

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-2681
Summary Calendar

STEPHEN V. HUNT,

Plaintiff-Appellant,

VERSUS

UNITED STATES POSTAL SERVICE and POSTMASTER GENERAL,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-92-2395)

(July 21, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

Appellant, a postal service employee, sued the Postmaster General and the United States Postal Service claiming employment discrimination on the basis of his race, sex, and as retaliation against him for earlier action. The district court dismissed his action for failure to serve the Postmaster General or the Postal Service within 120 days of the filing of his complaint. Alternatively, the district court dismissed all claims except Appellant's claim pertaining to his seven day suspension for lack

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

of jurisdiction for failure to file timely. As to the suspension claim, the district court found that Defendant's summary judgment evidence showed that the suspension was not based upon a discriminatory motive. Appellant offered no contrary evidence. We affirm.

It is undisputed that no Defendant was served within 120 days as Rule 4 requires. The district court offered Defendant numerous opportunities to show that service had been made, and to show good cause for the failure to make service timely. Not only was good cause never shown, but Appellant never attempted to make such a showing. The 1993 amendment to Rule 4 allows district court's some discretion to relieve parties from the effects of non-compliance. Even if the amended rule is applied to this case, Appellant has offered no reason upon which the district court could base an exercise of discretion. Appellant's late submitted evidence of service on the Postmaster General, even if considered, does not explain the lack of its timeliness. We find no abuse of discretion. Peters v. United States, 9 F.3d 344 (5th Cir. 1993).

The district court did err in finding that the claims were time barred. In fact, the record shows that they were filed within thirty days of the final agency action. The error, however, is harmless.

Appellee submitted substantial summary judgment evidence showing that Appellant was suspended for seven days, not for any discriminatory reason, but because of insubordination and other improper conduct, and because Appellant has received all relief

available to him in a prior settlement. Appellant filed a grievance concerning his seven day suspension under the provisions of the applicable bargaining agreement. Thereafter, the parties settled the grievance by making Appellant whole for all pay and benefits and by agreeing to remove any record of the disciplinary action provided he did not commit the same infraction over the following fourteen months. This settlement provided Appellant full relief for the suspension. He is entitled to no more. Strozier v General Motors Corp., 635 F.2d 424, 426 (5th Cir. 1981); see also Solitron Devices, Inc. v. Honeywell, Inc., 842 F.2d 274, 279 (11th Cir. 1988). Appellant offers nothing to contradict the Appellee's summary judgment evidence.

Finally, the district court did not err in refusing to appoint counsel for Appellant because Appellant's claims are without merit. Gonzalez v. Carlin, 907 F.2d 573, 580 (5th Cir. 1990).

AFFIRMED.