UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-1829
Summary Calendar

DANNY E. DAVIS,

Plaintiff-Appellant,

VERSUS

JOHNSON & JOHNSON MEDICAL, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(CA4-91-418E)

April 19, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Appellant Danny E. Davis (Davis) appeals the district court's grant of summary judgment in favor of Appellee Johnson & Johnson Medical, Inc. (Johnson & Johnson). Finding no genuine issue of material fact and that Johnson & Johnson, Inc. is entitled to judgment as a matter of law, we affirm.

BACKGROUND

Davis began working for Johnson & Johnson in approximately 1974, and became a Production Supervisor in 1981. In January

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[1] 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

1990, Davis, who was 42 at the time, interviewed for six positions at the Johnson & Johnson plant in Arlington, Texas, four as a Project Manager, and two as a Raw Material Coordinator. Five of these positions were filled with other long-time employees of Johnson & Johnson, and one was filled from outside the company.

In June 1990, Davis sent a letter to the plant manager stating his intention to resign and expressing his belief that Johnson & Johnson had discriminated against him on the basis of his age when it did not promote him to the positions he sought. Johnson & Johnson investigated his allegations, found them to be meritless, and offered to allow him to remain in his position despite his resignation. Davis declined the offer, and his resignation ultimately became effective in August 1990.

In October 1990, Davis sued Johnson & Johnson, alleging that Johnson & Johnson violated the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621-34, by (1) refusing to promote him to a position as Raw Material Coordinator or Project Manager because of his age; (2) creating such difficult conditions by refusing to promote him that he felt compelled to resign; (3) retaliating against him for having filed an EEOC complaint; (4) following a practice of refusing to hire persons forty years or older in upper level positions.

The court entered summary judgment in favor of Johnson & Johnson on all claims, and David appeals.

ANALYSIS

I. Standard of Review

Summary judgment is appropriate if the record discloses "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). In reviewing the summary judgment, we apply the same standard of review as did the district court. Waltman v. International Paper Co., 875 F.2d 468, 474 (5th Cir. 1989); Moore v. Mississippi Valley State Univ., 871 F.2d 545, 548 (5th Cir. 1989). The pleadings, depositions, admissions, and answers to interrogatories, together with affidavits, must demonstrate that no genuine issue of material fact remains. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). To that end we must "review the facts drawing all inferences most favorable to the party opposing the motion." Reid v. State Farm Mut. Auto. Ins. Co., 784 F.2d 577, 578 (5th Cir. 1986). If the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); see Boeing Co. v. Shipman, 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc).

II. Issues Raised on Appeal

Davis's brief does not clearly state which claims he believes were wrongly dismissed on summary judgment, but his brief seems to only address his promotion discrimination claim. Because we need not consider issues not adequately briefed on appeal, this opinion only addresses his promotion discrimination claim. See Corcoran v. United Healthcare, Inc., 965 F.2d 1321, 1326 (5th Cir. 1992), cert.

denied, 113 S.Ct. 812 (1992) (citing Hulsey v. State of Texas, 929 F.2d 168, 172 (5th Cir. 1991).

III. Failure to Promote

To establish a prima facie case of age discrimination, Davis must prove that (1) he was qualified for the positions he sought; (2) he was within the protected class at the time he was not promoted;[2] and (3) someone outside the protected age group or at least someone younger was promoted instead or he was otherwise discriminated against because of his age. Eg., Bienkowski v. American Airlines, Inc., 851 F.2d 1503, 1504-05 (5th Cir. 1988); Elliot v. Group Medical & Surgical Service, 714 F.2d 556, 565 (5th Cir. 1983), cert. denied, 467 U.S. 1215 (1984).

The district court granted summary judgment in favor of Johnson and Johnson on this claim because Davis did not establish a prima facie case. In reaching this conclusion, the court noted (1) that Davis failed to point to any evidence regarding the age of the allegedly favored persons, and (2) the only evidence Davis presented to support his claim of age discrimination consisted of his own deposition testimony describing statements made by other company employees, employees that Johnson & Johnson proved had no authority over the challenged promotion decision.

Davis first argues that "the [d]istrict [c]ourt erred by finding the [A]ppellant failed to prove that someone younger was

[2] The ADEA protects persons who are at least forty years old. 29 U.S.C. § 631.

hired to the positions [A]ppellant sought because that fact had never been disputed," but fails to point to any evidence in the record in support of this argument. We agree with the district court that the record reveals no evidence regarding the age of the allegedly favored persons.

Davis next argues that his deposition testimony that a Johnson & Johnson employee made age related comments was sufficient to raise a genuine issue of material fact under Normand v. Research Institute of America, Inc., 927 F.2d 857 (5th Cir. 1991). We agree with the district court that Johnson & Johnson proved that the employee who allegedly made the age related comment had no authority over the challenged promotion decision. Furthermore, we note that in Normand, the plaintiff set forth evidence of numerous employees who consistently made age related comments over the span of ten years. In contrast, Davis has pointed only to his own deposition testimony of one comment made by an employee who was outside the chain of promotion authority.

CONCLUSION

For the foregoing reasons, the district court's grant of summary judgment in favor of Johnson & Johnson on all of Davis's claims is AFFIRMED.