IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8185
Summary Calendar

SHARRON HOFFMANS,

Plaintiff-Appellant,

v.

THE UNIVERSITY OF TEXAS AT EL PASO, ET AL.,

Defendants-Appellees.

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SHARRON HOFFMANS,

Plaintiff-Appellant,

v.

THE UNIVERSITY OF TEXAS AT EL PASO,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
(EP-91-CA-254-H c/w EP-92-CA-35H)

(May 2, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.[*]

PER CURIAM:

Sharron Hoffmans has been a tenured assistant professor on the accounting faculty at the University of Texas at El Paso

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(UTEP) since 1980. Hoffmans earned her Ph.D. from Oklahoma State University in late 1990 and subsequently received a $2,000 increase in annual salary to $38,367. Dr. Hoffmans considered this increase insufficient and spoke to various UTEP administrators about an additional salary increase. In March 1991, Dr. Jack Bristol, Vice President for Academic Affairs at UTEP, informed Dr. Hoffmans that intervening Texas legislation precluded an additional salary increase.

Upon learning that the legislation did not preclude the "equity" pay raise which Dr. Hoffmans sought, Dr. Bristol recommended, and UTEP President Dr. Diana Natalicio subsequently approved, a $44,500 annual salary for Dr. Hoffmans -- the equivalent of a $6,133 annual pay raise. This higher annual salary became effective April 1, 1991 and was reflected in her UTEP paycheck dated May 1, 1991. However, when the request for a budget change was sent in early May 1991 from UTEP to Dr. James Duncan, an Executive Vice Chancellor for the University of Texas system who had primary budget responsibility for approving salary increases, he denied the request on the basis that the intervening Texas legislation prohibited "granting increases to current employees for the remainder of this fiscal year." On May 24, Dr. Bristol told Dr. Hoffmans that her pay raise had not been approved.

Dr. Hoffmans then filed this lawsuit alleging violations of 42 U.S.C. §1983 (1988), the Equal Pay Act, 29 U.S.C. §206(d) (1988), and Title VII of the Civil Rights Act. Shortly thereafter, Dr. Duncan wrote Dr. Natalicio approving *retroactively* to April 1,

1991 an annual salary of $44,500 for Dr. Hoffmans. The letter explained that the legislation in question did not prohibit "equity" salary adjustments and that he was previously unaware that Dr. Hoffmans' salary increase was an "equity" adjustment. The case proceeded to trial where the district court granted defendants' motion for judgment as a matter of law on the §1983 claim and the jury returned a verdict for UTEP -- the sole remaining defendant -- on the Equal Pay Act claim. The court also ruled for UTEP on the Title VII claim.

Dr. Hoffmans makes two main arguments on appeal. First, she maintains that the district court erred in concluding that she had no constitutionally cognizable property interest in her pay raise. Second, she claims that the district court erroneously instructed the jury on the Equal Pay Act violation. Finding no error in the judgment of the district court, we AFFIRM.

The district court granted the defendants' motion for judgment as a matter of law on the plaintiff's §1983 claim by concluding that Dr. Hoffmans had no cognizable property interest in her pay raise because it was never approved by Dr. Duncan's office.[1] As an initial matter, we agree with the district court's determination that a cognizable property interest is not at stake here. However, our analysis of the viability of the plaintiff's

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[1] Under Rule 50(a), the district court may grant a motion for judgment as a matter of law if "a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." Fed. R. Civ. P. 50(a). This court reviews *de novo* a district court's granting of a judgment as a matter of law, viewing the record in the light most favorable to the non-movant. See Turner v. Purina Mills, Inc., 989 F.2d 1419, 1421 (5th Cir. 1993).

alleged property interest in her pay raise is focused differently than the district court.

This court has previously recognized that "[a]n expectation of employment carries with it *some* protected expectations as to a salary." Williams v. Texas Tech Univ. Health Sciences Ctr., 6 F.3d 290, 293 (5th Cir. 1993) (emphasis added), cert. denied, 62 U.S.L.W. 3623 (1994). Furthermore, the Due Process Clause is implicated less, the more conditional and detailed the expectations become between employer and employee. See id. To the extent Dr. Hoffmans had any protected expectations of a pay raise, those expectations were conditioned at least to the same extent as her annual salary appointment with UTEP. Dr. Hoffmans' annual salary appointment documentation from the UTEP Accounting Department -- consisting of a form she testified to receiving every year since 1975 -- unambiguously stated that her salary appointment in a given year had been authorized by the Board of Regents of the University of Texas system. Thus, any expectations of a pay raise -- even if approved by the President and mistakenly paid -- would necessarily be qualified by the understanding that the UT Board of Regents would have to authorize the higher pay level. In sum, given the long-standing nature of the employment relationship between UTEP and Dr. Hoffmans, in which UTEP played a role subordinate to that of the UT Administration and Regents in awarding salary increases, Hoffmans cannot now maintain that she was deprived of an entitlement to a pay raise so as to invoke the Due Process Clause.

Even assuming arguendo that under these facts Dr. Hoffmans does have a cognizable property interest in a pay raise, the district court properly granted the motion because mere negligence on the part of state officials does not implicate the Due Process Clause. See Daniels v. Williams, 474 U.S. 327, 334 (1986). That Dr. Hoffmans did not at first receive approval for her pay raise because of Dr. Duncan's failure to ascertain the "equity" nature of the pay raise is uncontroverted. It is further undisputed that Dr. Duncan made a mistake in failing properly to characterize Dr. Hoffmans' request for a budget change. He corrected the mistake by retroactively giving Dr. Hoffmans her pay raise. In fact, Dr. Hoffmans testified that she received "almost" all the benefits of her pay raise by Dr. Duncan's retroactive award; she complains only that the retroactive pay raise did not fully compensate her for certain retirement benefits in the interim. In short, under Daniels, Dr. Duncan's negligence does not give rise to a §1983 claim for a Due Process violation.

Appellant's final argument concerns whether the district court properly instructed the jury concerning Dr. Hoffmans' Equal Pay Act claim.[2] Dr. Hoffmans claims that the trial court failed to properly instruct the jury concerning the definition of "equal work". She maintains that the court incorrectly instructed the

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[2] Appellant also maintains that the defendants failed to affirmatively plead their affirmative defense of lack of capacity on the part of Dr. Natalicio. We reject the appellant's characterization of the defendants' argument as an affirmative defense of lack of capacity. Properly viewed, the defendants were arguing that final salary approval came from the UT Board of Regents and that Dr. Hoffmans was aware of this. Additionally, any objection appellant might have had was waived by her failure to raise it below.

jury that "equal work" means exactly equal and not substantially equal. Appellant's argument leaves us unconvinced.

This court reviews jury instructions with deference and will reverse only where the charge taken as a whole leaves "substantial and ineradicable doubt whether the jury has been properly guided in its deliberations." Bradshaw v. Freightliner Corp., 937 F.2d 197, 20 (5th Cir. 1991). Having reviewed the district court's entire charge to the jury on the Equal Pay Act violation, we are satisfied that the jury was properly instructed. Particularly compelling is the fact that the district court instructed the jury that "equal work on jobs" required "equal skill, effort and responsibility, and ... *similar* working conditions." In short, not only did the district court not specifically instruct the jury that "equal work" means exactly equal, but the instruction by its terms clearly defeats the suggestion that "equal work" must mean exact equality.

For the foregoing reasons, the judgment of the district court is **AFFIRMED**.