

May 3, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-41490  
Summary Calendar

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GENE REYNOLDS,

Plaintiff-Appellant,

versus

DONALD H. RUMSFELD, SECRETARY, DEPARTMENT OF DEFENSE; R L  
BROWNLEE, Acting Secretary of the Army

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas, Texarkana Division  
Civil No. 5:03-CV-146  
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Before WIENER, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:\*

Appellant Gene Reynolds appeals from an adverse summary judgment dismissing his age and race discrimination claims brought against Appellees. Reynold's discrimination claims stem from his not being selected by the army for the position of 19th Theater Army Area Command Safety and Occupational Health Manager in Korea. The sole issue presented is Reynold's claim that the

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\* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

district court erred in its determination that Appellant failed to present sufficient evidence of pretext to rebut the Army's non-discriminatory reasons offered to explain why Appellant was not selected. Reynolds contends that he presented sufficient evidence to raise a fact issue as to whether the Army's proffered explanation was pre-textual. We reject Appellant's contention. Reynolds has not raised a fact issue of pretext nor has he shown that he was clearly better qualified than the applicant actually selected for the position involved. Conjecture, speculation, and Appellant's subjective beliefs are not relevant evidence. We do not second-guess the determination made here by the Army. We affirm essentially for the reasons set forth in the Report and Recommendation of the United States Magistrate Judge dated August 11, 2004, and District Judge Folsom's Memorandum Order dated August 30, 2004, dismissing Appellant's claim, rejecting Appellant's objection to the magistrate report, and adopting the magistrate report.

The judgment of the district court is AFFIRMED.