IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-20455

TIMOTHY BATISTE,

Plaintiff-Appellant,

v.

E.I. DU PONT DE NEMOURS AND COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-93-1093)

(June 6, 1995)

Before KING and JONES, Circuit Judges, and LAKE[*], District Judge.

PER CURIAM:[**]

Timothy Batiste, an African-American, was fired from his position as a production operator in a chemical plant after fourteen years with DuPont. Batiste sued DuPont, alleging that his termination was racially motivated in violation of Title VII of the Civil Rights Act. 42 U.S.C. §§ 1981, 2000e. The district

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[*] District Judge of the Southern District of Texas, sitting by designation.

[**] 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

court granted judgment as a matter of law in favor of DuPont. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Batiste began working for DuPont at its Sabine River Works facility in Orange, Texas, on July 17, 1978. Batiste was a production operator in the refining side of the Adipic Acid Business Unit of the plant.

In 1984, the Adipic Acid area of the plant adopted a quota system, permitting a certain number of employees per shift to maintain facial hair. All other employees in the Adipic Acid area had to be clean shaven, however, in order to ensure that there were a sufficient number of workers per shift that were "respirator qualified" in the event of an emergency. In order to be respirator qualified, an individual may not have hair growth at the point where the respirator apparatus makes contact with the skin.

While the quota system was in place, Batiste obtained a medical exemption permitting him to have facial hair because he suffered from pseudofolliculitis barbae (PFB), a condition in which facial hair grows inward, causing painful sores. Because shaving exacerbates PFB, many individuals with PFB grow beards.

On July 30, 1991, DuPont instituted a new policy which required all personnel in the Adipic Acid refining area to be clean shaven. Batiste was instructed to visit the DuPont physician to determine if he could satisfy the new policy. The

DuPont physician referred Batiste to a private dermatologist in Beaumont. Batiste visited the dermatologist, who recommended that Batiste attempt to shave and talk to other PFB sufferers who had learned to shave. Batiste then saw three other private dermatologists in an attempt to convince DuPont that he should be excepted from the clean shaven policy for medical reasons. All three dermatologists confirmed Batiste's PFB condition. DuPont permitted Batiste to be temporarily transferred into the control room of the Adipic Acid refining unit, an area physically segregated from the plant and therefore less likely to place Batiste at risk should a respirator be needed. During the time that Batiste was in the control room, he was told by DuPont supervisors that he was expected to make a good faith effort to comply with the new clean shaven policy or face termination.

On February 17, 1992, DuPont terminated Batiste. In its termination statement, DuPont stated that its decision was based upon Batiste's "refusal to put forth good faith effort to get medical assistance to remedy or treat PFB (pseudofolliculitis barbae) and your failure to cooperate with plant medical and your supervision with the PFB problem that prevents you from being respirator fit tested . . . ." Shortly after his termination, Batiste filed suit in Texas state court, alleging that his termination was racially motivated and seeking recovery under Title VII of the Civil Rights Act. 42 U.S.C. §§ 1981, 2000e. The defendant removed the case to federal district court and the case was tried before a jury. Following the close of Batiste's

case-in-chief, DuPont moved for judgment as a matter of law. The district court granted the motion. Batiste filed a timely appeal with this court, alleging that the district court erred in granting Dupont's motion for judgment as a matter of law because: (1) Batiste had established a prima facie case of racial discrimination and plausible evidence of pretext; (2) the district court improperly weighed the evidence and failed to view all facts and inferences in the light most favorable to Batiste; and (3) the district court impermissibly excluded several items of evidence.

II. STANDARD OF REVIEW

We review the district court's ruling on a request for judgment as a matter of law de novo. Conkling v. Turner, 18 F.3d 1285, 1300 (5th Cir. 1994); Omnitech Int'l, Inc. v. Clorox Co., 11 F.3d 1316, 1322-23 (5th Cir.), cert. denied, 115 S. Ct. 71 (1994). A judgment as a matter of law should not be granted unless the facts and inferences point so strongly and overwhelmingly in favor of one side that reasonable persons could not disagree on the verdict. Omnitech, 11 F.3d 1323.

III. ANALYSIS

In order to establish a prima facie case of intentional racial discrimination under Title VII, the plaintiff must prove: (1) that he is a member of a protected class; (2) that he was qualified for the position; (3) that he was terminated; and (4) that he was replaced by a member of a non-protected class. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). Once

the plaintiff has established this prima facie case, the burden of production (not persuasion) shifts to the defendant to articulate a legitimate, race-neutral reason for the termination. Id.; Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 254-55 (1981). If the defendant satisfies this obligation, the plaintiff must prove, by a preponderance of the evidence, that the articulated race-neutral reason is merely a pretext for discrimination based upon race. St. Mary's Honor Center v. Hicks, 113 S. Ct. 2742, 2747 (1993).

Throughout the proceeding, the burden of proving intentional discrimination remains with the plaintiff. Thus, even assuming the plaintiff satisfies the prima facie elements, the evidence of the defendant's proffered non-discriminatory reason may be sufficiently strong that reasonable jurors could not render judgment for the plaintiff. Brown v. American Honda Motor Co., Inc., 939 F.2d 946, 950 (11th Cir. 1991), cert. denied, 502 U.S. 1058 (1992). In such a case, the district court would be warranted in granting summary judgment or judgment as a matter of law for the defendant. Enplanar, Inc. v. Marsh, 11 F.3d 1284, 1295 (5th Cir.), cert. denied, 115 S. Ct. 312 (1994); Brown, 939 F.2d at 950.

In the case at hand, the district court implicitly concluded that Batiste had satisfied his prima facie case and that it was incumbent upon DuPont to articulate a non-discriminatory reason for Batiste's dismissal. The district court found that DuPont had met its burden of production, stating that "[t]he failure to

be respirator qualified is the non-discriminatory reason for the adverse act proffered by DuPont." The district court went on to acknowledge that DuPont's articulated reason-- Batiste's failure to be respirator qualified--"is attacked as pretextual on several grounds." The court analyzed Batiste's evidence of pretext and concluded that DuPont's "no beard" policy was a "bonified [sic] safety regulation." The court also explicitly stated that it was "not weighing testimony" and that it decided to grant judgment as a matter of law for DuPont based upon "the evidence taken in the light most favorable to Mr. Batiste."

We discern no error in the district court's conclusion. Batiste has proffered no direct evidence of discriminatory animus. Moreover, his circumstantial evidence of disparate treatment involves co-workers whose circumstances are too distinguishable to permit a reasonable inference of discriminatory animus. For example, co-worker Darwin James, also a PFB sufferer, was successful in becoming clean shaven (and hence, respirator qualified) within three months after being informed of the new policy. Batiste argues that James, who is caucasian, was treated more favorably because DuPont's physician, Dr. Barnes, "took much greater interest in [James'] PFB condition." Specifically, Batiste complains that "Dr. Barnes met with Batiste, the black, on one single occasion, whereas Mr. James, who is white, Dr. Barnes called him repeatedly, called his doctor, [and] asked him to come in at least five times . . . ."

The evidence clearly indicates, however, that Batiste did not ask or desire to see DuPont's physician more often. Moreover, unlike James, Batiste never expressed any willingness to institute a shaving regimen to become clean shaven. Another caucasian co-worker, Glenn Vincent, wore a beard while working in the same control room as Batiste. The evidence unequivocally indicates, however, that Vincent worked in a different area of the plant which was not required to be clean shaven at that time. Thus, while these two caucasian co-workers were treated differently from Batiste, the evidence clearly indicates that the difference in treatment was not based upon discriminatory animus but upon legitimate differences in circumstances and no reasonable jury could have found otherwise.

In short, Batiste did not introduce any evidence in his case-in-chief which would have permitted a reasonable jury to conclude that his termination was racially motivated. Additionally, there is no evidence in the record that the district court misunderstood DuPont's Rule 50(a) motion for judgment as a matter of law. Indeed, the district court explicitly informed the parties that, in granting DuPont's motion, it was "not weighing testimony." Thus, Batiste's speculation that the district court construed the motion as a motion for involuntary dismissal pursuant to Rule 41(b) is wholly without merit. Accordingly, the district court did not err in granting judgment as a matter of law for DuPont.

Batiste's final argument is that the district court erred in excluding several items of evidence he sought to introduce. We will not reverse a district court's evidentiary rulings unless the party asserting error proves both error and substantial prejudice. FDIC v. Mijalis, 15 F.3d 1314, 1318-19 (5th Cir. 1994). Our review of Batiste's laundry list of excluded evidence reveals that the evidence was irrelevant and therefore properly excluded.

IV. CONCLUSION

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