

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-10196

BENJAMIN W. MCKEE,

Plaintiff-Appellant,

VERSUS

WILLIAM PERRY, SECRETARY, DEPARTMENT OF DEFENSE,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(3:95-CV 0327-T)

December 4, 1996

Before JOLLY, JONES and PARKER, Circuit Judges.

PER CURIAM:*

McKee challenges the district court's order granting summary judgment to the defendant rejecting McKee's action for loss of employment opportunity because of age discrimination.

For essentially the reasons stated by the district court in its thorough order of December 26, 1995, we affirm the district court's judgment. Although the plaintiff, who was 54 years of age, established a prima facie case, the defendant produced evidence the plaintiff was not as qualified as applicants who were accepted in

*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

the program McKee sought to join. This was a non-discriminatory reason for the challenged action. McKee then failed to produce sufficient evidence to show that the employer's stated reason for refusing to select McKee into the program was untrue or pretextual. McKee's retaliation claim must fail for the same reason. Because McKee failed to show that the proffered reason for the employer's action (superior qualifications of other candidates) was a pretextual reason for not selecting McKee, no inference arises that the employer failed to select McKee for the program because he filed an EEOC complaint.

AFFIRMED.