

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-11103
Summary Calendar

GEMA PUGA,

Plaintiff-Appellant,

VERSUS

THE TRAVELERS INSURANCE COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(5:94-CV-48-C)

(May 29, 1995)

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:¹

Appellant Gema Puga asserted multiple causes of action against her former employer, The Travelers Insurance Company (Travelers). The district court granted summary judgment in favor of Travelers on all claims. Puga appeals only the court's dismissal of her discrimination claims under Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-2 (1988). We affirm.

BACKGROUND

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Travelers dismissed Puga, a senior claim specialist in Travelers' Lubbock, Texas office, in April 1993 as part of a reduction-in-force (RIF). The RIF caused the termination of four of the eight senior claim specialist positions at the Lubbock office. The RIF was based on four criteria: (1) qualifications; (2) specific experience; (3) abilities and strengths; and (4) total company service. Abilities and strengths, the third and most subjective factor, received double weight. Of the eight employees, five had a minority background. Of the four employees remaining after the RIF, three had a minority background.²

Puga received four satisfactory ratings in her annual reviews between 1989 and 1992. Danny Williams performed three of the reviews, and Connie Hust performed the fourth one. Puga's reviews consistently describe her as a diligent worker who handles external contacts well but needs improvement on working with fellow employees. In Travelers' 1992 review, Ferguson, Drake, and Condren received above average ratings. The others received satisfactory ratings.

² Travelers assigned credits based on its criteria. The scores and result of the RIF were as follows:

| | |
|--------------------------|------------|
| Marilyn Ferguson (black) | 3+4+6+3=16 |
| Sherri Drake (white) | 3+3+6+2=14 |
| Nelda Rosales (hispanic) | 3+2+6+2=13 |
| Irma Garcia (hispanic) | 3+3+4+3=13 |
| - - - - - | - - - - - |
| Darlene Condren (white) | 3+3+4+2=12 |
| Sherry Wolfe (white) | 2+2+4+3=11 |
| Gema Puga (hispanic) | 3+3+2+3=11 |
| Ana Rodriguez (hispanic) | 1+1+2+3= 7 |

Travelers denied Puga a promotion in 1992 to the position of claim representative, which is four levels higher than senior claim specialist. Travelers filled the vacant position with an employee who was a claim analyst, which is the position immediately below that of claim representative. Travelers told Puga that the claim analyst position was a required prerequisite to obtaining the claim representative position.

DISCUSSION

We review a district court's grant of summary judgment de novo. Weyant v. Acceptance Ins. Co., 917 F.2d 209, 212 (5th Cir. 1990). We consider all the facts contained in the summary judgment record and the inferences to be drawn therefrom in the light most favorable to the non-moving party. Id. In its ruling, the district court dismissed Puga's Title VII claims because she failed to make out a prima facie case and, alternatively, failed to rebut Travelers' legitimate business reasons for acting as it did.

Puga does not attack the RIF itself as discriminatory; rather, she hinges her claim on the RIF's subjective factors and her supervisor Williams's allegedly discriminatory conduct. In other words, Puga contends that her scores on the subjective factors were affected by Williams's conduct. To make out a prima facie case of discrimination, Puga must show that she is a member of a protected class, that she was qualified for the job, that she suffered an adverse employment action, and that she was treated less favorably than individuals not in a protected class. Waggoner v. City of Garland, 987 F.2d 1160, 1163-64 (5th Cir. 1993).

Concerning the RIF, Puga cannot show that she was treated less favorably than non-minorities. Both Williams and Hust, Puga's two supervisors, gave her similar reviews and cited her weakness of interacting with fellow employees. This weakness caused Puga's low score on the abilities and strengths factor, which resulted in her low overall score. Ferguson, Drake, and Rosales scored highest on abilities and strengths; Travelers retained all three after the RIF. Ferguson is black, Drake is white, and Rosales is hispanic. The employees who fared best on the most subjective factor of Travelers' RIF criteria are equally diverse. Because Puga cannot show that she was treated less favorably than non-minorities, she cannot prove a prima facie case of discrimination for her discharge.³

Puga also complains about her denied promotion, for which she can establish a prima facie case of discrimination. Travelers responds that it denied the position to Puga because she had not held the required prerequisite position of claim analyst. Puga offers no evidence that Travelers' asserted reason for the promotion denial is pretextual. Therefore, we conclude that summary judgment was appropriate.⁴

CONCLUSION

³ Puga's various allegations of discrimination on the part of Williams do not otherwise suffice to establish a prima facie case because they are neither connected to an adverse employment action nor show a hostile environment.

⁴ Puga waives her argument concerning disparity in pay because she does not argue this issue in her brief.

For the foregoing reasons, the district court's grant of summary judgment is

AFFIRMED.