UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-5104
Summary Calendar

TOMMY BRANNUM,

Plaintiff-Appellant,

VERSUS

FISHER CONTROLS INTERNATIONAL, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
(92-CV-202)

(February 28, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Tommy Brannum appeals the district court's grant of summary judgment in favor of Fisher Controls International, Inc. ("Fisher Controls"). We affirm.

I.

Brannum was an employee of TAD Technical Services Corporation ("TAD"), which provides temporary workers to companies such as Fisher Controls. Brannum worked at Fisher Controls on a temporary basis from October 9, 1990 to July 24, 1991.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

In April 1991, Brannum submitted an application for permanent employment with Fisher Controls. The company requires that its applicants undergo a physical examination and that they receive no negative references from previous employers. Brannum's physical indicated that he was diabetic. Two of Brannum's five references provided information which the company considered to be negative.

On July 18, 1991, Brannum met with Robert Lorah, Fisher Controls' Human Resources Manager, and Charles Kraemer, the company's Plant Manager, and was told that he was not going to be hired on a permanent basis. Fisher Controls contends that Brannum became abusive at this meeting, and that following the meeting, Kraemer instructed Lorah that he wanted Brannum "out of the plant."

On July 24, 1991, Lorah learned that Brannum was circulating a petition relating to the company's decision not to hire him. Later that day, Brannum was notified that his temporary assignment with Fisher Controls was terminated.

Brannum maintains that Fisher Controls violated the Texas Commission on Human Rights Act ("TCHRA"): (1) by not hiring him on a permanent basis because he was diabetic; and (2) by terminating his temporary work assignment in retaliation for his opposition to the company's discriminatory hiring practices. The district court granted Fisher Controls' motion for summary judgment as to both claims.[2]

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[2] The district court also dismissed Brannum's claim for negligent infliction of mental anguish. Brannum does not contest the district court's dismissal of this claim in light of **Boyles v. Kerr**, 855 S.W.2d 593 (Tex. 1993).

II.

A.

Summary judgment is appropriate if "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The district court must resolve all doubts in favor of the party opposing the motion. **See Reid v. State Farm Mutual Auto Ins. Co.**, 784 F.2d 577, 578 (5th Cir. 1986).

Brannum alleges that Fisher Controls did not hire him because he is diabetic, and that as a result, the company unlawfully discriminated against him based on his "disability." Fisher Controls, on the other hand, maintains that Brannum was not hired because of his negative references and because he provided incorrect information on his employment application.

Under the TCHRA, to establish a **prima facie** case for discrimination based on a disability, a plaintiff must establish: (1) that he was qualified for the position; (2) that he was disabled at the time of the alleged wrongful conduct; and (3) that he was not hired because of his disability. **See** Tex. Rev. Civ. Stat. Ann. art. 5221k, § 5.01(1).

We agree with the district court that Brannum has not established a **prima facie** case. The evidence is uncontradicted that Fisher Controls did not hire Brannum because he received negative references and because he supplied incorrect information on his employment application. The district court did not err in granting summary judgment on this claim.

B.

We also agree with the district court's grant of summary judgment as to Brannum's retaliation claim. The TCHRA makes it unlawful to "retaliate or discriminate against a person who has opposed a discriminatory practice or who has made or filed a charge, filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this Act." Tex. Rev. Civ. Stat. Ann. art. 5221k, § 5.05(a)(1).

To state a claim for retaliation under the TCHRA, Brannum must show that: (1) he was engaged in protected activity; (2) adverse employment action was taken; and (3) there was a causal connection between his participation in the protected activity and the adverse employment action. **See Shirley v. Chrysler First, Inc.**, 970 F.2d 39, 41 (5th Cir. 1992). Brannum contends that Fisher Controls retaliated against him because he circulated a petition alleging discriminatory hiring practices.

Based on uncontradicted summary judgment evidence, the district court concluded that Fisher Controls decided to terminate Brannum following the July 18 meeting, and that therefore there was no causal connection between Brannum's termination and his circulation of the petition on July 24.

Fisher Controls presented summary judgment evidence that it decided to terminate Brannum following his outburst at the July 18 meeting. Brannum argues that no objective, written proof corroborates this assertion, and that it would be odd for a company to decide to terminate an employee and then allow that employee to continue to function in his position for another six days.

This assertion does not raise a genuine issue of material fact. The defendant explained that it did not terminate Brannum immediately because the company first had to contact TAD and had to inform the appropriate supervisory persons of the decision, at least one of whom was out of town. The district court properly granted summary judgment on Brannum's retaliation claim.

AFFIRMED.