

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-10918
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 3, 2019

Lyle W. Cayce
Clerk

ERIC BAGGETT,

Plaintiff–Appellant,

versus

ONCOR ELECTRIC DELIVERY COMPANY, L.L.C.,

Defendant–Appellee.

Appeal from the United States District Court
for the Northern District of Texas
No. 3:17-CV-3136

Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:*

Eric Baggett sued his former employer under Title VII and the Age

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Discrimination in Employment Act (“ADEA”). On appeal, he abandons Title VII and complains only of the dismissal of his ADEA claim.

The Equal Employment Opportunity Commission (“EEOC”) dismissed Baggett’s charge as untimely. We need not rest our decision on that alleged deficiency, however. As the district court carefully explained, “Even if the Court were to ignore the EEOC’s dismissal of the Charge as untimely, the allegations in the First Amended Complaint are insufficient to state a claim of age discrimination under the ADEA. Baggett has not sufficiently alleged two of the elements—that he was qualified for the position and that he was (i) replaced by someone outside the protected class, (ii) replaced by someone younger, or (iii) otherwise discharged because of his age.”

The district court also noted that Baggett “has already amended his pleadings once, failed to respond to the Motion to Dismiss, and did not request leave to amend [, so] allowing Baggett the opportunity to replead would be futile.” There is no reversible error in the district court’s determinations. The judgment of dismissal is AFFIRMED, essentially for the reasons given by the district court.