *See Dobkin*, 210 Md. App at 592.

McDonnell Douglas *Paradigm*

Wood also failed to establish a *prima facie* case for discrimination under the *McDonnell Douglas* test. As stated above, to establish a *prima facie* case, the plaintiff must prove:

> (i) that he belongs to a [protected] minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of [plaintiff's] qualifications.

*Williams*, 136 Md. App. at 164 n.2 (2000) (quoting *McDonnell Douglas*, 411 U.S. at 802). Here, the record establishes (1) that Wood is a man; and (2) that Wood was qualified and applied for the Research Project Coordinator position. There is no evidence that anyone, including Wood, was considered for the position before it was cancelled.[5] It follows, *a fortiori*, that Wood failed to establish that the Research Project Coordinator position remained open and the University continued to seek applicants from persons of his qualifications.

Wood argues that the Research Project Coordinator job posting and the Clinic

[5] Federal cases interpreting *McDonnell Douglas* assume that an applicant is "rejected" when an employer cancels the relevant vacancy, but these federal cases state that such a rejection does not establish a *prima facie* case of discrimination. *See Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 358 n.44 (1977) ("[T]he alleged discriminatee [must] demonstrate at least that his rejection did not result from the two most common legitimate reasons on which an employer might rely to reject a job applicant: an absolute or relative lack of qualifications or the absence of a vacancy in the job sought."); *see also Stoyanov v. Mabus*, 126 F. Supp. 3d 531, 547 (D. Md. 2015); *Bowie v. Ashcroft*, 283 F. Supp. 2d 25, 31 (D.D.C. 2003).

Coordinator job posting were effectively for the same position, and that when he applied to the Research Project Coordinator position, he also effectively applied to the Clinic Coordinator position. *See Muse-Ariyoh*, 235 Md. App. at 245. Uncontroverted evidence in the record shows that the University only intended to hire for one position.

In *Muse-Ariyoh v. Board of Education of Prince George's County*, 235 Md. App. 221, an architect alleged that his employer, the local Board of Education, refused to hire him to five different positions because of his race and national origin. One position was advertised twice; the Board withdrew the first posting without hiring any applicants, and then readvertised the position in a new posting seven months later. *Muse-Ariyoh*, 235 Md. App. at 229. The architect applied for the position on the first vacancy announcement, but not on the second. *Id.* In analyzing whether the architect had established a *prima facie* case regarding that position, this Court noted that "[a]s a general rule, a person who does not apply for the job cannot complain when he or she does not get it." *Id.* at 244. We observed, in dicta, that:

> The case law does recognize several exceptions to the principle of "no application/no complaint"—that a person is excused for not applying if he/she is unaware of the vacancy because it was not properly posted, *or if . . . he/she makes some alternative effort to convey an interest in the position that is a functional equivalent of an application*, or if it is made clear to the person, directly or because of a known standing policy of discrimination, that an application would be futile.

*Id.* at 245 (emphasis added). However, we held that none of those exceptions applied to the architect, and that the Board had no duty to interview the architect for the second vacancy announcement "when he no longer showed any interest in it." *Id.* at 245-46.

Wood does not qualify for the exception mentioned in *Muse-Ariyoh* because his application for the Research Project Coordinator position was not the "functional equivalent of an application" to the Clinic Coordinator position. *Muse-Ariyoh*, 235 Md. App. at 245. The Research Project Coordinator position required different experience and qualifications, and overall, paid a higher salary than the Clinic Coordinator position. The Research Project Coordinator position was advertised as a regular exempt staff position with research-related functions, and applicants for this position were required to possess a bachelor's degree in an appropriate scientific discipline. The Clinic Coordinator position was advertised as a non-exempt position with primarily clerical duties, and it required applicants to have only a high school diploma or GED equivalent and five years of clinical experience.

By creating one posting for the Research Project Coordinator position and another for the Clinic Coordinator position, the University effectively created two pools of candidates with different qualifications. This is significant under the fourth prong of the *McDonnell Douglas* framework, which requires that "the position remained open and the employer continued to seek applicants from persons of [plaintiff's] qualifications." *Williams*, 136 Md. App. at 164 n.2 (2000) (quoting *McDonnell Douglas*, 411 U.S. at 802). By choosing to interview only candidates from the Clinic Coordinator pool, the University ceased seeking applicants from persons of Wood's qualifications—those with a bachelor's degree—and began seeking only applicants with fewer qualifications and lower salary requirements.

The University presented sufficient evidence of a legitimate, nondiscriminatory reason for considering only applicants for the Clinic Coordinator position. In Lisa Chrisley's affidavit, she stated that the recruiting job was largely clerical in nature, and that applicants for the Research Project Coordinator position would be overqualified. She stated her belief that applicants for the Research Project Coordinator position "would seek a higher salary than what I thought was appropriate for the job." Other evidence in the record supports Chrisley's conclusions. Wood, who has a bachelor's degree, requested $85,000 per year for the Research Coordinator position. Wood's salary was $62,000 when he previously worked as a Research Project Coordinator. Both figures are well over $50,000, the maximum approved compensation for the Clinic Coordinator position. And when asked in his deposition whether he would have accepted the Clinic Coordinator position at $45,000 per year, Wood only said, "I may have. It wasn't offered to me."

Wood did not meet his burden to show that Chrisley cancelled the Research Coordinator position to discriminate against him. Wood points to Chrisley's comment about adding testosterone to the group, as well as the fact that she only interviewed two women applicants. This evidence is purely speculative. If Chrisley were set on hiring a woman, she could have selected a woman from among the 45 other applicants for the Research Coordinator position rather than cancelling the position altogether. That Chrisley only interviewed two people for the Clinic Coordinator position, both of whom were women, does not raise a meaningful inference of discrimination—especially in the absence of information about the gender ratio of the entire applicant pool. And other,

uncontroverted evidence shows that Chrisley later hired two men for other positions, including one man hired over a female applicant. Thus, based on the evidence in the record, we hold that the circuit court correctly determined that Wood failed to establish a *prima facie* case for unlawful discrimination.

For those reasons, we affirm the circuit court's grant of the University's motion for summary judgment.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.**