

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-50771
Summary Calendar

VIOLA PENA

Plaintiff-Appellant,

versus

COMPASSIONATE CARE, INC.

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
(MO-98-CV-179)

March 15, 1999

Before HIGGINBOTHAM, JONES, and DENNIS, Circuit Judges.

PER CURIAM:*

Viola Pena claims that Compassionate Care, Inc., her former employer, discriminated against her because of her national origin in violation of Title VII of the Civil Rights Act of 1964. She alleges that Compassionate Care fired her because she is Hispanic. Judge L. Stuart Platt, United States Magistrate Judge, granted summary judgment for Compassionate Care, and Pena appeals. Because the competent summary judgment evidence before the lower court did

*Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

not raise a material fact issue that national origin was a motivating reason for Pena's termination, we AFFIRM.

The analysis for Title VII discrimination claims is well-established. See *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502 (1993). The plaintiff must demonstrate a prima facie case that the defendant made an employment decision that was motivated by a protected factor. Once the plaintiff makes out a prima facie case, the defendant bears the burden of producing evidence that its employment decision was based on a legitimate nondiscriminatory reason. The burden then shifts back to the plaintiff to prove that the defendant's proffered reasons were a pretext for discrimination. See *Mayberry v. Vought Aircraft Co.*, 55 F.3d 1086, 1089 (5th Cir. 1995).

Assuming Pena were to establish a prima facie case, Pena fails to present competent summary judgment evidence to rebut Compassionate Care's proffered reason for her termination: that Pena submitted a false mileage claim after having been warned not to do so when had previously submitted a false claim. Pena argues that similarly situated white employees were treated more favorably than she was, but this argument is invalid. The white employees whom Pena claims were similarly situated did not, like Pena, submit a false mileage claim after having previously done so and been warned about it. Thus, Pena provides no evidence to show that the true reason she was terminated was because she was Hispanic.

For the foregoing reasons, we AFFIRM.