IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-5664
Summary Calendar

ABEL H. HERNANDEZ,

Plaintiff-Appellant,

VERSUS

DONALD B. RICE,
Secretary, Department of the Air Force,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
(SA-91-CA-694)

(February 22, 1993)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

JERRY E. SMITH, Circuit Judge:*

I.

A.

Abel Hernandez worked at Kelly Air Force Base as a pneudraulic systems mechanic. On April 27, 1990, he first contacted an Equal Employment Opportunity (EEO) counselor regarding five alleged acts

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* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

of discrimination, claiming he was discriminated against based upon his race (American Indian), color ("dark brown"), and religion ("Study of Scientific Beliefs and Nature"). Hernandez alleges five specific acts of discrimination as follows:

> 1. He was transferred on January 6, 1990 from the Exciter shop to the Cable shop.
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> 2. He was required to wear safety boots and glasses on January 6, 1990.
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> 3. Between March 1989 and January, 1990, he failed to receive additional job training.
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> 4. On March 27, 1990, he was warned about leaving his tools unattended.
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> 5. On April 17, 1990, he received a performance rating that he considers to have been too low.

Pursuant to 29 C.F.R. § 1613.214(a)(1)(i), defendant notified plaintiff that the first four allegations were rejected as untimely filed. Hernandez appealed this rejection to the Equal Employment Opportunity Commission (EEOC), which affirmed the defendant's partial rejection of Hernandez's claims. The defendant proceeded to investigate the fifth claim and found that Hernandez's appraisal rating was not the result of discrimination.[1]

Specifically, the defendant found Hernandez had problems with the following: (1) spending too much time away from his work area; (2) an inability to work on different equipment; (3) undue reliance upon his supervisor when confronted with a problem; (4) difficulty relating to other employees; (5) difficulty following technical

[1] Although Hernandez's appraisal rated his performance as "fully successful," he claimed he deserved the highest ratings possible for eight of the nine appraisal categories.

orders; (6) ordering parts in excess quantities when the service was attempting to keep inventories low; and (7) an unwillingness to follow the orders of his supervisors.

B.

Hernandez, acting pro se, filed suit on July 3, 1991, challenging the five alleged acts of discrimination outlined above. On August 20, 1992, the district court granted summary judgment for the defendant.

II.

A.

The decision of the district court is correct as to the first four allegations of discrimination. Hernandez did not report these alleged incidents within thirty days, though he plainly knew about each of these events on the day it occurred. Under EEOC regulations, these claims were not timely. See 29 C.F.R. § 1613.214(a)(1)(i).

In appropriate cases, the filing deadline may be extended, as the deadline is in the nature of a statute of limitations, subject to waiver, estoppel, and equitable tolling. Henderson v. United States Veterans Admin., 790 F.2d 436, 440 (5th Cir. 1986). Obviously, this case does not present a proper occasion to depart from the normal deadline. Hernandez was well aware of these deadlines, as he previously had filed six discrimination claims against the same employer, yet he failed to produce any summary

judgment evidence supporting an exception to the thirty-day deadline.

B.

The district court's decision as to the fifth alleged act of discrimination also is correct. The defendant proffered ample evidence as to why Hernandez received his score on his evaluation. Once defendant made a prima facie showing that had a legitimate non-discriminatory reason for the adverse action,[2] Hernandez had the duty to produce some piece of evidence tending to raise a material issue of fact as to whether defendant's justifications were pretextual. See Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981); Celotex Corp. v. Catrett, 477 U.S. 317 (1986). Because Hernandez did not produce any evidence of discrimination, the district court properly granted summary judgment.

III.

The defendant asks that we award sanctions against Hernandez for filing a frivolous appeal. Hernandez has filed six previous complaints against defendant for alleged discrimination. Apparently, he blames all of his problems on discrimination and

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[2] We use the term "adverse action" only as a term of art. Hernandez's evaluation was "wholly successful," which would not seem to be an "adverse action." Hernandez claims only that he should have had a better rating. Given that his evaluation was "wholly successful," however, Hernandez does not indicate how was harmed in any way. In other words, he has not identified any loss of benefits from his rating.

continues to use the judicial system for the purpose of harassment.

We have previously awarded sanctions against Hernandez for filing a frivolous appeal in a discrimination case. Hernandez v. Rice, No. 91-5785 (5th Cir. Sept. 29, 1992) (unpublished). The district court in the present case refused Hernandez's motion to proceed in forma pauperis based upon its determination that the appeal would be frivolous. We agree that the appeal is frivolous. Hernandez produced no evidence in response to the motion for summary judgment and does not come close to having a meritorious argument on appeal.

Although Hernandez proceeded pro se, he had "no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets." Farguson v. MBank Houston, N.A., 808 F.2d 358, 359 (5th Cir. 1986). We may properly award sanctions to deter future abuse of the courts. Coghlan v. Starkey, 852 F.2d 806, 816 (5th Cir. 1988) (per curiam).

Our prior sanctions of Hernandez apparently had no effect on him. As a result, we will award slightly larger sanctions this time with the hope that Hernandez will stop his abuse in the future. We warn Hernandez that penalties for any future frivolous filings will be more severe. Because Hernandez had no basis for his position on appeal, we grant defendant's request for sanctions and impose sanctions in the amount of $500.00 attorneys' fees and double costs.

The appeal is frivolous and is hereby DISMISSED pursuant to Fifth Cir. Loc. R. 42.2.