

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10021
Summary Calendar

VIRGINIA R. VANDERGRIFF,

Plaintiff-Appellant,

versus

BELL HELICOPTER TEXTRON, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(3:92-CV-301-R)

(June 3, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Virginia R. Vandergriff appeals from the adverse summary judgment on her employment discrimination claims against Bell Helicopter Textron, Inc. We **AFFIRM**.

I.

Vandergriff, who was born in 1941, was hired by Bell in 1986. She suffered a work-related injury in July 1990, but continued to work until that August, when she requested a leave of absence for a non-work-related illness. That September, she reported that her

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 Pursuant to that rule, the court has determined that this opinion should not be published.

leave had been necessitated by the work-related injury, and she was placed on worker's compensation. In late 1990, Vandergriff's physician released her to return to work, subject to a 20-pound lifting restriction. She worked for a brief period, but found that she was unable to perform her job duties; accordingly, she resumed her medical leave of absence. Bell denied her request for transfer to a position where her medical restriction could be accommodated, relying on its policy that employees on medical leave must be able to resume their previous jobs before returning to work. In February 1992, Vandergriff's position was eliminated as part of a reduction in force. She was laid off, but informed that she would be considered for recall if medically released to return to an available position for which she was eligible under the collective bargaining agreement.

Vandergriff filed suit against Bell, alleging discrimination on the basis of age and sex, as well as retaliatory discharge under the Texas Workers' Compensation Act. The district court granted Bell's motion for summary judgment on the discrimination claims, and dismissed Vandergriff's state law claim without prejudice.

II.

We review a summary judgment under the same standards applied by the district court, affirming if there is "no genuine issue of material fact ... and the movant is entitled to judgment as a matter of law". *Davis v. Chevron U.S.A., Inc.*, 14 F.3d 1082, 1084 (5th Cir. 1994).

Vandergriff contends that Bell provided favorable treatment (transfers or other accommodations) to other employees with medical restrictions similar to hers, but, because of her age and sex, denied such favorable treatment to her. In a thorough and well-reasoned opinion, the district court held that Vandergriff had failed to establish a *prima facie* case of age or sex discrimination, because the evidence she produced in opposition to summary judgment (her conclusory affidavit that essentially reiterates her complaint) was insufficient to support an inference of discriminatory intent.

Based upon our review of the record, we agree with the district court that Vandergriff failed to provide adequate factual support for her claims. Although she identified one younger woman and two older men whose medical restrictions allegedly were accommodated by Bell, she produced no evidence to show, *inter alia*, that she was qualified, either medically or under the terms of the collective bargaining agreement, for similar accommodation or transfer to another position at Bell.² Because Vandergriff failed to establish a *prima facie* case of discrimination, summary judgment was proper. See **Davis**, 14 F.3d at 1085 (to defeat summary judgment, employment discrimination plaintiff must present evidence sufficient to establish a *prima facie* case).

² Because we affirm the district court's decision that Vandergriff did not establish a *prima facie* case of discrimination, we do not address her contention that there is a material factual dispute as to whether Bell's explanation for its actions was pretextual, or her contention that a portion of Bell's summary judgment evidence was inadmissible.

III.

For the foregoing reasons, the judgment is

AFFIRMED.