

PlainSite® 

Legal Document

Maryland District Court
Case No. 1:00-cv-02937-MJG
Sanders v. USA, et al

Document 49



View Document



View Docket

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

| | |
|--|--------------------------------|
| STEVEN P. SANDERS | * |
| Plaintiff | * |
| vs. | * CIVIL ACTION NO. MJG-00-2937 |
| RICHARD V. HAYDEN, Director of National Security Agency | * |
| Defendant | * |
| * * * * * | * * * * * |

MEMORANDUM AND ORDER

The Court has before it Defendant's Second Motion to Dismiss, or in the Alternative, for Summary Judgment [Paper 35] and the materials submitted by the parties related thereto. The Court finds a hearing unnecessary.

I. BACKGROUND¹

Plaintiff Steven Sanders ("Plaintiff" or "Sanders") is a white male, born in 1956, employed by the National Security Agency ("NSA" or "Agency") since 1978. Defendant Lt. General Michael Hayden ("Defendant" or "Hayden"), who is sued in his official capacity, is the Director of the NSA.

The Agency is organized into several key components which are further subdivided into groups, offices, divisions, and

¹ In the present context, it is necessary to assume that the Plaintiffs' version of the disputed facts is correct.

branches. In March 1997, Plaintiff, who was grade 13², was transferred from the P01 branch ("P01") to the P43 ("P43") branch. P43, the Information Warfare Support Center's Program Management Division, was responsible for providing oversight for security support, resource management, personnel administration, facilities, and training.

In P43, Plaintiff's immediate supervisor was Acting Division Chief Carol Cochran ("Cochran"), a fifty-four year old, African American woman. Cochran's supervisor was Deputy Chief David Pille ("Pille"). Pille's supervisor was Chief Lawrence Schaffer ("Schaffer"). Plaintiff was the only man permanently assigned to P43. There were two male security people detailed to the branch from their controlling divisions.

Plaintiff was assigned to P43 as a Senior Program Manager/IO Category Manager with the Operations Directorate. Plaintiff was responsible for the oversight and management of several programs and special services (money and billets) resource allocation. His job description went on to say that "Mr. Sanders also functions as the P4/IW corporate briefer..." Pl.'s Ex. 3. In July 1997, Lisa Millford ("Millford") was assigned to P43 for the purpose of assuming the briefing

² Grade 13 is the government pay grade.

responsibilities for P43. Plaintiff, who had receive accolades and a cash award for his preparation and presentation of briefings did not want to stop doing the briefings. Arrangements were made so that Millford would do the lower level briefings and Plaintiff would continue to do the corporate briefings. Cochran sent an email identifying Millford as the lead contact person with reference to briefings.

Millford, a woman and younger than Plaintiff, was grade 12 when she was hired. Despite the fact that she was junior to Plaintiff, Millford was given a private office. Plaintiff's workspace was in a common work area. Plaintiff complained about this office assignment, but no accommodation was offered until Plaintiff had made steps to leave P43. Millford was also allowed to take training classes which Plaintiff was not allowed to attend.

In August of 1997, Schaffer requested that Cochran be designated Chief of P43 and that Plaintiff be designated Deputy Chief. This request was approved on November 6, 1997. On the same day, Cochran sent an email requesting that the personnel office update the database to reflect that Cochran and Plaintiff were now in supervisory positions. Their new positions would be designated by an "S" in the database. The

data base was never updated to reflect Plaintiff's new position.

There was tension between Plaintiff and Cochran from the beginning of their working relationship. Plaintiff felt that Cochran discriminated against him because of his age and gender. He further believed that she made inappropriate, and possibly illegal, funding decisions. On one occasion, Plaintiff believed that Cochran attempted to force him to sign off on an illegal travel reimbursement. Plaintiff refused to sign off and got upset. Cochran reported Plaintiff to Schaffer and asked that he receive a written reprimand. After a private meeting, no reprimand was issued.

In 1997, Plaintiff was eligible for promotion. Under the Agency's promotion system, grade 13 employees are considered for promotion twice a year, in July and December. Plaintiff was considered for transfer by P01 during July and December of 1997 because he had begun the year working with that branch. Plaintiff was not promoted in 1997 and believes that the failure to promote was due to poor reports from Cochran and because he never received the "S" designation indicating his new position in P43.

Plaintiff's health began suffering as a result of workplace stress. On October 9, 1997 Plaintiff was taken to

the hospital and placed in the intensive care unit due to elevated blood pressure. On December 5, 1997, after Plaintiff received an email from Cochran discussing Plaintiff's problems in the workplace, Plaintiff's wife and a colleague took Plaintiff to the Agency's medical center and then to the hospital. Plaintiff was semi-conscious, and his blood pressure was elevated. In October, Plaintiff contacted the Office of Equal Employment Opportunity ("OEEEO"). Because he did not want his medical problems reflected on his record, he did not file a formal complaint.

Plaintiff began seeking other employment within the agency on his own. On November 3, 1997, after receiving a job offer from another department, Plaintiff asked to be released from P43 effective November 24, 1997. The Agency was in the middle of a "budget build", and the P Group was preparing a first-time Request for a Proposal (RFP). Schaffer informed Plaintiff, that because he was the primary budget officer in the P Group and because he had been hired specifically to complete the RFP, Plaintiff could not be released at that time.

Plaintiff filed a Formal Complaint of Discrimination with the OEEEO on November 25, 1997 alleging gender and age discrimination. He sought the sole remedy of being released

from his position at P43. Plaintiff produced doctor's notes which indicated that he needed to be released for his health. The OEE0 officer also spoke to Schaffer to secure Plaintiff's release. Plaintiff was released on December 8, 1997. He immediately began a new job in another department at the Agency.

On March 13, 1998, Plaintiff sought to add charges of race and disability discrimination to his OEE0 Complaint. On December 30, 1998 the OEE0 issued a notice of "Acceptance and Rejection of Formal Complaint of Discrimination." Plaintiff did not appeal, and a Final Agency Decision rejecting the Complaint was issued on February 5, 1999. During May of 1999, Plaintiff filed a second OEE0 Complaint alleging retaliation and age, disability, race, and gender discrimination based on the Agency's OEE0's failure to rule favorably on his first complaint and the Agency's failure to correct the hostile work environment created by Cochran. The OEE0 dismissed the second Complaint on July 14, 1999. Plaintiff appealed the dismissal. The dismissal was upheld.

Plaintiff filed the instant suit in September of 2000. By the subject motion, Defendant seeks dismissal or, alternatively, summary judgment on the remaining claims.

II. LEGAL STANDARD

Defendant is seeking either dismissal pursuant to Rule 12(b)(6) or summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. A motion to dismiss may be converted into a motion for summary judgment if 1) matters outside the pleadings are presented to, and not excluded by, the court; 2) all parties are given notice; and 3) all parties have a reasonable opportunity conduct discovery and present pertinent materials. See Fed. R. Civ. P. 12(c); Gay v. Wall, 761 F.2d 175, 177 (4th Cir. 1985).

The discovery deadline was October 10, 2002. The subject motion was filed on October 29, 2002. Plaintiff argues that he has not had adequate discovery. Plaintiff filed a motion to compel in January 2003. Magistrate Judge Bredar denied Plaintiff's request noting that Plaintiff appeared to be attempting to expand discovery. See Order dated April 8, 2003. As Plaintiff has had adequate opportunity for discovery, the Court shall consider the instant motion as a motion for summary judgment.

A motion for summary judgment shall be granted if the pleadings and supporting documents "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R.

Civ. P. 56(c). The well-established principles pertinent to such motions can be distilled to a simple statement.

The Court may look at the evidence presented in regard to the motion for summary judgment through the non-movant's rose colored glasses, but must view it realistically. After so doing, the essential question is whether a reasonable fact finder could return a verdict for the non-movant or whether the movant would, at trial, be entitled to judgment as a matter of law. E.g., Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59 (1970); Shealy v. Winston, 929 F.2d 1009, 1012 (4th Cir. 1991).

III. DISCUSSION

Both of Plaintiff's pending³ claims (Title VII gender and ADEA) are evaluated under the burden-shifting scheme set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-804 (1973). Plaintiff must first establish a prima facie case. If Plaintiff is able to establish a prima facie case,

³ Pursuant to a Joint Consent Motion for Dismissal granted on March 13, 2001 and this Court's Order of July 30, 2001, only Count I (Violation of Title VII) and Count IV (Violation of the ADEA) of Plaintiff's Complaint are before the Court.

Defendant must articulate a legitimate, nondiscriminatory reason for its action. If Defendant is able to articulate such a reason, the burden shifts back to Plaintiff to prove that Defendant's articulated reason was mere pretext for unlawful discrimination.

As a threshold matter, Plaintiff must first establish that he suffered an adverse employment action. See St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507 (1993). "A tangible employment action constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 761 (1998). "[T]here are many interlocutory or mediate decisions having no immediate effect upon employment conditions which were not intended to fall within the direct proscriptions of [Title VII]." Page v. Bolger, 645 F.2d 227, 233 (4th Cir. 1981).

Plaintiff bases his suit on five categories of alleged adverse employment actions: 1) denial of training opportunities; 2) removal from briefing assignments; 3) failure to assign the appropriate title; 4) denial of office space; and 5) refusal to release Plaintiff from his job with the P43

branch. Plaintiff tacitly concedes that the denial of training opportunities, the removal of his briefing duties, the denial of office space, and the refusal to release Plaintiff do not constitute actionable adverse employment decisions.⁴ Plaintiff's sole argument is that Defendant's failure to include the "S" designation in Plaintiff's records affected his ability to be promoted. Plaintiff does not base the instant suit, nor did he base his EEOC charge, on a failure to promote. Plaintiff cites an unpublished Fourth Circuit decision, McNair v. Computer Data Systems, Inc., 172 F.3d 863 (4th Cir. 1999)(table), to support his contention that "[a] failure to correctly title an employee, when that title prevents a promotion, constitutes an actionable employment action." Pl.'s Opp. to Def.'s Second Mot. to Dismiss, or in the Alt., for Summ. J. at 7.

The Fourth's Circuit's reasoning in McNair is directly on point and instructive in the instant action. Of McNair's suit, the Fourth Circuit wrote:

McNair contends that the change in her GSA contract title would ultimately lead to a

⁴ In Plaintiff's discussion of "Defendants' Claim that Plaintiff Failed to Show that He Suffered an Adverse Employment Action," Plaintiff's sole argument is that the denial of the "S" designation constituted an adverse employment action. The other four issues are never mentioned. See Pl.'s Opp. to Def.'s Second Mot. to Dismiss, or in the Alt., for Summ J. at 6.

discriminatory failure to promote, because only individuals with the higher GSA job title received promotions. However, McNair never alleged denial of promotion in either of her two EEOC charges, and she is therefore precluded from litigating such a claim....Even were we to consider appellant's claim that the change in contract title adversely affected her chances for promotion, we would still conclude that while actual failure to promote constitutes an actionable "ultimate employment decision," the particular employment action in question, as a decision of the "interlocutory or mediate" variety, does not.

McNair, 172 at **3 n.2 (internal citations omitted) (emphasis added). As in McNair, the failure to assign the "S" designation to Plaintiff, does not constitute an actionable employment decision. This reasoning is applicable to the ADEA claim as well. See Id., citing Flaherty v. Gas Research Institute, 31 F.3d 451, 456 (7th Cir. 1994) (semantic change in title and change in supervisor not actionable under analogous provision of ADEA); Crady v. Liberty Nat'l Bank & Trust Co., 993 F.2d 132, 136 (7th Cir. 1993) (lateral transfer with semantic change in title and alteration of job responsibilities similarly not actionable under ADEA). Furthermore, as Plaintiff did not include the failure to promote in his EEOC charge, he cannot litigate it now.

Plaintiff has failed to establish that there was an actionable adverse employment decision. Accordingly, he is

unable to establish a prima facie case of Title VII gender or ADEA discrimination. Therefore, Defendant is entitled to summary judgment.

IV. CONCLUSION

For the foregoing reasons:

1. Defendant's Motion for Summary Judgment [Paper 35] is GRANTED.
2. Defendant's Second Motion to Dismiss is DENIED AS MOOT.
3. Judgment shall be entered by separate Order.

SO ORDERED, on Tuesday, June 3, 2003.

_____/ s /_____
Marvin J. Garbis
United States District Judge