UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8229
Summary Calendar

GEORGE T. ARAIZA,

Plaintiff-Appellant,

versus

SHEILA E. WIDNALL, Secretary of the Air Force,

Defendant-Appellee.

Appeal from the United States District Court for the Western District of Texas (SA-92-CA-200)

(February 22, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

George T. Araiza, *pro se*, appeals from the denial of his claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. We **AFFIRM.**

I.

Araiza, a Hispanic male and disabled veteran with a physical handicap, was employed as a supply clerk for a unit that repaired

---

[1] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

aircraft engines at Kelly Air Force Base in San Antonio, Texas, until he was removed from his position on August 26, 1988. The Air Force's asserted reason for his removal was unscheduled leave without pay, resulting in excessive absenteeism from duty from 1985-1988, and his failure to report for duty from September 11, 1987, through August 23, 1988.

In September and October 1988, Araiza filed informal and formal complaints with an equal employment opportunity counselor, alleging that his removal was both discriminatory, on the basis of his national origin, sex, and physical handicap, and in retaliation for his prior filing of discrimination complaints.[2] The Air Force conducted an investigation and found neither discrimination nor reprisal. Araiza appealed to the Merit Systems Protection Board. The administrative law judge found no discrimination or reprisal; and the MSPB denied Araiza's petition for review, affirming the ALJ's decision. Araiza then appealed to the Equal Employment Opportunity Commission, which affirmed the MSPB's decision.

Araiza filed a complaint in federal court in March 1992, alleging substantially identical claims of discrimination and retaliation. Following a bench trial, the district court, in extensive findings of fact and conclusions of law, as amended, held that Araiza had failed to meet his burden of proving discrimination on the basis of race, national origin, sex, or physical handicap,

---

[2] Araiza filed discrimination complaints in June and July 1977, August 1980, May 1981, August and November 1985, and October and November 1986.

or that he was discharged in retaliation for filing other discrimination claims.

II.

Araiza contends generally that the district court's factual findings are erroneous and that it incorrectly interpreted the law. "Because a finding of intentional discrimination is a finding of fact, the standard governing appellate review ... is that set forth in Federal Rule of Civil Procedure 52(a): `Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses'". ***Anderson v. City of Bessemer City, N.C.***, 470 U.S. 564, 573 (1985). Findings on retaliation claims are also reviewed under the clearly erroneous standard. ***Collins v. Baptist Memorial Geriatric Center***, 937 F.2d 190, 193-95 (5th Cir. 1991). "`A finding is "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed'". ***Id***. (quoting ***United States v. United States Gypsum Co.***, 333 U.S. 364, 395 (1948)).

At trial, the Air Force's evidence included the following: that from 1985 to June 18, 1988, Araiza took a total of 5,578.5 hours of leave; that no other employee in his work unit had been absent from duty as much as Ariza without being removed from employment; and that it was important that the position held by Araiza be staffed on a regular basis. Araiza did not produce any evidence that similarly situated employees were treated

differently; that there was a causal relation between his prior discrimination complaints and his discharge; or that, with reasonable accommodation, he could perform the essential functions of his job. *See* ***St. Mary's Honor Center v. Hicks***, ___ U.S. ___, 113 S. Ct. 2742 (1993) (Title VII discriminatory treatment); ***Collins v. Baptist Memorial Geriatric Center***, 937 F.2d at 193, (retaliation), *cert. denied*, ___ U.S. ___, 112 S. Ct. 968 (1992); ***Chiari v. City of League City***, 920 F.2d 311, 315 (5th Cir. 1991) (handicap discrimination).

The district court correctly applied the law to factual findings which are amply supported by the record, and therefore not clearly erroneous.

III.

Accordingly, the judgment of the district court is

AFFIRMED.