

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-60489

(Summary Calendar)

LIZZIE E. WILLIAMS,

Plaintiff-Appellant,

versus

UNIVERSITY MEDICAL CENTER,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
(3:92-CV-822)

(January 12, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

Lizzie E. Williams sued the University of Mississippi Medical Center ("UMMC"), alleging age discrimination in violation of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34 (1988) ("ADEA"). Williams appeals the district court's grant of summary judgment in favor of UMMC. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

I

Williams worked in the laundry department of UMMC for twenty-two years. She received good performance ratings and knew how to perform the duties of all of the positions in the department. By 1991, however, she had developed health problems that prevented her from carrying out the tasks required for some of the positions. This had not been a problem because, for quite some time, Williams had worked in only one position, as an iron feeder.

In January, 1991, UMMC implemented a new work policy in the laundry department. The policy required all personnel to rotate among the various positions in the department on a weekly basis. UMMC stated that it wanted all personnel to be able to work in any position so that it could more efficiently accommodate absences. UMMC held a meeting for all laundry personnel to explain the new system and stated that the policy would be enforced without exception.

When Williams returned from an authorized leave of absence,¹ she discovered that she could no longer work exclusively at her position as a iron feeder. She met with the Laundry Manager, John Pline, and informed him that her age and health would not permit her to do some of the tasks required by other positions. Later, she met with James Swisher, the Director of the department, who informed her that UMMC would not make an exception from the policy

¹ Due to this leave, Williams had not attended the meeting at which the new system was announced.

for Williams. Because she could not comply with the new system, Williams left work.²

Williams sued UMMC, alleging that her termination constituted discrimination in violation of the ADEA. UMMC responded and filed a motion for summary judgment, which the district court granted. Williams appeals, arguing that she demonstrated several genuine issues of material fact sufficient to withstand the grant of summary judgment against her.

II

A

We review challenges to summary judgments *de novo*, applying the same standard as the district court. *Bodenheimer v. PPG Indus., Inc.*, 5 F.3d 955, 956 (5th Cir. 1993). Summary judgment is appropriate if no genuine issue of material fact exists. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25, 106 S. Ct. 2548, 2552-54, 91 L. Ed. 2d 265 (1986). Disputed material facts create a genuine issue only if a reasonable jury could find for the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). In reviewing a district court's grant of summary judgment, we view the evidence in the light most favorable to the nonmovant. *Id.* at 255, 106 S. Ct. at 2513.³

² Although the parties disagree about whether Williams quit or was fired, UMMC concedes that Williams was constructively terminated.

³ We note here that, although it did not do so, the district court should also have viewed the evidence in the light most favorable to Williams.

The ADEA makes it "unlawful for an employer . . . to discharge any individual . . . because of such individual's age." 29 U.S.C. § 623(a)(1). To establish a prima facie case of age discrimination, the plaintiff "must demonstrate that: (1) he was discharged; (2) he was qualified for the position; (3) he was within the protected class at the time of the discharge; and (4) he was either i) replaced by someone outside the protected class, ii) replaced by someone younger, or iii) otherwise discharged because of his age." *Bodenheimer*, 5 F.3d at 957. If the plaintiff establishes a prima facie case, he creates a presumption of discrimination, *Texas Dept. of Community Aff. v. Burdine*, 450 U.S. 248, 254, 101 S. Ct. 1089, 1094, 67 L. Ed. 2d 207 (1981), and the burden shifts to the defendant to "articulate some legitimate, nondiscriminatory reason" for the challenged action, *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 1824, 36 L. Ed. 2d 668 (1973). The defendant may meet this burden by presenting evidence that, "if believed by the trier of fact, would support a finding that unlawful discrimination was not the cause of the employment action." *St. Mary's Honor Ctr. v. Hicks*, ___ U.S. ___, ___, 113 S. Ct. 2742, 2747, 125 L. Ed. 2d 407 (1993). If the defendant meets its burden, the presumption raised by the plaintiff's prima facie case disappears. *Id.* at ___, 113 S. Ct. at 2749 (explaining that the presumption "simply drops out of the picture"). The plaintiff then has the opportunity to demonstrate, through presentation of his own case and through cross-examination

of the defendant's witnesses, that the proffered reason was not the true reason for the employment decision, and that age was. *Id.* at ____, 113 S. Ct. at 2747; *Bodenheimer*, 5 F.3d at 957.

UMMC concedes that Williams provided a prima facie case. Therefore, the burden shifted to UMMC to articulate a legitimate, nondiscriminatory reason for Williams' termination. An employer satisfies this burden by offering evidence that would legally suffice to support a jury finding for the employer. *Bodenheimer*, 5 F.3d at 957. According to the affidavits of Pline and Swisher, Williams was terminated because she did not comply with the new rotation policy. There is considerable dispute over the circumstances of Williams' termination, but this does not alter the fact that UMMC instituted a new work system, and Williams did not comply with it. Failure to perform assigned duties constitutes a legitimate basis for termination;⁴ accordingly, UMMC met its burden. Thus, the analysis shifted back to determine whether Williams demonstrated that UMMC's proffered reason was pretextual.

In order to prove pretext, Williams must have shown that UMMC instituted the new work schedule in order to discriminate against older workers. The evidence provided, however, consists merely of Williams' own statement that "it seemed that the rotation system

⁴ *Smith v. Texas Dep't of Water Resources*, 818 F.2d 363, 365 (5th Cir. 1987), cert. denied, 484 U.S. 1059, 108 S. Ct. 1012, 98 L. Ed. 2d 977 (1988); *Jack v. American Linen Supply Co.*, 498 F.2d 122, 124 (5th Cir. 1974).

was a plan to get rid of older workers."⁵ Conclusory statements of generalized, subjective belief, however, do not suffice to prove discrimination. *Elliott v. Group Medical & Surgical Serv.*, 714 F.2d 556, 564 (5th Cir. 1983) ("[G]eneralized testimony by an employee regarding his subjective belief that his discharge was the result of age discrimination is insufficient to make an issue for the jury in the face of proof showing an adequate, nondiscriminatory reason for his discharge."), *cert. denied*, 467 U.S. 1215, 104 S. Ct. 2658, 81 L. Ed. 2d 364 (1984). Fundamentally, Williams questions the wisdom of the new policy, but it is not the role of this Court to substitute its own views for the business decisions of the employer. *See Bienkowski v. American Airlines, Inc.*, 851 F.2d 1503, 1507-08 (5th Cir. 1988) ("The ADEA was not intended to be a vehicle for judicial second-guessing of employment decisions, nor was it intended to transform the courts into personnel managers."). Consequently, Williams has failed to show that UMMC's proffered reason for her discharge was a pretext for age discrimination, and the district court properly granted UMMC's motion for summary judgment.

B

Williams nonetheless contends that she successfully raised several genuine issues of material fact precluding summary

⁵ Williams argues that, because *she* already knew how to do all the jobs in the department, we should hold that she has demonstrated pretext. Her knowledge of all the jobs, however, does not contradict UMMC's need for *all* employees to know every job.

judgment. She provided evidence contesting 1) the procedures and events surrounding her discharge, 2) who informed her of the new work schedule and when, 3) whether she or her supervisor requested the meeting with Swisher, and 4) whether she quit or was fired. Even viewing these facts in the light most favorable to Williams, however, the issues are not material, because they still do not bear on the issue of whether UMMC instituted the new work schedule to discriminate against older workers. Williams' failure to comply with the new schedule is independently sufficient to satisfy UMMC's burden; therefore, a genuine dispute over the circumstances of her departure does not create a material conflict on the question of pretext. At best, this evidence indicates that UMMC may have been unfairly rigid in the implementation of its new system, but this still does not constitute age discrimination. *See Moore v. Eli Lilly & Co.*, 990 F.2d 812, 819 (5th Cir.) ("A discharge may well be unfair or even unlawful yet not be evidence of age bias under the ADEA."), *cert. denied*, ___ U.S. ___, 114 S. Ct. 467, 126 L. Ed. 2d 419 (1993).

Williams also provided the affidavit of Aliece Garrett, who alleged that she, Garrett, had also been discriminated against by UMMC because of her age. Garrett's statements, however, suffer the same flaw as Williams'; they simply constitute her own subjective belief that her retirement was induced by age bias. This is not enough. *See Elliott*, 714 F.2d at 567 (refusing "to hold that a subjective belief of discrimination, however, genuine, can be the

basis of judicial relief"). In *Elliott*, each of six persons testified to his own belief that the employer had discriminated against him. The court held that those beliefs did not raise a genuine issue of pretext for any of the plaintiffs, either individually or collectively. *Id.* Further, Pline and Swisher's statements to Garrett concerning her retirement also do not suffice to indicate a discriminatory animus. See *Moore*, 990 F.2d at 817-18 (holding that questions about an employee's plans for retirement were reasonable and nondiscriminatory). Consequently, while Williams correctly identifies several genuine factual disputes, none are material to the critical inquiry of this case.

III

For the foregoing reasons, we AFFIRM.