IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-3357

Summary Calendar

CHARLES SIMMS,

Plaintiff-Appellant,

versus

MARVIN T. RUNYON,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA 92 CV 1167 B)

October 27, 1993

( )

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

I

Charles Simms, a commercial artist formerly with the U.S. Postal Service, filed a complaint in the district court claiming that the Postal Service abolished his job for discriminatory reasons. The Postmaster General moved for summary judgment. The trial court granted the motion. Simms appealed. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Simms has not made a showing sufficient to establish the existence of an element essential to his case. <u>Celotex Corp. v. Catrett</u>, 477 U.S. 317, 322 (1986). If this case were to go to trial, Simms would have to prove that the Postal Service abolished his position for a discriminatory reason. <u>St. Mary's Honor Center v. Hicks</u>, 113 S.Ct. 2742 (1993). A failure to prove discriminatory intent means that no genuine issue of material fact exists for trial. <u>Celotex</u>, 447 U.S. at 322-23.

The Postal Service produced evidence that it eliminated the artist/illustrator position to reduce the number of work hours in the New Orleans Division. Though Simms complains that the Postal Service did not corroborate its explanation with statistics, he did not controvert the explanation. In addition, Simms did not prove that the Postal Service filled the artist/illustrator position by someone outside his protected class. Simms failed to make a showing of discriminatory intent.

AFFIRMED.