

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Tiffany Potter v. Douglas A. Collins

Potter · No. CV-24-00347-PHX-SHD · Decided February 27, 2026

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF
ARIZONA 8 9 Tiffany Potter, No. CV-24-00347-PHX-SHD 10 Plaintiff, ORDER 11 v. 12
Douglas A Collins, 13 Defendant. 14 15 Pending before the Court is Defendant the Secretary of
the Department of Veteran 16 Affairs’ (the “Secretary”) motion for summary judgment of Plaintiff
Tiffany Potter’s 17 claims.

(Doc. 41.) For the following reasons, the Secretary’s motion will be granted. 18 I. FACTUAL
BACKGROUND 19 On June 16, 2015, Tiffany Potter filed an equal employment opportunity
 (“EEO”) 20 complaint with the Department of Veterans Affairs (the “Agency”), alleging that the
21 Agency subjected her to discrimination and a hostile work environment on the bases of her 22
race (black) and sex (female) in violation of Title VII of the Civil Rights Act of 1964.

(See 23 Doc. 40-4 at 2.) She later amended her complaint to add claims alleging the Agency 24
subjected her to discrimination and a hostile work environment in reprisal for prior 25 protected
EEO activity. (See id.) Potter alleged she was subjected to ongoing harassment 26 that included
over 80 incidents. (Id.)

The Agency investigated her complaints and, at the 27 conclusion of the investigation, provided
Potter with a copy of the report of investigation 28 and notice of her right to request a hearing
before an Equal Employment Opportunity 1 Commission (“EEOC”) Administrative Judge (“AJ”).
(Id. at 3.)

On February 2, 2016, 2 Potter timely requested a hearing. (Id.; Doc. 40-1 at 17.) On April 18,
2017, Potter filed a 3 Motion to Amend her complaint to include a constructive discharge claim.
(Doc. 40-4 at 4 3.) 5 The AJ held a hearing over the course of five days in late December 2020 and
early 6 January 2021. (Id. at 4.)

On May 10, 2021, the AJ issued a decision finding in favor of 7 Potter, in part, and the Agency, in
part. (See Doc. 40-1 at 41–52.) The AJ found that the 8 Agency discriminated against Potter based
on her race and sex, retaliated against her for 9 engaging in protected EEO activity, and subjected
her to a hostile work environment. (Id.) 10 The AJ found that Potter’s constructive discharge claim
was not independently actionable 11 because it was untimely, but noted that he considered it as
part of the pattern of conduct 12 and evidence supporting her claim for harassment/hostile work
environment.

(Id. at 48.) 13 The AJ ordered the Agency to pay Potter \$550 in past pecuniary compensatory damages, 14 and \$137,000 in non-pecuniary compensatory damages. (Id. at 69–70.) On July 21, 2021, 15 the AJ issued an order awarding Potter \$233,761.90 in attorneys’ fees and \$2,409.61 in 16 costs, for a total of \$236,171.51. (Doc. 40-2 at 25.) 17 The Agency subsequently issued a final order adopting the AJ’s decisions.

(Doc. 18 40-4 at 6.) Potter appealed the Agency’s final order to the EEOC’s Office of Federal 19 Operations (“OFO”). (Id. at 2.) There, Potter challenged both the AJ’s decision that her 20 constructive discharge claim was not an independently actionable claim and the amount of 21 the non-pecuniary compensation award. (Id. at 6.)

The OFO denied her appeal and 22 affirmed the AJ’s ruling. (Id. at 10.) It held that the AJ did not abuse his discretion in 23 declining to treat Potter’s constructive discharge claim as an independent claim. (Id. at 7, 24 8.)

The OFO also found that the AJ did not err in awarding \$137,000 in non-pecuniary 25 compensatory damages. (Id. at 9.) 26 The OFO affirmed the relief awarded by the AJ and ordered the Agency to pay 27 Potter back pay, \$550 in pecuniary compensatory damages, \$137,000 in non-pecuniary 28 compensatory damages, \$233,761.90 in attorney fees, and \$2,409.61 in costs.

(Id. at 10– 1 11.) The Agency calculated back pay to be \$58,254.99, with additional tax calculations of 2 \$2,993.96. (Doc. 54-1.) The Agency paid Potter the monetary relief that the OFO 3 affirmed. (See Doc. 54-1; Doc. 55.) 4 Potter also pursued separate remedies through the federal Merit Systems Protection 5 Board, which determined that Potter’s claims lacked credibility and rejected them.

(See 6 generally Doc. 40-3.) 7 On February 20, 2024, Potter filed this lawsuit against the Secretary, asserting four 8 claims: (1) “Employment Discrimination of the Basis of Race and Sex —Constructive 9 Discharge,” (2) “Hostile Work Environment—Constructive Discharge,” (3) “Employment 10 Discrimination on the Basis of Reprisal—Constructive Discharge,” and (4) “Employment 11 Discrimination on the Basis of Race—Constructive Discharge.” (Doc.

1 at 14–21.) 12 On August 1, 2025, the Secretary filed its motion for summary judgment. (Docs. 13 39, 41.) 1 Potter responded on September 15, 2025, (Doc. 44), and the Secretary replied on 14 January 12, 2026, (Doc. 52). Potter requested oral argument on the motion. (Doc. 44 at 15 8.)

The Court concludes that oral argument would not assist in resolving the issues 16 presented. See LRCiv 7.2(f). Accordingly, the request for oral argument is denied. 17 II. LEGAL STANDARD 18 “The court shall grant summary judgment if the movant shows that there is no 19 genuine dispute as to any material fact and the movant is entitled to judgment as a matter 20 of law.” Fed.

R. Civ. P. 56(a). Not all factual disputes are material or genuine, however: 21 a “fact is ‘material’ only if it might affect the outcome of the case, and a dispute is ‘genuine’ 22 only if a reasonable trier of fact could resolve the issue in the non-movant’s favor.” Fresno 23 Motors, LLC v. Mercedes Benz USA, LLC, 771 F.3d 1119, 1125 (9th Cir. 2014). Courts 24 “must view the evidence in the light most favorable to the nonmoving party and draw all 25 reasonable inference[s] in the nonmoving party’s favor.” Rookaird v. BNSF Ry.

Co., 908 26 F.3d 451, 459 (9th Cir. 2018). “Summary judgment is improper where divergent ultimate 27 1 The Secretary originally filed the motion for summary judgment on August 1, 2025. 28 (Doc. 39.) On August 4, 2025, it filed an amended motion to correct typographical errors. (Doc. 41.)

For purposes of this Order, the Court refers to the amended motion, (Doc. 41). 1 inferences may reasonably be drawn from the undisputed facts.” Fresno Motors, 771 F.3d 2 at 1125 (internal quotation marks omitted). 3 At summary judgment, there are shifting burdens of production. A party moving 4 for summary judgment “bears the initial responsibility of informing the district court of the 5 basis for its motion, and identifying those portions of the pleadings, depositions, answers 6 to interrogatories, and admissions on file, together with the affidavits, if any, which it 7 believes demonstrate the absence of a genuine issue of material fact.” Celotex Corp. v. 8 Catrett, 477 U.S. 317, 323 (1986) (internal quotation marks omitted). “In order to carry 9 its burden of production, the moving party must either produce evidence negating an 10 essential element of the nonmoving party’s claim or defense or show that the nonmoving 11 party does not have enough evidence of an essential element to carry its ultimate burden of 12 persuasion at trial.” Nissan Fire & Marine Ins.

Co. v. Fritz Cos., 210 F.3d 1099, 1102 (9th 13 Cir. 2000). 14 If the “moving party carries its burden of production, the nonmoving party must 15 produce evidence to support its claim or defense.” Id. at 1103. “If the nonmoving party 16 fails to produce enough evidence to create a genuine issue of material fact, the moving 17 party wins the motion for summary judgment.” Id. There is no issue for resolution at trial 18 unless enough evidence favors the non-moving party.

Anderson v. Liberty Lobby, Inc., 477 19 U.S. 242, 249 (1986). “If the evidence is merely colorable or is not significantly probative, 20 summary judgment may be granted.” Id. at 249–50 (citations omitted). At bottom, the 21 Court’s “inquiry as to whether a genuine issue exists will be whether the evidence 22 presented is such that a jury applying that evidentiary standard could reasonably find for 23 either the plaintiff or the defendant.” Id. at 255.

24 III. DISCUSSION 25 Before initiating a Title VII action in district court based on employment 26 discrimination by a federal agency, an employee must first exhaust her administrative 27 remedies. Kraus v. Presidio Trust Facilities Div./ Residential Mgmt. Branch, 572 F.3d 28 1039, 1043 (9th Cir. 2009).

First, the employee must file a complaint with the agency that 1 allegedly discriminated against the individual. 29 C.F.R. § 1614.106(a). The agency then 2 must conduct an “investigation of the complaint within 180 days of the filing of the 3 complaint.” 29 C.F.R. § 1614.106(e)(2).

The complainant may request a hearing before 4 an AJ, who will issue a decision. 29 C.F.R. § 1614.108(f). 5 After the AJ issues a decision, the agency must take final action by issuing a final 6 order. 29 C.F.R. § 1614.110(a). That order must inform the complainant whether the 7 agency will fully implement the AJ’s decision and must also notify the complainant of the 8 right to appeal to the EEOC, the right to file a civil action in federal district court, and the 9 applicable deadlines for doing so.

Id. If dissatisfied with the AJ’s decision, the 10 complainant may either file a lawsuit or appeal to the EEOC. Id.; see also 29 C.F.R. § 11 1614.402. 12 If the complainant appeals to the EEOC, the OFO reviews the record, may request 13 additional submissions from the parties, and then issues a decision. 29 C.F.R. § 1614.404. 14 The OFO’s decision constitutes a final agency action and triggers the complainant’s right 15 to file a civil action.

See 29 C.F.R. §§ 1614.404, 1614.407. The parties do not dispute that 16 Potter exhausted her administrative remedies in this case. 17 When a federal employee brings a civil action following final agency action, the law 18 provides two discrete avenues. A plaintiff must either (1) file an enforcement action, or 19 (2) initiate a de novo action. *Carver v. Holder*, 606 F.3d 690, 696 (9th Cir.

2010); see 20 *Thompson v. Donahoe*, 2013 WL 144271, at *3–4 (S.D. Cal. 2013) (applying *Carver* to a 21 Title VII claim). In an enforcement action, the court does not revisit liability or the 22 remedies awarded; it only determines whether the agency has complied with the ordered 23 relief. *Carver*, 606 F.3d at 696. By contrast, in a de novo action, the complainant places 24 the entire administrative disposition at issue, challenging both the OFO’s liability 25 determination—that the agency engaged in discrimination—and the remedy awarded.

Id. 26 A plaintiff may not selectively challenge only a portion of the administrative ruling while 27 retaining favorable aspects. See *id.*; *Melgozza v. Mayorkas*, 2022 WL 3369631, at *3 (C.D. 28 Cal. 2022) (holding plaintiff barred from seeking partial review of administrative 1 damages); *Ellis v. England*, 432 F.3d 1321, 1323–25 (11th Cir. 2005) (rejecting 2 “fragmentary de novo review” of EEOC decisions).

3 Here, the operative Complaint does not seek to enforce the OFO decision, nor does 4 it plead a comprehensive de novo action placing the entirety of liability and remedies at 5 issue. (See generally Doc. 1.) Rather, Potter’s Complaint asserts four causes of action— 6 race and sex discrimination, hostile work environment, reprisal, and race discrimination— 7 each, expressly styled as and predicated upon “Constructive Discharge.” (See Doc.

1 at 8 14–21.) The Complaint therefore seeks to relitigate only one issue: whether the Agency 9 violated Title VII based on a constructive discharge theory. The Complaint does not raise 10 any other independent claims of discrimination, retaliation, or hostile work environment, 11 nor does it seek de novo review of the administrative findings as a whole. 12 The Agency has already paid Potter the monetary relief awarded in her favor at the 13 administrative level.

(See Doc. 54-1; Doc. 55.) Potter acknowledges as much, while 14 asserting that the payment did not include relief for constructive discharge because that 15 theory was rejected and therefore “unadjudicated.” (Doc. 55 at 1.) That framing is 16 unpersuasive.

The constructive discharge theory was considered during the administrative 17 proceedings and determined not to be independently actionable, and the OFO affirmed the 18 final decision. Potter may not accept the monetary relief awarded on the claims resolved 19 in her favor while selectively seeking to relitigate only the portion of the decision adverse 20 to her.

See Thompson, 2013 WL 144271, at *4. This is precisely the type of piecemeal 21 litigation that the governing framework prohibits. See Carver, 606 F.3d at 696 (holding 22 that a federal employee who files a civil action following an EEOC decision “must either 23 accept the administrative disposition in its entirety”—including the OFO’s determination 24 that the agency’s payment was sufficient—“or bring a de novo action in the district court”).

25 Potter does not dispute that her Complaint is predicated solely on a theory of 26 constructive discharge. (See Doc. 44 at 1, 3.) Rather, acknowledging that only two 27 pathways exist for challenging a final EEOC decision, Potter asserts that she is now willing 28 to proceed with a full de novo review of the EEOC’s findings on liability and remedies. 1 (Id.)

For his part, the Secretary argues that it is too late for Potter to expand the scope of 2 this litigation. (Doc. 52 at 2–3.) Specifically, the Secretary contends that discovery has 3 closed, he retained experts in reliance on the constructive discharge claim, expert reports 4 have already been disclosed to Potter, and dispositive motions have been filed. (Id. at 3.)

5 In the Secretary’s view, permitting an expansion of the claims under these circumstances 6 would cause undue prejudice. (See id. at 2–3.) The Court agrees. 7 First, Potter cannot expand the scope of this action through summary-judgment 8 briefing. “It is well-settled that a plaintiff cannot raise a new claim for relief in response 9 to a motion for summary judgment.” Ruiz v. Magellan Financial & Insurance Services, 10 2025 WL 1796275, at *9 (D.

Ariz. 2025) (cleaned up); Ortiz v. Lopez, 688 F. Supp. 2d 11 1072, 1082 (E.D. Cal. 2010) (holding “a plaintiff cannot oppose summary judgment based 12 on a new theory of liability,” since doing so “would essentially blind side the defendant 13 with a new legal issue after the bulk of discovery has likely been completed”). Courts 14 routinely reject efforts to enlarge or alter the claims at issue through opposition papers.

See *15 Pickern v. Pier 1 Imports (U.S.), Inc.*, 457 F.3d 963, 968 (9th Cir. 2006) (holding district 16 court properly excluded new allegations raised only in summary-judgment filings); *Ward 17 v. Clark County*, 285 F. App'x 412, 412–13 (9th Cir. 2008) (holding plaintiff could not 18 base her retaliation claim on an incident not mentioned in the complaint). These rules 19 ensure that defendants have fair notice of the claims asserted and are not forced to defend 20 new theories raised for the first time at summary judgment.

21 Second, Potter has not moved to amend her Complaint. Even if she had, amendment 22 at this stage would be improper. To amend the scheduling order deadline, a plaintiff must 23 show “good cause”. See Fed. R. Civ. P. 16(b)(4). Where, as here, the deadline to amend 24 has already expired, the plaintiff must also demonstrate the higher “excusable neglect” 25 standard.

Fed. R. Civ. P. 6(b)(1)(B).² Potter cannot satisfy either standard. She has known 26 the facts and legal theory underlying her claims since the inception of this action and offers 27 2 The Court’s Scheduling Order required that any motion to amend the pleadings be 28 filed no later than September 12, 2024. (Doc. 18 at 1.) Potter did not seek amendment by that deadline.

1 no reason for the delay. See *Acri v. Int’l Ass’n of Machinists & Aerospace Workers*, 781 2 F.2d 1393, 1398 (9th Cir. 1986) (“[L]ate amendments to assert new theories are not 3 reviewed favorably when the facts and the theory have been known to the party seeking 4 amendment since the inception of the cause of action.” (citations omitted)). 5 Moreover, “even under the liberal Rule 15 standard ‘late amendments to assert new 6 theories are not reviewed favorably when the facts and the theory have been known to the 7 party seeking amendment since the inception of the cause of action.’” *Coleman v. Quaker 8 Oats Co.*, 232 F.3d 1271, 1295 (9th Cir.

2000) (quoting *Acri v. Int’l Ass’n of Machinists 9 and Aerospace Workers*, 781 F.2d 1393, 1398 (9th Cir. 1986)). Permitting Potter to 10 broaden this action now to encompass de novo review of the underlying discrimination, 11 retaliation, and hostile work environment claims would materially alter the scope of the 12 case and substantially prejudice the Secretary.

Those claims are governed by distinct legal 13 standards and require different elements of proof and evidentiary showings than a 14 constructive discharge claim. Discovery has closed, dispositive motions have been filed, 15 and the case has proceeded on the understanding that constructive discharge was the sole 16 theory at issue. Reopening the case to litigate all theories at issue in the EEOC decision 17 would necessitate additional discovery, revised expert analysis, and a restructured defense 18 strategy, resulting in significant cost and delay.

See *Coleman*, 232 F.3d at 1295 (“A need 19 to reopen discovery... supports a district court’s finding of prejudice from a delayed 20 motion to amend the complaint.” (quoting *Lockheed Martin Corp. v. Network Solutions, 21 Inc.*, 194 F.3d 980, 986 (9th Cir. 1999))). Such a late-stage

transformation of the litigation 22 absent a properly sought and justified amendment is not permitted.

See e.g., *Morongo 23 Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir.1990) (upholding denial of 24 leave to amend on the basis of dilatoriness and prejudice where plaintiffs attempted to 25 introduce new legal theory well into the litigation); *AmerisourceBergen Corp. v. Dialysist 26 West, Inc.*, 465 F.3d 946, 953 (9th Cir. 2006) (affirming denial of leave to amend where 27 amendment would prejudice the opposing party and disrupt the orderly course of the 28 litigation).

1 Because Potter's complaint sought neither enforcement nor de novo review, her || selective challenge to the administrative ruling is foreclosed as a matter of law. See *Carver*, 3|| 606 F.3d at 696. There being no genuine dispute of material fact, the Secretary is entitled 4}) to summary judgment. 5 IT IS ORDERED that the Secretary's motion for summary judgment (Doc.

41) is 6|| GRANTED. 7 IT IS FURTHER ORDERED directing the Clerk of Court to enter judgment 8 || accordingly and close this case. 9 Dated this 27th day of February, 2026. 10 11 / 12 / 13 H le Sharad H. Desai IS United States District Judge 16 17 18 19 20 21 22 23 24 25 26 3 The Secretary broadly asserts that, by filing suit, Potter has automatically invalidated the administrative award in its entirety.

(Doc. 41 at 1.) Although the Court is 28 skeptical of the government's position, that issue is not presently before the Court, and the Court will not reach it. -9-