

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1300
Summary Calendar

DAVID M. SANDS,

Plaintiff-Appellant,

v.

U.S. POSTAL SERVICE,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(CA 3 91 1213 T)

(December 22, 1992)

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.*

PER CURIAM:

The district court held that Sands had not exhausted his administrative remedies before pursuing in federal court his claim that he was dismissed by the Postal Service on the basis of sex discrimination. Sands has not advanced arguments on appeal that contradict this ruling, and we therefore affirm the dismissal for lack of jurisdiction.

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Sands now asserts that he contacted an EEO counselor within thirty days after the alleged discrimination, but this allegation is made for the first time on appeal. It is in any event irrelevant, because Sands never pursued his EEO remedy by filing a formal complaint within fifteen days of his exit interview. The EEOC never had an opportunity to investigate and resolve the claim he then filed in district court. While EEOC statutes of limitations are treated as subject to equitable tolling, exhaustion of remedies remains a jurisdictional prerequisite. East v. Romine, Inc., 518 F.2d 332, 336 (5th Cir. 1975) (exhaustion of administrative remedies is a jurisdictional prerequisite to Title VII suit in federal court). Sands did not exhaust. Sands may not defeat the purpose of exhaustion and still preserve a judicial remedy. Munoz v. Aldridge, 894 F.2d 1489, 1493 (5th Cir. 1990).

Sands's allegation, made for the first time in his response to the Postal Service's motion to strike, that the district court denied due process by not permitting him to file exhibits he seeks to introduce on appeal, is also without merit. This court does not review issues raised for the first time in an appellant's reply brief. United States v. Prince, 868 F.2d 1379, 1386 (5th Cir.), cert. denied, 493 U.S. 932 (1989).

The judgment of the district court is **AFFIRMED**.