

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 92-5679

Summary Calendar

---

MATTIE H. HENDERSON,

Plaintiff-Appellant,

versus

DONALD B. RICE, Secretary  
of Air Force,

Defendant-Appellee.

---

Appeal from the United States District Court  
for the Western District of Texas  
(SA 91 CV 272)

---

( March 19, 1993 )

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Mattie H. Henderson, a black female, filed this Title VII suit alleging that the Air Force discriminated against her on the basis of her race, sex, religion, and national origin and reprisal when she was terminated from her job as a Personnel Staffing Specialist. She proceeded in forma pauperis and pro se. The magistrate granted her in forma pauperis status but denied her request for appointed

---

\*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

counsel. After a bench trial, the magistrate issued a detailed opinion supporting its finding of no intentional discrimination. After de novo review, the district court adopted the magistrate's recommendation and dismissed the suit with prejudice. Henderson appeals, asserting error in the failure to appoint counsel, the finding of no discrimination, and the magistrate's admission of certain documentary evidence at trial. We affirm.

The decision not to appoint counsel was not an abuse of discretion. Applying the proper factors to consider in making this determination, see Gonzalez v. Carlin, 907 F.2d 573, 580 (5th Cir. 1990); Caston v. Sears Roebuck & Co., 556 F.2d 1305, 1309 (5th Cir. 1977), the magistrate concluded that although Henderson was financially eligible for appointed counsel and had made adequate efforts to obtain counsel, her case did not have sufficient merit. The magistrate relied on the fact that Henderson's case had been reviewed by the Merit Systems Protection Board and the EEOC, both of which found no discrimination, and on an independent review of the record. See Caston, 556 F.2d at 1308-09.

As to the factual determination that Henderson suffered no discrimination, we find no clear error. See Pullman-Standard v. Swint, 102 S.Ct. 1781, 1789 (1982). After receiving a number of low performance ratings, Henderson was given one-on-one training over a period of 60 days. Following this training, she continued to make serious errors in her work and was placed on a five-month performance improvement period. During this period, Henderson received additional training but failed to improve. She was

ultimately removed and replaced with another black female. The district court's adoption of the magistrate's recommendation is amply supported by the record.

Finally, we find no abuse of discretion in the admission of documentary evidence at trial. The documents essentially comprised Henderson's personnel file. She objected to not having an opportunity to review the documents in preparation for cross-examination. The magistrate gave her an opportunity to review the documents, though Henderson had previously listed portions of these documents in her own Court Advisory, which, among other things, enumerated all documents having a bearing on the case.

AFFIRMED.