SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1895-15T2

JAREER ABU-ALI,

Plaintiff-Appellant,

v.

PINNACLE FOODS GROUP, LLC,
and STEPHEN GUNTHER,

Defendants-Respondents.

Argued September 12, 2017 – Decided September 26, 2017

Before Judges Yannotti and Carroll.

On appeal from Superior Court of New Jersey, Law Division, Morris County, Docket No. L-0143-13.

Damian Christian Shammas argued the cause for appellant (Law Offices of Damian Christian Shammas, LLC, attorneys; Mr. Shammas and Kristen Jasket Piper, on the briefs).

Nicholas Stevens argued the cause for respondents (Starr, Gern, Davison & Rubin, PC, attorneys; Mr. Stevens, of counsel and on the brief; Jonathan J. Lerner, on the brief).

PER CURIAM

Plaintiff Jareer Abu-Ali appeals from an order entered by the Law Division on December 3, 2015, granting summary judgment in favor of defendants Pinnacle Foods Group, LLC (Pinnacle), and Stephen Gunther (Gunther). We affirm.

I.

Pinnacle is the owner of several food brands, including Vlasic pickles, Log Cabin syrup, Comstock and Wilderness pie-fillings, and Bernstein's salad dressings. In May 2011, Pinnacle hired plaintiff as its Director of Product Development. His duties included developing new products, maintaining current products, and managing scientists and technicians in his group. Gunther was Pinnacle's Vice President of Research. He was plaintiff's direct supervisor.

Plaintiff claims he disclosed to his supervisors certain actions or practices regarding the company's products that he believed were a violation of a law, rule, duly-promulgated regulation, or a clear mandate of public policy. He alleges he had a reasonable belief that in certain respects, the company was violating the Federal Food Drug and Cosmetic Act (FDCA), specifically, 21 U.S.C.A. § 331, or the Nutritional Labeling and Education Act (NLEA), specifically, 21 U.S.C.A. § 343.

Plaintiff alleges that he was asked to determine if certain whole baby pickles, which the company had stored in a salt tank

and were more than one year past their "shelf-life," could be used in the company's products. Plaintiff acknowledged that he did not know who had determined the shelf-life of the pickles. He sampled the pickles and informed Gunther and Mark Schiller, the company's Executive Vice President, that in his opinion, the pickles should not be used in the company's products. According to plaintiff, the company modified its internal standards, extended the "shelf life" of the pickles, and used the pickles to make relish.

Plaintiff also claims that to generate savings, Pinnacle directed him to remove an additional ten percent of the cucumbers that the company was placing in its pickle jars. Plaintiff learned that the company was already including fewer pickles than the company's internal specifications required. Plaintiff reported his findings to Gunther and other company executives.

Plaintiff alleges he believed that if Pinnacle was putting fewer pickles in the jars, the jar's nutrition label would not accurately state the number of servings in the jar and its salt content. He testified that the practice did not violate any specific regulation, but he thought it violated "the spirit" of some regulation. Pinnacle decided not to remove the additional ten percent of the product from the jars.

In addition, plaintiff claims he raised concerns about Farmer's Garden 1 (FG1), a pickle product that Pinnacle was

developing. At some point, a Pinnacle plant worker told plaintiff the FG1 test product did not taste right. Plaintiff investigated the report and determined that the use of "expired" carrots could have caused the taste. Plaintiff recommended that Pinnacle destroy the test samples. Gunther agreed and the FG1 test products did not go to market.

Plaintiff further alleges that he received an e-mail indicating that the metal caps on the FG1 jars had a tendency to rust. It appears that a third-party manufactured the caps for Pinnacle. Plaintiff determined that the manufacturer's production process scratched the outside of the caps, which caused the rusting. Plaintiff reported his findings and Pinnacle removed products that had gone to market with the defective caps.

Furthermore, plaintiff alleges that Pinnacle made certain fraudulent financial projections. He reviewed the company's internal "productivity sheets," which estimated certain savings. Plaintiff found that some of the productivity sheets reflected savings on projects that the company was no longer pursuing. He also thought that some of the estimates were not realistic or achievable. The company's Procurement Department agreed with some of plaintiff's analyses and revised those estimates. At his deposition, plaintiff testified that he did not know whether the estimates were provided to the public. There is no evidence that

the estimates were incorporated in Pinnacle's public financial disclosures.

Plaintiff further claims that Pinnacle's Director of Meat Procurement, Myron Welton, asked him to approve the use of certain meat in its food products. Plaintiff determined that the meat was not suitable for such use, and Gunther agreed. In addition, plaintiff claims Pinnacle acquired certain brands of pie-fillings from other companies, and the brands were undergoing a "packaging graphics change." According to plaintiff, Pinnacle was including less fruit and real sugar in the products, and replacing both ingredients with high-fructose corn syrup.

Plaintiff claims that as a result of the changes, the nutrition labels on the products were not accurate. He did not, however, know if the incorrect labels originated at Pinnacle or the companies who sold the brands to Pinnacle. Pinnacle's Regulatory Department corrected the labeling errors that plaintiff identified.

Plaintiff also claims that the nutrition labels on some syrups inaccurately stated the calories of the products. Plaintiff raised the issue with the company's Productivity, Quality Assurance, and Regulatory Departments. Gunther approved revised labels for the products, but authorized the use of the existing labels until the new labels could be printed.

Plaintiff further alleges that a third-party had manufactured salad dressing for Pinnacle and shipped an order of the product to a store in California. Plaintiff received a report that the ingredients of the salad dressing did not separate as they should and remained cloudy. Plaintiff also claims the product's contents did not match the sugar, salt, and calorie content referenced on the nutrition label. Plaintiff informed Gunther the product did not meet the company's specifications and should be removed from the store's shelves; however, Pinnacle informed the store the product did not pose a safety hazard. Pinnacle asserts that it later corrected the problem with the dressing.

Plaintiff also raised concerns about the nutrition label on Pinnacle's new Farmer's Garden 2 (FG2) product. The product label referred to FG2 as "All Natural." Plaintiff alleges that the label listed certain additives that were not natural and therefore the label was not accurate. He also informed Gunther and others that the company was not cleaning certain production machinery properly and, as a result, FG2 contained salt that would affect the accuracy of the label. Gunther agreed with some of plaintiff's concerns.

On June 5, 2012, after plaintiff engaged in what Pinnacle believed was inappropriate conduct toward a Pinnacle employee, the company reclassified plaintiff's position as an independent contributor. Pinnacle asserts the change did not affect

plaintiff's compensation or benefits. Plaintiff refused the reclassification. Pinnacle then told plaintiff he could resign or he would be terminated. Plaintiff resigned. Pinnacle asserts plaintiff voluntarily resigned his position, but plaintiff claims he was fired.

In January 2013, plaintiff filed a complaint against Pinnacle and Gunther asserting claims under the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to -14. In his complaint, plaintiff alleges defendants violated CEPA by subjecting him to an adverse employment action in retaliation for his alleged whistle-blowing activities. Plaintiff further alleges that as a direct and proximate result of defendants' actions, he suffered monetary damages and personal injuries. He sought compensatory and punitive damages, attorney's fees and costs, and other relief.

Defendants filed an answer and denied liability. After the completion of discovery, defendants filed a motion for summary judgment. On October 23, 2015, the Law Division judge heard oral argument and on December 3, 2015, placed an oral decision on the record. The judge decided there were no genuine issues of material fact and defendants were entitled to judgment as a matter of law.

In her decision, the judge stated that except for labeling issues associated with certain products, plaintiff failed to show he had a reasonable belief that Pinnacle had violated a law, rule,

regulation, or clear mandate of public policy with regard to the contents or labeling of its food products. The judge also determined that plaintiff had not shown that he engaged in whistle-blowing activity protected by CEPA; plaintiff had not been subjected to an adverse employment action; and he failed to show a causal connection between his alleged whistle-blowing activities and any adverse employment action. The judge memorialized her decision in an order dated December 3, 2015. This appeal followed.

II.

On appeal, plaintiff argues that the trial court erred by granting summary judgment in favor of Pinnacle. He contends he presented sufficient evidence to raise genuine issues of material fact as to whether: (1) he had an objectively reasonable belief that Pinnacle was engaging in illegal and/or fraudulent activities, practices, or conduct; (2) he engaged in protected whistle-blowing conduct; (3) there is a causal connection between the alleged whistle-blowing and the retaliatory action taken against him; and (4) the reasons Pinnacle gave for its retaliatory actions are pretextual.

"An appellate court reviews an order granting summary judgment in accordance with the same standard as the motion judge." Bhagat v. Bhagat, 217 N.J. 22, 38 (2014). Therefore, we "must review the competent evidential materials submitted by the

parties to identify whether there are genuine issues of material fact and, if not, whether the moving party is entitled to summary judgment as a matter of law." Ibid.; Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995); R. 4:46-2(c).

Here, plaintiff is asserting claims under CEPA. In order to prevail on such a claim, the plaintiff first must establish:

> (1) he or she reasonably believed that his or her employer's conduct was violating either a law, rule, or regulation promulgated pursuant to law, or a clear mandate of public policy;
>
> (2) he or she performed a "whistle-blowing" activity described in N.J.S.A. 34:19-3(c);
>
> (3) an adverse employment action was taken against him or her; and
>
> (4) a causal connection exists between the whistle-blowing activity and the adverse employment action.
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> [Lippman v. Ethicon, Inc., 222 N.J. 362, 380 (2015) (quoting Dzwonar v. McDevitt, 177 N.J. 451, 462 (2003)).]

If a plaintiff establishes these elements of a prima facie case, the defendant "must come forward and advance legitimate nondiscriminatory reasons for the adverse conduct against the employee." Klein v. Univ. of Med. and Dentistry of N.J., 377 N.J. Super. 28, 38 (App. Div. 2005) (citation omitted), certif. denied, 185 N.J. 35 (2005). "If such reasons are proffered, plaintiff must then raise a genuine issue of material fact that the employer's

proffered explanation is pretextual." Id. at 39. (citation omitted).

As we noted previously, plaintiff's CEPA claims are based on his contention that he had a reasonable belief Pinnacle was violating the FDCA or the NLEA with regard to certain acts and practices in its food-production business. The FDCA authorizes the Food and Drug Administration (FDA) to protect the public health by ensuring that "foods are safe, wholesome, sanitary, and properly labeled." 21 U.S.C.A. § 393(b)(2)(A).

Among other things, the FDCA bans "adulterated" food from interstate commerce. Young v. Cmty. Nutrition Inst., 476 U.S. 974, 976, 106 S. Ct. 2362, 90 L. Ed. 2d 959, 963-64 (1986) (citing 21 U.S.C.A. § 331). Under the FDCA, food is "adulterated"

> (1) [i]f it bears or contains any poisonous or deleterious substance which may render it injurious to health;
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> . . . .
>
> (3) [I]f it consists in whole or in part of any filthy, putrid, or decomposed substances, or if it is otherwise unfit for food;
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> . . . .
>
> (b) Absence, substitution, or addition of constituents. (1) [i]f any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if

> any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.
>
> [21 U.S.C.A. § 342.]

Furthermore, in 1990, Congress enacted the NLEA, "which altered, expanded, and clarified the [FDCA's] labeling requirements." Smajlaj v. Campbell Soup Co., 782 F. Supp. 2d 84, 92 (D.N.J. 2011) (citing 21 U.S.C.A. §§ 301, 321, 337, 343, 371). Among other things, 21 U.S.C.A. § 343 provides that food intended for human consumption that is offered for sale, must have a label that provides the number of servings, the number of calories, and the amount of sodium and sugars in the product. 21 U.S.C.A. § 343(q)(B)(C)(D).

III.

Here, plaintiff argues that he presented sufficient evidence to raise a genuine issue of material fact as to whether he had an objectively reasonable belief that Pinnacle was engaging in practices that violated the FDCA or the NLEA. As we have explained, plaintiff's claims relate to (1) the attempted use of certain baby whole pickles in the company's food products; (2) the reduction in the number of cucumbers in pickle jars; (3) the use of "expired" carrots in a test product; (4) the request to use allegedly "suspect" meat in products; (5) the use of metal caps on jars of

food that had a tendency to rust; (6) the alleged use of misleading labels on pie-filling products; (7) the creation of certain allegedly fraudulent financial projections; (8) the sale of allegedly defective salad dressing; (9) the change of ingredients in certain products without needed changes to the labels; and (10) the substitution of sweeteners in syrups without changing the labels.

As we stated previously, the motion judge found that plaintiff had presented sufficient evidence to show that he had a reasonable belief Pinnacle had violated the FDCA and NLEA by changing the ingredients in certain products without modifying the nutrition labels for these products. The judge concluded, however, that plaintiff failed to present sufficient evidence to show he had a reasonable belief that Pinnacle was violating any law, rule, regulation, or clear mandate of public policy with regard to the other products.

In her decision, the judge pointed out that the FDCA generally bars the introduction into interstate commerce of adulterated foods. 21 U.S.C.A. § 331. The judge noted that according to the FDCA, food is considered "adulterated" if it contains poisonous or deleterious substances, contains certain unsafe food additives, is injurious to health, or includes substances that make it unfit for consumption as food. 21 U.S.C.A. § 342(a), (b), or (c). The

judge concluded that except for the labels on certain pie-fillings and syrups, plaintiff had not presented sufficient evidence to support his claim that he had a reasonable belief the company was violating either the FDCA or NLEA.

The judge noted that plaintiff had not identified any specific rule, regulation or standard that Pinnacle had allegedly violated, and plaintiff had not presented "any evidence that would enable a rational juror to conclude that Pinnacle's departure from internal product specifications violated any specific government specification." The record supports the judge's assessment of the evidence.

Here, plaintiff claims Pinnacle asked him to determine if certain baby whole pickles that were allegedly past their "shelf life" could be used in the company's products. Plaintiff testified that he believed the use of the "decomposed" pickles violated the FDCA. The FDCA precludes the sale of "adulterated" foods, but plaintiff did not cite any rule or regulation indicating that the pickles at issue were unfit for consumption as food.

Plaintiff further alleges that Pinnacle used so-called "expired" carrots in its FG1 test product. Plaintiff failed to show, however, that Pinnacle's alleged use of the "expired" carrots violated any specific rule or standard pertaining to the use of

such ingredients. Moreover, there is no evidence that Pinnacle ever sold such products to the public.

Plaintiff also claims the FG1 test product had metal caps that had a tendency to rust. Plaintiff may have expressed concerns about the rusting of the metal caps on the FG1 product, but the evidence was insufficient to show that the caps adulterated the contents of the jars or rendered the contents unfit for consumption. Furthermore, Pinnacle had removed any products with the deficient caps that had been sent to market.

In addition, plaintiff claims a Pinnacle employee asked him to approve the use of the allegedly "suspect" meat in certain Pinnacle products. Plaintiff did not, however, approve the use of the meat, and Gunther agreed with his decision. Plaintiff did not present any evidence that Pinnacle ever used any tainted meat in any food product. The mere fact that someone asked plaintiff to approve the use of the meat is not a violation of the FDCA, and plaintiff could not have a reasonable belief that Pinnacle was violating the FDCA.

Plaintiff also claims he reasonably believed Pinnacle violated the FDCA and the NLEA by providing allegedly deficient salad dressing to a store. He claimed the product had an inaccurate label. However, a third-party had manufactured the product for Pinnacle, and Pinnacle determined the deficiencies in the dressing

did not present a safety issue for consumers. Plaintiff did not provide sufficient evidence to support the claim that he had a reasonable belief the product was unfit for consumption or that the label was inaccurate.

Plaintiff also alleges he reasonably believed the labels for Pinnacle's FG2 product violated the NLEA because the company used the term "All Natural" on the label. As the motion judge noted, however, the FDA had not established any standard for use of the term "All Natural." In addition, plaintiff claims that the FG2 labels were false and misleading because the labels allegedly did not match the ingredients in the product, and the salt content was much higher than the actual product. The record shows, however, that Pinnacle addressed many of the issues plaintiff raised regarding FG2, and plaintiff failed to present sufficient evidence showing that he had a reasonable belief the company sold FG2 products with inaccurate labels to consumers.

Plaintiff's claim regarding the alleged faulty financial projections also fails for lack of proof. He has not identified any specific statute, rule, regulation, or clear mandate of public policy that Pinnacle allegedly violated by creating these internal company financial projections. Plaintiff identified errors in some estimates and some were corrected. There is, however, no evidence

that Pinnacle disseminated any faulty estimates to the public, or used them in any of the company's public financial disclosures.

We therefore conclude that the motion judge correctly determined that, with the exception of the labeling issues pertaining to the change of ingredients in certain products, plaintiff failed to present sufficient evidence to show he had a reasonable belief Pinnacle violated either the FDCA or the NLEA.

Plaintiff nevertheless argues that the motion judge erred by requiring that he identify specific standards applicable to the specific products about which he expressed concerns. Plaintiff notes that a party asserting a CEPA claim need not show that his employer actually violated a law, regulation, or clear mandate of public policy. See Dzwonar, supra, 177 N.J. at 462 (citations omitted).

However, a plaintiff must "first find and enunciate the specific terms of a statute or regulation, or the clear expression of public policy, which would be violated if the facts as alleged are true." Id. at 463 (quoting Fineman v. New Jersey Dept. of Human Servs., 272 N.J. Super. 606, 620 (App. Div.), certif. denied, 138 N.J. 267 (1994)). The court "must identify a statute, regulation, rule, or public policy that closely relates to the complained-of conduct." Ibid. There must be a "close relationship"

between the plaintiff's claims and the alleged violation. Id. at 467.

Here, plaintiff merely referred to the requirements of the FDCA and the NLEA, which generally bars the introduction of adulterated food into interstate commerce and requires accurate labels for food products. Reference to the general requirements of the FDCA and NLEA are insufficient, however, because CEPA requires a showing of a "close relationship" between plaintiff's concerns and the purported violations. As the motion judge noted, plaintiff failed to cite any specific rule, regulation, or standard applicable to the food products about which he had expressed concerns.

Therefore, with the exception of the two labeling issues noted by the motion judge, plaintiff failed to show that, even if his claims were proven, he had a reasonable belief that Pinnacle violated a specific law, rule, regulation, or clear mandate of public policy. Plaintiff failed to present sufficient evidence to show the required "close relationship" between his claims and the alleged violations of the FDCA and NLEA.

IV.

We turn to plaintiff's contention that the motion judge erred by finding that he did not present sufficient evidence to show that he engaged in whistle-blowing activity that is protected by

CEPA. In her decision, the motion judge concluded that although plaintiff had raised concerns about some of the company's practices and products, he had not raised any specific concern that the company was violating the FDCA or the NLEA.

As the judge pointed out, the record shows that plaintiff's concerns related to the possible deviations from the company's internal standards and specifications. The judge noted that plaintiff had raised legitimate business concerns "about practices that may result in the loss of customers or consumers purchasing the product." Indeed, it appears that this was precisely the role plaintiff had been hired to fulfill in his capacity as Pinnacle's Director of Product Development. Nevertheless, the concerns plaintiff raised did not rise to the level of whistle-blowing protected by CEPA.

As the record shows, plaintiff's responsibilities as Pinnacle's Director of Product Development were part of the company's internal process for reviewing and assessing existing products and developing new products. Among other things, plaintiff had the responsibility to ensure that the company's products conformed with its internal standards and specifications. In furtherance of his responsibilities, plaintiff reviewed the suitability of certain product ingredients, the contents of the

jars, the lids on the jars, proposed changes to product ingredients, and related labeling issues.

That record also shows that in some instances, other persons or departments in the company agreed with plaintiff's views and in some instances, other persons or departments did not agree. There is no evidence that the disagreements represented an effort on the part of Pinnacle to introduce adulterated food into interstate commerce, or regularly employ inaccurate labels on its products. We agree with the motion judge's conclusion that internal disputes regarding the products or the labels of the sort at issue in this case do not constitute whistle-blowing protected by CEPA.

The judge's decision on this issue was consistent with the applicable law. See Hitesman v. Bridgeway, Inc., 218 N.J. 8, 31 (2014) (noting that CEPA protects employees who report an employer's illegal or unethical conduct, but not routine disputes in the workplaces about internal policies or procedures); Maw v. Advanced Clinical Commc'ns, 179 N.J. 439, 445-46 (2004) (findings that employee's private dispute with her employer about a noncompete agreement was insufficient to support a claim under CEPA because employee had not shown a clear mandate of public policy regarding such agreements); Dzwonar, supra, 177 N.J. at 467-69 (holding that a CEPA claim could not be premised on a disagreement about the manner in which a union conducted its

meetings or explained its actions to members because such a disagreement was not closely related to any statutory violation); Klein, supra, 377 N.J. Super. at 45 (noting that CEPA was not intended to "settle internal disputes in the workplace").

We therefore conclude the motion judge correctly found that plaintiff failed to present sufficient evidence to show that he engaged in whistle-blowing activity that is protected under CEPA.

V.

Plaintiff also argues that the motion judge erred by concluding that he did not present sufficient evidence to raise a genuine issue of material fact as to whether he had suffered an adverse employment action. He contends that reclassifying his position as an independent contributor was a demotion and his resignation in lieu of termination was the equivalent of a termination. Again, we disagree.

In her decision, the motion judge noted that not every employment action "that makes an employee unhappy" is an adverse employment action under CEPA. The judge determined that a reasonable juror could not find that Pinnacle took any retaliatory action against plaintiff that is actionable under CEPA.

CEPA defines retaliatory action as "the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of

employment." N.J.S.A. 34:19-2(e). "[E]mployer actions that fall short of [discharge, suspension, or demotion] may nonetheless be the equivalent of an adverse employment action." Cokus v. Bristol Myers Squibb Co., 362 N.J. Super. 366, 378 (Law Div. 2002), aff'd, 362 N.J. Super. 245 (App. Div.), certif. denied, 178 N.J. 32 (2003). Actions that negatively affect an employee's "compensation," "rank," or "terms and conditions of employment," can serve as the "functional equivalent of a demotion." Beasley v. Passaic Cty., 377 N.J. Super. 585, 608 (App. Div. 2005).

Here, the motion judge observed that after the incident in which plaintiff had allegedly yelled at a worker at one of Pinnacle's production plants, the company reclassified plaintiff's position as an independent contributor. The judge pointed out, however, that plaintiff's grade level, compensation, and scientific-work responsibilities remained the same. The only difference was that subordinates would not report to plaintiff.

The judge observed that plaintiff had not inquired about the details of the reclassification, but rejected the position "based on his personal perception" that the reclassification was a demotion. The judge stated that there was no objective evidence supporting plaintiff's "personal perception." The judge also noted that when plaintiff offered to resign, Album told him to take a few days "to think things over," while the company investigated

the complaints regarding plaintiff's dealings with other Pinnacle employees.

Later, plaintiff met with Album and he was told he could resign or he would be terminated. Plaintiff chose to resign. The judge stated that Pinnacle's decision to accept plaintiff's resignation was not an adverse employment action because plaintiff had made clear before the meeting that he would never accept the position of independent contributor.

The judge commented that plaintiff chose to resign his position. He made the "unilateral and voluntary determination that he would never accept the position of independent contributor." The judge decided that under the circumstances, plaintiff could not establish that he had been subject to either a constructive discharge or an adverse-employment action.

We are convinced that the record supports the motion judge's determination. Plaintiff failed to show that he was demoted or otherwise subjected to an adverse employment action. His position was changed to independent contributor, but he failed to show that there was any adverse change to his compensation or benefits. Plaintiff decided he would not accept the reclassification of his position, and he decided to resign rather than be terminated.

As the judge pointed out in her decision, not every action that makes an employee unhappy constitutes an actionable

retaliatory action under CEPA. Nardello v. Twp. of Voorhees, 377 N.J. Super. 428, 434 (App. Div. 2005). Plaintiff claims without any factual support that his reclassification as an independent contributor is tantamount to a demotion. Although the record shows that subordinates would no longer report to him, he failed to show that the reclassification was, in fact, a demotion.

Plaintiff also argues that he was offered the opportunity to either resign or be fired, and that under the circumstances, his employment was terminated. The record shows, however, that plaintiff decided he would not under any circumstances accept the reclassification of his position. As the motion judge determined, plaintiff voluntarily resigned.

In view of our decision, we need not consider whether there is a causal connection between plaintiff's alleged protected conduct and the alleged retaliatory action, or whether the reasons Pinnacle gave for the alleged retaliatory action were pretextural.

Affirmed.