UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-8212
(Summary Calendar)

JANISE LORRAINE POWELL,

Plaintiff-Appellant,

VERSUS

DONALD B. RICE, SECRETARY, DEPARTMENT OF THE AIR FORCE,

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Texas

(SA-91-CA-165)

(September 21, 1993)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges

PER CURIAM*:

This case arises out of Plaintiff-Appellant Janise Lorraine Powell's short and unhappy tenure as a civilian employee at Kelly Air Force base ("Kelly AFB"). Powell, a Jehovah's Witness who describes her ethnicity as "African Native American Indian,"

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

charged the United States Air Force ("Air Force") with engaging in unlawful discrimination in employment and in unlawfully retaliating against her for filing complaints with Equal Employment Opportunity ("EEO") officials, both in violation of Title VII. After a three day hearing the fact finder, a magistrate judge appointed as a special master by the district court, concluded that Powell failed to prove any discrimination or retaliation by the Air Force. The district court adopted the factual findings of the magistrate judge. On appeal, Powell asserts that the district court erred in failing to find unlawful discriminatory or retaliatory intent on the part of the Air Force in the employment actions that led to her discharge. As we conclude that the district court was not clearly erroneous finding no actionable discrimination or retaliation, we affirm.

I

FACTS AND PROCEEDINGS

Powell first applied for a job as an environmental protection specialist at Kelly AFB in May 1989. After she failed to receive an offer of employment, Powell contacted the base's EEO office. She then reapplied to Kelly AFB, was hired, and began work as an Environmental Protection Specialist Trainee in February of 1990. Erin Wolff, a white male, was also hired for this classification during the same period. Wolff was assigned to the compliance section in which his duties included conducting field examinations. Powell was assigned to the hazardous waste section in which her duties included providing technical support in the identification,

handling, storage, and disposal of hazardous materials and waste generated at Kelly AFB.

As part of her initial training, Powell's work included tracking waste products by issuing labels, tracking turn-in dates, and entering Contract Line Item Number data along with any modifications to this data into a computer system. Diane Glass, a computer systems operator, was assigned as Powell's primary trainer to instruct her in the use of the computer programs used to accomplish this work. Glass had previously performed these same duties and was responsible for maintaining and upgrading those computer programs.

Shortly after Powell started work it became apparent that she and her trainer, Glass, did not get along.[1] In early April Powell's supervisor held a meeting to diffuse the tensions between Powell and Glass. Part of these tensions arose from Powell's refusals to allow Glass to explain the rationale for the work, and from Powell's accusations that Glass failed to provide proper training. In mid-May Powell was again counseled for problems ranging from her unacceptable employment performance to complaints from co-workers that Powell was derogatory and rude.

Powell received an advance copy of her 90-day performance appraisal on May 17, 1990. This report stated that her performance was below acceptable standards in every category. The formal appraisal, issued in mid-June, enumerated deficiencies in Powell's

[1]Powell was also involved in disputes with other employees, such as her co-worker and office mate Ken Small.

performance, noting that she: 1) neglected to provide service customers with requested assistance and rendered improper instructions on the accumulation of liquid waste; 2) was unable to communicate information about the waste management program to base customers; 3) committed repeated data entry errors and was unsuccessful in properly tracking hazardous waste turn-in; and 4) failed properly to enter data in a timely fashion and refused to perform assigned duties. Powell responded to this report by arguing that she had not been instructed on how to enter waste disposal data into the computer. A review of her work, however, revealed that she had correctly performed this task in the past.

By the end of July most of Powell's duties were reassigned and on August 1, 1990, Powell was notified that her employment would be terminated effective August 15, 1990, less then seven months after starting work. Her termination thus occurred during the probationary-training period. Powell was replaced by Dorothy Anthony, a female African American.

Powell contacted the EEO office at Kelly AFB in April and July of 1990. These contacts provide the basis for Powell's retaliatory treatment and discharge claim. After her termination Powell submitted a memorandum to the EEO, which issued an acceptance letter for the complaint from Wright-Patterson AFB on December 18, 1990. Powell subsequently filed a pro se complaint in district court. The government does not challenge that Powell timely instituted and exhausted her administrative remedies for the

employer conduct at issue in this appeal.[2]

The case was referred to a magistrate judge acting as a special master, who provided Powell with appointed counsel for the three day hearing. The magistrate judge found that Powell had failed to prove that the Air Force engaged in any unlawful discrimination or retaliation in its employment relationship with her. Powell appealed these fact findings to the district court. The district court subsequently reviewed the record, determined that the magistrate judge's findings of fact were not clearly erroneous, and ordered that the report and recommendation be adopted. Powell timely appealed.

II

ANALYSIS

Powell challenges the district court's findings that she was not subjected to discrimination on the basis of her race, sex, or religion, and that she was not retaliated against for contacting EEO officials. We review the district court's factual findings, which reflect the adoption of the findings of the magistrate judge

[2]The government stipulated before trial that Powell had exhausted her administrative remedies relating to the termination claim. Powell had also raised claims related to her earlier unsuccessful application in May, 1989; however, Powell has not appealed the district court's conclusion that those claims were barred.

as special master,[3] only to see whether they are clearly erroneous.[4] A finding of fact is clearly erroneous "only if our review of the entire record impels the definite and firm conviction that a mistake has been committed."[5]

A. Discrimination Claim

The framework for deciding a disparate treatment case was recently summarized and clarified by the Supreme Court in St. Mary's Honor Center v. Hicks.[6] The plaintiff must first establish a prime facie case, which switches the burden of production to the employer to offer a legitimate, non-discriminatory explanation for its actions.[7] If the employer proffers such an explanation, then the case moves on to the ultimate issue of discrimination vel non.[8] The burden of persuasion on this issue remains at all times on the plaintiff.[9] Moreover, although proof that an employer has offered a pretextual explanation is sufficient to support a finding of discrimination, it does not compel such a finding; alone, pretext

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[3]The findings of a master, to the extent they are adopted by the district court, shall be considered as the findings of the district court. FED. R. CIV. P. 52(a). To simplify narration, the adopted findings in this case are referred to as though they were originally made by the district court.

[4]E.g., Anderson v. Bessemer City, 470 U.S. 564, 573 (1985).

[5]E.g., Sullivan v Rowan Cos., 952 F.2d 141, 147 (5th Cir. 1992); United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948).

[6]509 U.S. ___, 125 L.Ed. 2d 407 (1993).

[7]Id. at 425-16 (discussing the McDonnell Douglas-Burdine framework).

[8]Id. at 418-19.

[9]Id. at 419 (collecting cases).

does not constitute a Title VII violation.[10] After a case has been tried on the merits the issue whether a plaintiff has established a prima facie case becomes secondary; at that point the court must move on to decide the ultimate issue -- whether the defendant unlawfully discriminated.[11]

In the instant case the district court concluded that Powell established a prima facie case, and that the Air Force offered legitimate, non-discriminatory reasons for its actions. Thus, the district court proceeded to the ultimate issue whether the Air Force's employment actions were discriminatory. After the three-day hearing the court concluded that Powell had failed to prove actionable discrimination by the Air Force.

Construing Powell's pro se brief and arguments liberally,[12] her theory of the case appears to be that discrimination was an integral part of the casual chain leading to her termination. Powell is thus contending that she was treated differently because of her race, sex, and religion in her initial and subsequent work assignments, in her training, and in her evaluations. Additionally, Powell argues that she was subjected to a hostile working environment because of her race and religion. She insists that this discriminatory treatment led to her poor work

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[10] Id. .

[11] Id. at 419 & 424 (discussing U.S. Postal Services Bd. of Govs. v. Aikens).

[12] Cf. e.g., Haines v. Kerner, 404 U.S. 519, 520-21 (1972) (holding that courts must construe pro se pleadings liberally); Wesson v. Oglesby, 910 F.2d 278, 281 (5th Cir. 1990) (stating same).

performance, which in turn led to her dismissal.[13]

We conclude that the district court was not clearly erroneous in finding no discrimination on the part of the Air Force. The district court's specific factual findings, rejecting any claim of discriminatory treatment, are supported by the evidence. For example, the record discloses that Powell received training from her co-worker, Ken Small, and from her immediate supervisory instructor, Diane Glass. These endeavors are sufficient to sustain a factual finding that any problems encountered in this training resulted from Powell's personality, temperament, and attitude, rather than from her race, religion, or gender.[14] Moreover, Powell was offered the opportunity to receive additional training by attending several government-sponsored seminar, but could only offer conflicting explanations as to why she declined these offers.

Powell's allegation that she was subjected to a hostile working environment is not borne out by the evidence. At best the

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[13]Differential treatment on the basis of a protected characteristic, such as race or sex, could of course establish a valid claim under Title VII. See e.g., Vaughn v. Edel, 918 F.2d 517, 521-23 (5th Cir. 1990) (holding that differential treatment on the basis of race which was part of the casual chain leading to employee's dismissal violated Title VII).

[14]The record discloses that after Powell's termination Glass trained an African American female, Dorothy Anthony, for Powell's former position without any incidents. Although both Powell and Anthony testified that the computer system was difficult at times to learn, only Powell had arguments with Glass.

Powell's relationship with Small was no less troublesome. Small testified to encountering many problems with Powell, with whom she shared an office. These problems ranged from Powell's partitioning the office to separate herself from Small, to Powell's bringing in garlic, which created an unpleasant odor in that same office for almost a week.

evidence shows that she encountered difficulty in dealing with several co-workers--difficulties apparently caused by Powell's lack of interpersonal skills, not by her race, religion, or gender. There is also no indication that Powell received discriminatory allocations of work. As to her initial assignment it is clear that Wolff was placed into a different area involving more field work because he had more field experience. Powell's own substandard performance prevented her from accepting work with more responsibility. Moreover, Powell's complaints of having to perform clerical work appear disingenuous given the fact that she declined an earlier offer to delegate these duties to a secretary.

Finally, Powell was unable to provide any credible evidence that she was subjected to unfair or discriminatory evaluations. The record is replete with testimony of her substandard work performance. The only defense Powell offered was her own testimony as to the lack of training she received. This uncorroborated and self-serving testimony, however, was controverted by other testimony and documentary evidence which indicated that Powell had in fact received proper training.

B. Retaliation Claim

An employee establishes a prima facie case of retaliation by showing that: 1) she was engaged in activity protected by Title VII; 2) an adverse employment action occurred; and 3) there was a casual connection between the participation in the protected

activity and the adverse employment decision.[15] The district court found that Powell was unable to establish her prima facie case because she failed to prove such a casual connection between her termination and her participation in a protected activity.

On appeal, Powell strongly urges that she was subjected to retaliation for engaging in the protected activity of contacting EEO officials while she was employed at Kelly AFB. Yet Powell offers no proof of a nexus (other than coincidental timing) between her contacts with EEO officials and her dismissal. In contrast, the Air Force provided ample proof of legitimate, non-retaliatory reasons for Powell's dismissal that ranged from her substandard work performance to the interoffice conflicts produced by her own behavior. Under these facts we cannot say that the district court erred in failing to find the requisite casual connection.

III

CONCLUSION

From the outset Powell's stint at Kelly AFB was rife with dissension. The record reveals that Powell became alienated shortly after arriving at Kelly AFB, and that this alienation continued and occasionally worsened during the remainder of her employment. What the record does not disclose, however, is evidence of any type of discriminatory or retaliatory animus by her employer that would constitute a Title VII violation.

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[15] E.g., Collins v. Baptist Memorial Geriatric Center, 937 F.2d 190, 193 (5th Cir. 1991), cert. denied, 112 S.Ct. 968 (1992); Jones v. Flagship International, 793 F.2d 714, 724 (5th Cir. 1986), cert. denied, 479 U.S. 1065 (1987).

As we conclude that the district court was not clearly erroneous in failing to find actionable discrimination or retaliation, the judgement of the district court is AFFIRMED.