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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

YONG-JUAN YU,

Plaintiff and Appellant,

v.

BD BIOSCIENCES et al.,

Defendants and Respondents.

D058770

(Super. Ct. No. 37-2009-00090237-
CU-WT-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, William R. Nevitt, Jr., Judge. Affirmed.

Plaintiff and appellant Yong-Juan Yu brought this action for damages for breach of implied contract and wrongful constructive termination of employment against her former employers, defendants and respondents BD Biosciences, Becton, Dickinson and Company, and Dr. James Waters (Biosciences). Summary judgment was granted for Biosciences. (Code Civ. Proc., § 437c.) Yu appeals, contending she raised triable issues of material fact about whether the presumption of at-will employment, as presented in the

moving papers, was rebutted by evidence she supplied of the existence of an implied contract not to terminate her employment without good cause. (Lab. Code, § 2922; all further statutory references are to this code unless noted.) We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Terms of Employment

In 1993, Yu began employment at the predecessor of Biosciences, "BDG PharMingen," as a scientist in its tissue culture department (the company or the department). At that time, the company used a 1992 employee manual containing policy statements that the employment was on an "at-will" basis. The manual included rules of conduct outlining a progressive discipline policy. During her 15 years of employment, Yu was promoted from technician to a supervisory position, and she received positive performance reviews, raises in pay and bonuses.

Biosciences bought the PharMingen company, and by January 2001, it had posted numerous employment policies, online (intranet), for internal company employee reference. Yu accessed some of them, such as the vacation and sick leave policy. The online human resources staffing policy stated that "[t]he employment relationship between each Associate and the Company is 'at will.' " Its human resources policy for termination of employees states company policy requires reasonable efforts to retain good associates, while reiterating, "the employment relationship between BD Biosciences and its Associates is 'at will.' This means that the Company or the Associate may terminate the employment at any time with or without good cause and with or without

advance notice. This at-will status is not subject to change without an express written agreement signed by an officer of the Company."

Other company documents made available to employees included several (1995-2008) versions of its stock option plans. These documents set forth procedures for purchase of company stock, and rules for retention or forfeiture of those opportunities for purchase by employees who were terminated for cause, or who were involuntarily terminated, either for cause or not for cause. Those plans include definitions of "cause," as a willful and continued failure to perform employee duties (for reasons other than incapacity), or an engagement in illegal conduct or gross misconduct that injured the company.

B. Events Surrounding Termination of Yu's Employment

On October 14, 2008, one of Yu's subordinates (temporary technician Ajay Kumar), was injured while working with liquid nitrogen, which is used at Biosciences for storing vials of cells while they are being developed. Yu inspected his thermal gloves and believed that they were defective and had contributed to his injury. She then conducted her own experiment to see if double-gloving (using thermal and also chemical resistant nitrile gloves underneath) might help prevent such burn or frostbite injuries. She understood the hazards of working with liquid nitrogen, and she had experience in solving laboratory safety problems before, since troubleshooting was part of her job description. In performance reviews, she had been praised for her troubleshooting ability.

After Yu conducted her own experiment, she asked another set of subordinate employees to participate by double-gloving and reaching into the liquid nitrogen tank, to touch the liquid nitrogen surface. They refused and about a month later, complained to the Biosciences Environmental, Health and Safety Department (EH&S). They also reported that a third employee, Andrew Burns, had been asked to do the same.

In mid-November 2008, Biosciences employees investigated, including its human relations business partner Sandra Lundy, the manager of the EH&S department (Steve Sladky), and Yu's direct supervisor, Sharon Kinsey-Smith. Around the same time, other employees complained about a safety incident in which Kinsey-Smith was involved (continuing work without cleaning up a hazardous spill). That matter was also investigated and Kinsey-Smith was not penalized for it.

On November 24, 2008, Lundy, Kinsey-Smith and Sladky investigated Yu's experiment by meeting with Burns and separately with Yu. Kinsey-Smith told Yu no decision had been made yet and it was possible she would receive a warning. The next day, they suspended Yu's access to the liquid nitrogen room. Yu then sent an email apology to Lundy and to Dr. Waters, the plant manager of the facility where Yu worked, admitting she had made a "serious safety mistake" in conducting the experiments. On December 1, 2008, Yu sent a different email to all associates in her department, again admitting to making a "serious safety mistake" by double-gloving and placing her hand into liquid nitrogen, and asking Burns to do so.

Yu was taking sick leave at the beginning of December and her doctor told her not to go back to work before December 5, 2008. During her sick leave, Yu met privately

with her production manager, Dr. Zuofang Chen (Dr. Chen), who supervised Yu's own supervisor, Kinsey-Smith. Dr. Chen's husband, who did not work for Biosciences, told Yu that Dr. Waters was behind whatever decision was being made about her employment, due to unpleasant differences Yu and Dr. Waters had earlier about long-term stock policies and other matters (transfer of another employee).

In early December, other meetings were being conducted among Kinsey-Smith, Dr. Chen, Dr. Waters, and Lundy (the senior staff), to decide on a course of action about Yu's experiments. Lundy recommended that Yu be removed from her supervisory role. The other senior staff agreed and determined that Yu would be given two options, being demoted to senior biochemist and remaining in the same working group at the same salary, without any supervisory responsibility, or resigning her position.

Yu was scheduled to go on a month-long vacation December 8. The senior staff notified her about a meeting on December 5, 2008, for giving her their decision. Yu had her husband notify them she would not be attending that meeting.

Upon returning to work January 5, 2009, Yu attended a meeting at which she was told about the company's offer to demote her or accept her resignation. When she asked Kinsey-Smith about the planned demotion, she was told the reason was the safety violation. Yu then researched some computer files about Biosciences's processes and procedures, which was unusual for her. Yu asked for additional time to decide whether she would accept the senior biochemist position, and understood that she should come back the next day at noon.

On January 6, 2009, Lundy talked to Kinsey-Smith about Yu's questions to her, and then told Yu to stay home, and had her security access disabled. Lundy notified Yu there would be a meeting the following day, January 7, for Yu to decide on accepting the demotion. Late on the night of January 6, Yu sent an email to Lundy and Kinsey-Smith accepting the nonsupervisory (senior biochemist) position.

When Yu arrived at work early on January 7, she was not able to get into the building, and she went home and sent out several resignation e-mails early that morning. In those e-mails to several senior Biosciences officers, Yu accused Dr. Waters of a "pattern of vengeful and discriminatory behavior," based on their 2005 dispute about long term incentive compensation policies. She attached earlier e-mails showing her dispute with Waters.

Yu returned to the Biosciences facility at noon on January 7, 2009, for the meeting, but Lundy told her she had already resigned, and therefore the meeting had been canceled. Yu's vacation paperwork showed she had been involuntarily terminated, but that box was crossed out and the voluntary box checked. She picked up her final paycheck at the end of the day.

C. Complaint, Summary Judgment Proceedings and Ruling

In 2009, Yu sued Biosciences for damages for breach of an implied-in-fact employment contract not to demote or terminate without good cause, and for wrongful

constructive termination of employment. An amended complaint was filed alleging the same causes of action.¹

Biosciences answered the complaint and filed a motion for summary judgment or adjudication. Biosciences submitted declarations from its human resources partner, Lundy, and its attorney, authenticating numerous deposition excerpts from Yu and other employees about her history of employment and the experiment events. Biosciences contended Yu could not prevail on her cause of action for breach of implied contract, because as the employer, it was presenting evidence that the only relationship between the two parties was an at-will one. This was documented in the 1992 employee manual and the 2001 and updated online employment policies that could be accessed by employees.

Biosciences cited to Yu's admissions that no one from Biosciences or its predecessor had made any oral or written representations to her about a requirement for certain terms to exist before it could demote or terminate her employment. She admitted she had not entered into any sort of agreement with an officer of the company that established such conditions. Biosciences officials considered the safety violation to be a serious one, showing poor judgment, particularly for a supervisor.

¹ The trial court did not address two additional issues raised by the motion, whether good cause existed to terminate Yu's employment, or the constructive termination argument, and we need not discuss them. In a second cause of action, Yu sued the plant manager, Dr. Waters, for intentional infliction of emotional distress. Summary judgment was granted on that claim, and Yu does not challenge that ruling on appeal. At oral argument, counsel for Yu clarified that the implied-in-fact contract theories are the sole subject of this appeal.

In her opposition to the motion, Yu pointed to certain language found in the 1992 employee manual, a progressive discipline policy, as raising triable issues about the existence of an implied contract not to terminate except for good cause. She relied on deposition excerpts from Dr. Chen and Kinsey-Smith, to the effect that a company decision to discipline or terminate an employee would consider the whole person and the entire history of his or her conduct, such that one incident did not normally support termination of employment. She argued the evidence supported a finding that Biosciences employees understood there was a progressive discipline policy in place to be used for safety violations, and that understanding supported a finding that her employment was subject to an implied contract not to terminate without good cause.

Yu submitted her declaration detailing her longevity of service, raises and promotions received, all leading her to believe she had secure employment. She argued that since Biosciences could not produce any express employment contract stating at-will terms, its summary judgment request was necessarily without merit. Yu did not consider the 2001 online human resources policies particularly relevant to her position and had not needed to consult them, except for sick leave or vacation. She was scheduled for a merit increase based on her performance for the period up to September 2008, and received the increase at her severance in 2009, which she argued was an acknowledgment of lack of good cause for termination of her employment.

As for the stock option documents, she argued their significance lay in their definition of cause for termination, referring to willful or continuing misconduct, which these facts did not demonstrate. Yu also contended that other employees who had

committed safety violations were not terminated, including Kinsey-Smith. She outlined the disputes she had had with Dr. Waters and stated that she learned from Dr. Chen that Dr. Waters intended to cause her employment to be terminated because of his dislike for her.

After considering reply papers and hearing argument, the trial court issued a ruling granting summary judgment. The court determined that Biosciences had met its initial burden of proof, by producing documentary evidence supporting a presumption that Yu was an "at-will" employee. (§ 2922.) The court primarily relied on excerpts from her deposition stating no one had told her she had an implied promise for ongoing employment if no good cause for termination arose.²

The court next ruled that Yu had not produced evidence sufficient to raise a triable issue of material fact that her employment was other than "at will," and concluded, "The Court need not, and does not, consider defendants' 'good cause' [citation] and 'no constructive termination' [citation] arguments." Yu appeals.

DISCUSSION

Yu argues the trial court erroneously failed to recognize there are triable issues of fact about whether an implied-in-fact contract existed between herself and Biosciences, such that she could have been discharged from employment only for good cause.

² Yu does not challenge the lower court's ruling on her evidentiary objections.

I

STANDARD OF REVIEW

Evaluation of these arguments requires review under a de novo standard. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 859-860 (*Aguilar*); *Lunardi v. Great-West Life Assurance Co.* (1995) 37 Cal.App.4th 807, 819; *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) This court will "apply the same rules and standards that govern a trial court's determination of a motion for summary judgment." (*Distefano v. Forester* (2001) 85 Cal.App.4th 1249, 1258.) Summary judgment should be granted if "all the papers submitted show that there is no triable issue of material fact and . . . the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).)

To satisfy its burden in seeking summary judgment, a moving defendant is not required to "conclusively negate an element of the plaintiff's cause of action. . . . All that the defendant need do is to 'show[] that one or more elements of the cause of action . . . cannot be established' by the plaintiff." (*Aguilar, supra*, 25 Cal.4th 826, 853; *Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, 1594-1598.) Once this defendant's burden is met, the "burden shifts to the plaintiff . . . to show the existence of a triable issue of one or more material facts" (*Eisenberg v. Alameda Newspapers, Inc.* (1999) 74 Cal.App.4th 1359, 1375 (*Eisenberg*), italics omitted.) The plaintiff must supply affidavits setting forth specific facts demonstrating there are triable issues of material fact. When the defendant has sufficiently shown that the plaintiff's action has no merit, "substantial" responsive evidence is required. (*Id.* at p. 1376.)

When a plaintiff alleges the existence of an employer's implied promise to discharge an employee only for good cause, generally, but not always, a question of fact about the promise is presented. (*Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 677 (*Foley*); *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 337 (*Guz*)). Where the material facts are undisputed and/or are susceptible of only one conclusion, summary judgment may be proper in a case alleging an implied-in-fact contract not to terminate except for good cause, based on the legal issues identified in the record. (*Davis v. Consolidated Freightways* (1994) 29 Cal.App.4th 354, 366 (*Davis*)). If "the evidentiary submissions conclusively negate a necessary element of plaintiff's cause of action, or show that under no hypothesis is there a material issue of fact requiring the process of a trial," a defendant is entitled to judgment as a matter of law. (*Thompson v. Sacramento City Unified School Dist.* (2003) 107 Cal.App.4th 1352, 1360-1361.)

II

IMPLIED-IN-FACT EMPLOYMENT CONTRACT

A. Substantive Legal Principles

"An employment, having no specified term, may be terminated at the will of either party on notice to the other." (§ 2922.) At-will employment may be ended by either party at any time, without cause, for any or no reason, and it is not subject to any specified procedure except the statutory requirement of notice. (*Guz, supra*, 24 Cal.4th 317, 335.) Where the parties have made "no express oral or written agreement specifying the length of employment or the grounds for termination," there is a statutory presumption that the employment was at will in nature. (*Foley, supra*, 47 Cal.3d 654,

677; § 2922; *Haycock v. Hughes Aircraft Co.* (1994) 22 Cal.App.4th 1473, 1488
(*Haycock*.)

Such a presumption of at-will employment may be rebutted if one party can show the parties expressly or implicitly agreed to depart from the at-will status. (*Tomlinson v. Qualcomm, Inc.* (2002) 97 Cal.App.4th 934, 943.) An implied-in-fact agreement of this kind arises from the parties' conduct evidencing an actual mutual intent to create such a contractual agreement, that is, not to terminate except for good cause. (*Guz, supra*, 24 Cal.4th at p. 336.) " '[T]he totality of the circumstances' must be examined to determine whether the parties' conduct, considered in the context of surrounding circumstances, gave rise to an implied-in-fact contract limiting the employer's termination rights." (*Id.* at p. 337.) Thus, the employer's rights regarding either termination or demotion, as an adverse employment action, may be limited by such a contractual agreement. (*Id.* at p. 355.)

In examining such a claim, the courts take into consideration the entire relationship of the parties, which includes the following factors, as relevant here: an employee manual; online, accessible personnel policies and practices; longevity of service; any employer-sanctioned assurances of continued employment; and communications from or conduct of the employer approving of the employee's work, such as promotions, raises, bonuses, or positive performance reviews. (*Foley, supra*, 47

Cal.3d at p. 680; *Haycock, supra*, 22 Cal.App.4th at p. 1488.)³ The courts acknowledge that an employer has the right to give appropriate notice of changes in its personnel policies and practices. (*Asmus v. Pacific Bell* (2000) 23 Cal.4th 1, 17-18.)

Longevity of service alone, even with evidence of employer approval of the employee's work, does not suffice to form an implied-in-fact contract, because those circumstances may likewise be consistent with at-will employment. (*Eisenberg, supra*, 74 Cal.App.4th at pp. 1386-1390; *Guz, supra*, 24 Cal.4th at pp. 341-342.) "The issue is whether the employer's words or conduct, on which an employee reasonably relied, gave rise to that specific understanding." (*Id.* at p. 342, italics omitted.)

B. Procedural Principles in Summary Judgment Proceedings

Yu relies on *Wood v. Loyola Marymount University* (1990) 218 Cal.App.3d 661 (*Wood*), arguing it sets the standard for summary judgment analysis in an employment case with similar facts. There, the court applied the principles of *Foley, supra*, 47 Cal.3d at page 698, in the procedural context of summary judgment, and stated "the burden is on the moving defendant to 'negative the matters which the resisting party would have to prove at the trial.' [Citation.]" (*Wood, supra*, at p. 665.) The court then concluded that triable issues of fact existed as to whether the employer actually adhered to its own termination policies, and whether such adherence to the procedures would necessarily have resulted in termination of the plaintiff's employment. (*Id.* at p. 671.)

³ An additional area of inquiry identified in *Guz, supra*, 24 Cal.4th at page 345, applicable industry standards, is not in dispute here.

In *Guz, supra*, 24 Cal.4th at page 339, the Supreme Court relied on *Wood, supra*, 218 Cal.App.3d 661, as an example of a case in which employer-promulgated documents that include certain at-will terms of employment will not always overcome other evidence that the employer did intend that an employee's position was held under an implied contract not to terminate without good cause. The court said this was particularly so, "where other provisions in the employer's personnel documents themselves suggest limits on the employer's termination rights." (*Guz, supra*, at p. 339, citing *Wood, supra*, 218 Cal.App.3d 661, 665-669.)

From that analysis in *Guz, supra*, 24 Cal.4th 317, it appears that *Wood, supra*, 218 Cal.App.3d 661, is still good authority for the proposition that the totality of the circumstances must be considered in evaluating the terms of a particular employee's contractual arrangement, as opposed to having at-will status. Nevertheless, *Wood's* procedural approach for summary judgment burden-shifting is outdated, in light of the rules applied in *Guz* for analyzing the respective strength of moving and opposing summary judgment showings in an employment termination case that is based on implied contract theory. It would be inappropriate to require Biosciences (as in *Wood, supra*, at p. 665) to "negative the matters which the resisting party would have to prove at the trial," in light of the more modern principles stated in *Aguilar, supra*, 25 Cal.4th 826. (See also *Brantley v. Pisaro, supra*, 42 Cal.App.4th 1591, 1594-1598.) Currently, a defendant moving for summary judgment is not required to "conclusively negate an element of the plaintiff's cause of action. . . . All that the defendant need do is to 'show[]

that one or more elements of the cause of action . . . cannot be established' by the plaintiff." (*Aguilar, supra*, at p. 853.)

Once such a defendant's burden is met, the "burden shifts to the plaintiff . . . to show the existence of a triable issue of one or more material facts" (*Eisenberg, supra*, 74 Cal.App.4th 1359, 1375; italics omitted.) Using that analytical approach, we next consider the parties' respective showings.

C. Showing by Defendants

In moving for summary judgment, Biosciences had the initial burden of showing the nature of Yu's employment allowed it to be terminated at will, consistent with the presumption of at-will employment set forth by section 2922. In the implied contract analysis required by Yu's complaint, it is appropriate to focus on, first, the documentary evidence of Biosciences' personnel policies, employment manual, and stock option agreements, and second, evidence of other circumstances such as employer conduct and communications. The totality of the circumstances includes Yu's longevity of employment, and the existence of any employer assurances that might reasonably have led Yu to believe Biosciences created "binding limits on an employer's statutory right to terminate the relationship at will." (*Guz, supra*, 24 Cal.4th at p. 340.)

1. *Employment Documents*

At-will language in personnel manuals is not dispositive, where there is "other evidence of the employer's contrary intent," such as contradictory provisions in the employer's personnel documents, which indicate that the employer agreed to certain limits upon its right to terminate an employee. (*Guz, supra*, 24 Cal.4th at p. 339.) The

Biosciences personnel policies and employment manual include at-will language.

Additionally, the 1992 employment manual contained rules for conduct that outlined a progressive discipline procedure. The 2001 personnel policies do not.

With respect to the stock option plans, they contain references to different kinds of termination of employment, either for cause, or voluntary or involuntary termination without cause, as affecting purchase rights. It is not dispositive that the stock option plans contain a definition of cause for termination, since that was only part of the purpose of the documents, which were not directly used as a human resources or staffing guideline.

From these documents, taken as a whole, the trial court was justified in finding that the employer had not communicated to its employees in writing that it would follow certain personnel policies, as alleged, containing any detailed rules or restrictions upon its right to make adverse employment decisions under particular circumstances. (See *Guz*, *supra*, 24 Cal.4th at pp. 346, 355.)

2. *Other Employer Conduct or Communications*

In discussing the other types of evidence relevant to a determination of the existence of an implied employment agreement restricting an employer's termination rights, the Supreme Court has explained that "long and successful service is not necessarily irrelevant to the existence of such a contract." (*Guz*, *supra*, 24 Cal.4th at p. 342.) However, without more evidence of the employer's intent to enter into such restrictions, "longevity, raises and promotions are their own rewards for the employee's

continuing valued service; they do not, in and of themselves, additionally constitute a contractual guarantee of future employment security." (*Ibid.*, italics omitted.)

Biosciences relies on Yu's own deposition testimony to argue that nothing its managers did communicated to Yu that her 15 years of employment somehow created rights against termination at will. (*Guz, supra*, 24 Cal.4th at p. 343.) She also admitted at deposition that the managers at Biosciences did not communicate to her that the company had any unwritten practice or policy of releasing employees only for cause. (*Id.* at p. 345.) Those admissions do not support her position that the employer impliedly agreed not to terminate her without good cause.

On these demonstrated facts regarding the totality of the circumstances, Biosciences sufficiently shifted the burden to Yu in the motion proceedings, by showing her breach of implied contract cause of action has no merit.

D. Opposition and Analysis.

Once the burden was shifted to Yu, she relied mainly on the *Foley* categories of evidence for showing triable issues of material fact remained about the company's intent regarding the terms of her employment. (*Foley, supra*, 47 Cal.3d at p. 680.) She also contends the employment documents are not inconsistent with her implied-in-fact contract theory.

1. *Employment Documents*

Yu makes several arguments about the face of these documents. In her view, the lack of an express signed at-will contract, which is admitted by Biosciences, means that she is free to prove that implied contract terms exist, and that she has done so. She also

argues that since the evidence did not show she had any specific discussion with employer representatives, specifying her employment terms regarding termination for cause or at will, that absence of evidence cuts in her favor. However, the absence of a specific showing about a written contract is only part of the circumstances that must be considered in determining whether an at-will presumption of employment was rebutted, for summary judgment analysis. (*Aguilar, supra*, 25 Cal.4th at p. 853.)

Yu next argues that the 1992 personnel manual should not apply to her, since she started employment after its publication and there is no record that she was given a copy, or alternatively, that it was superseded by the 2001 and updated online personnel policies that Biosciences made available to its employees. Somewhat contradictorily, she also relies on the manual's rules of conduct, containing a progressive discipline procedure. These documents should be read as a whole, and it is illogical for her to claim that only the progressive discipline policy in the manual remained binding on the company. Testimony from Biosciences' human resources business partner Lundy and another company management witness, Ms. Weddle, stated that they were not aware of any existing progressive disciplinary policy at the time of these events, and it is not in the online documents.

According to Yu, other Biosciences employees still seemed to understand there was a progressive discipline policy in place to be used for safety violations, such as when Kinsey-Smith told her she might get a warning, although no discipline decision had yet been made. Also, Dr. Chen testified that the decision not to fire Kinsey-Smith for her own safety violation had taken into account Kinsey-Smith's employment history and

other factors. Yu did not show that these types of considerations were required by the terms of the employment documents, or that they were not appropriately used in either instance.

Yu also contends that since she began work in 1993, there was no adequate consideration binding her to the terms of the 2001 and updated versions of the online personnel policies, which do not show any express progressive discipline policy. Yu does not dispute that the human resources and staffing policies were made available to her, but says she did not need to examine them. Her continued employment, however, and her admitted access to and use of some of those policies, undermines her argument. (See *Asmus, supra*, 23 Cal.4th 1, 17-18; *Schacter v. Citigroup, Inc.* (2009) 47 Cal.4th 610, 619-620 [employees may have impliedly accepted changed employment terms by continuing to work].)

Further, to the extent Yu relies on the definition of cause for termination, as found in the stock option plans, that reliance is unjustified because it is taken out of context. The purpose of the definition is to specify what happens when an employee is terminated "for cause," i.e., the stock options are cancelled as of the date of the termination. Under the policies, where employment was terminated "without cause," a three-month grace period is allowed for exercising stock options. That does not answer the question of whether a particular termination of employment was appropriate, either for cause or not. To the extent that any of the employment documents arguably created terms of employment, Yu did not show why they indicate her employment was not "at will," nor did she identify provisions within the documents that created enforceable limits on the

employer's termination rights. (*Guz, supra*, 24 Cal.4th at p. 339, citing *Wood, supra*, 218 Cal.App.3d 661, 665-669.)

In *Wood, supra*, 218 Cal.App.3d 661, 665-671, the terminated employee was able to show that triable issues of fact existed as to whether the employer had adhered to its own established termination policies. However, Yu did not show Biosciences created and adopted particular restrictive policies and criteria that had to be satisfied to justify termination of her employment, and thus *Wood* is distinguishable in this respect. (*Id.* at pp. 665, 671.)

2. *Other Employer Conduct and Communications*

Yu contends she presented factual evidence that the employment documents were supplemented by an implied-in-fact contract term not to discharge in the absence of good cause. Company representatives, Dr. Chen and Kinsey-Smith, testified that a company decision to discipline or terminate an employee would usually consider the whole person and the entire history of his or her conduct, such that one incident did not normally support termination of employment. These statements do not show that the company somehow restricted its rights to treat employment on an at-will basis. Human resources partner Lundy reviewed Yu's personnel file while the senior staff was considering how to treat Yu in light of her experiment, and found no previous discipline record. Lundy testified that although the staff took that into consideration, they considered her experiment to be significantly egregious, for a supervisor, such that Yu's employment history was not all that relevant to them.

Yu mainly relied on evidence of her length of employment, her receipt of promotions, and various positive statements made to her over the course of her employment, to attempt to raise a triable issue of fact concerning implied terms of employment, such as a requirement of good cause for termination. However, evidence about an employee's receipt of positive reinforcement for doing a good job (e.g., raises and bonuses) does not alone change the presumed at-will nature of employment. In *Stillwell v. Salvation Army* (2008) 167 Cal.App.4th 360, 380-383, this court determined that the employee had presented substantial evidence to show that the employer had promised to terminate his employment only for cause, and it had breached that promise. In addition to positive performance reviews, commendations, and salary increases, that employee was able to present evidence of specific assurances by his supervisors that he would be able to work for them until he voluntarily retired, thus supporting his implied contract claim.

Similarly, in *Reid v. SmithKline Beecham Corp.* (S.D.Cal. 2005) 366 F.Supp.2d 989, 995, the employee was able to show that she was expressly told by her supervisors that she would not be terminated without cause, and that the employer had a practice not to terminate without cause. In *Reid*, there were remaining issues of material fact for trial, about whether that employer had impliedly agreed not to terminate that 14-year employee without good cause.

By contrast, in *Kovatch v. California Casualty Management Co.* (1998) 65 Cal.App.4th 1256, 1276 (disapproved on other grounds in *Aguilar, supra*, 25 Cal.4th 826, 854, fn. 19), this court noted that an employee who presented "evidence of positive

performance reviews, commendations, salary increases, and vague assurances that [the employee] would become a sales manager" did not adequately raise triable issues of fact about an alleged implied contract term, to be terminated only for good cause, because those positive factors were equivocal in nature on that issue. More evidence was needed to contradict the at-will agreements he had signed. (*Kovatch, supra*, at p. 1276.)

Here, Yu has offered mainly her own understanding, based on her previous good performance and positive performance reviews, that she would not be terminated without good cause, and such allegations do not amount to the factual showing required to defeat a well-supported defense summary judgment. (*Eisenberg, supra*, 74 Cal.App.4th 1359, 1386-1390.) She did not present evidence of any actual promise by authorized Biosciences managers that she would be employed for a specific term or as long as she was doing a good job, or that she could only be terminated for good cause. She suggests that there was initially no criticism of her October 2008 experiment, and that only belatedly, and on a pretextual level, was any inquiry into her conduct made. However, the complaints from the other employees were followed up within a month of the incident (November 2008), and her termination occurred about six weeks later (January 2009). The timing of these events alone, or in combination with her other arguments, provide no support for her claims that implied contract terms protected her reasonable expectation of continued employment, absent good cause to terminate, under all the relevant circumstances.

3. Related Good Cause Issues

To the extent that Biosciences is arguing it had good cause to terminate her employment (an issue we need not decide), Yu contends that the company eventually adopted her double-gloving procedure, and that this is shown in the material safety data sheet regarding liquid nitrogen utilized by Biosciences. However, although that document specifies (in a portion about personal protection of workers), that hands should be protected by chemical resistant, impervious gloves, it includes that specification in a list that also names insulated gloves suitable for low temperature. The manner in which those criteria are listed does not show that the company adopted the precise method Yu created. Also, other testimony she provided at deposition showed that she knew the nitrile gloves she used were unsafe for use with liquid nitrogen, alone, and she did not research what would happen if the nitrile gloves were exposed to liquid nitrogen.

Yu also argues her receipt of a merit increase based on her recent performance in 2008 showed there was some dispute about whether good cause for her termination existed. However, since the relevant merit increase period did not include the October and November 2008 events, this argument is not persuasive. In any case, with respect to the predicate issue here, she has not supported her claim that any results of her experiment have anything to do with the existence of implied contract terms not to be terminated except for good cause, or without additional warnings. Yu's receipt of promotions, raises, and bonuses, over 15 years of employment, showed her satisfactory performance during that time period, but she did not demonstrate those factors were

anything other than "a natural consequence" of an ongoing, but at will, employment relationship. (*Guz, supra*, 24 Cal.4th at p. 341.)

This is a case in which summary judgment is appropriate, because the nonexistence of any implied-in-fact contract not to terminate except for good cause can appropriately be resolved on this set of undisputed facts, as a matter of law. (*Davis, supra*, 29 Cal.App.4th 354, 366.) To the extent Yu may have pursued any related constructive termination arguments, the same analysis applies.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to Respondents.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

McINTYRE, J.