

DISTRICT OF COLUMBIA COURT OF APPEALS

District of Columbia Housing Authority and the District of Columbia
v. District of Columbia Office of Human Rights and George
Brummell, Sr.

881 A.2d 600 (D.C. 2005) · No. Nos. 02-CV-524, 02-CV-525 · Decided August 25, 2005

SUMMARY

The District of Columbia Court of Appeals reviewed a Superior Court judgment upholding an administrative determination that the District of Columbia Housing Authority discriminated against George Brummell based on age and national origin. The court held that the Superior Court had jurisdiction and that the Housing Authority waived arguments concerning mandatory EEO counseling and an evidentiary hearing by failing to raise them earlier. The court affirmed the judgment upholding the administrative finding of discrimination and the remedies awarded.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Glickman, Associate Judge; Schwelb, Associate Judge; Ruiz, Associate Judge
JURISDICTION	District of Columbia
DECIDED	August 25, 2005
DOCKET	Nos. 02-CV-524, 02-CV-525
DISPOSITION	affirmed
PROCEDURAL POSTURE	The District of Columbia Housing Authority and the District appealed the Superior Court's affirmance of the District of Columbia Department of Human Rights' determination that the agency discriminated against George Brummell based on age and national origin. Brummell cross-appealed the Superior Court's jurisdiction to review the administrative decision.
STANDARD OF REVIEW	The court reviewed the administrative decision in the same manner as if it had come directly from the agency and was bound by factual findings supported by substantial evidence in the record. Legal issues concerning waiver and jurisdiction were reviewed independently.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

District of Columbia Housing Authority, District of Columbia v.
District of Columbia Office of Human Rights, George Brummell, Sr.

TOPICS

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employment discrimination

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QUESTIONS PRESENTED

1. Whether the Superior Court had jurisdiction to review DHR's final determination at DCHA's petition.
2. Whether DCHA's petition for review was timely under the applicable limitations period.
3. Whether DCHA waived its claim that DHR should have dismissed Brummell's complaint because he failed to consult an EEO counselor before filing.
4. Whether DCHA waived its claim that DHR was required to conduct an evidentiary hearing rather than issue a summary determination.
5. Whether substantial evidence supported DHR's finding that DPAH discriminated against Brummell based on age and national origin.

HOLDINGS

1. The Superior Court had jurisdiction to entertain DCHA's petition for review because DCHA was an aggrieved party and no clear legislative intent precluded judicial review.
2. DCHA's petition for review was timely because it was filed within three years of DHR's final decision, the limitations period applicable when no other filing period is specified.
3. DCHA forfeited its challenge to DHR's failure to dismiss the complaint for lack of prior EEO counseling because DCHA did not raise the issue before DHR or the Superior Court.
4. DCHA forfeited its claim that DHR was required to conduct an evidentiary hearing because it accepted summary determination before the agency, did not request a hearing, and did not seek reopening on that ground.
5. Substantial evidence supported DHR's finding that DPAH's stated reasons for not selecting Brummell were pretextual and that DPAH discriminated against him based on age and national origin.

KEY QUOTATIONS

"We have long held that we will not review a procedural claim that was not adequately raised at the agency level." (at 611)

“a plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated.” (at 616)

FACTUAL BACKGROUND

George Brummell, a sixty-year-old United States-born employee with extensive construction and contracting experience and excellent performance evaluations, was employed by the Department of Public and Assisted Housing. When DPAH created Modernization Coordinator positions, Brummell was first on the priority-consideration list but was not interviewed and was passed over for two younger applicants born in Africa. DPAH gave shifting explanations for the non-selection, including Brummell's purportedly limited contracting experience and an allegedly mandatory technical-degree requirement that was not stated in the job materials and was never substantiated.

PROCEDURAL HISTORY

Brummell filed an administrative discrimination complaint after DPAH failed to select him for a Modernization Coordinator position despite his priority ranking and instead selected younger applicants born in Africa. DHR found probable cause, later issued a summary determination finding discrimination, and ordered reinstatement, priority consideration, and back pay. DCHA's initial petition to the Court of Appeals was dismissed for lack of jurisdiction, after which DCHA sought review in Superior Court. The Superior Court denied Brummell's motion to dismiss and affirmed DHR's decision; the Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- D.C. Housing Authority v. D.C. Dep't of Human Rights, 733 A.2d 338 (D.C. 1999)
- Martin v. District of Columbia Courts, 753 A.2d 987 (D.C. 2000)
- Simpson v. District of Columbia Office of Human Rights, 597 A.2d 392 (D.C. 1991)
- District of Columbia Water & Sewer Auth. v. Delon Hampton & Assocs., 851 A.2d 410 (D.C. 2004)
- District of Columbia v. Owens-Corning Fiberglas Corp., 572 A.2d 394 (D.C. 1989)
- Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Regulation, 716 A.2d 987 (D.C. 1998)
- Goodman v. District of Columbia Rental Hous. Comm'n, 573 A.2d 1293 (D.C. 1990)
- Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd., 549 A.2d 315 (D.C. 1988)
- United States v. L.A. Tucker Truck Lines, Inc., 344 U.S. 33 (1952)
- District of Columbia Gen. Hosp. v. District of Columbia Office of Employee Appeals, 548 A.2d 70 (D.C. 1988)
- R.R. Yardmasters of Am. v. Harris, 721 F.2d 1332 (D.C. Cir. 1983)
- Bayer v. United States Dep't of the Treasury, 956 F.2d 330 (D.C. Cir. 1992)
- Mitchell v. Christopher, 996 F.2d 375 (D.C. Cir. 1993)

- *Community Hospitals of Central California v. National Labor Relations Board*, 335 F.3d 1079 (D.C. Cir. 2003)
- *United Transportation Union v. Surface Transportation Board*, 114 F.3d 1242 (D.C. Cir. 1997)
- *Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n*, 743 A.2d 1231 (D.C. 2000)
- *B.J.P. v. R.W.P.*, 637 A.2d 74 (D.C. 1994)
- *Hollins v. Federal National Mortgage Ass'n*, 760 A.2d 563 (D.C. 2000)
- *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)
- *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000)
- *Pitt v. District of Columbia Dep't of Corr.*, 819 A.2d 955 (D.C. 2003)
- *Hahn v. University of the District of Columbia*, 789 A.2d 1252 (D.C. 2002)
- *Kegley v. District of Columbia*, 440 A.2d 1013 (D.C. 1982)

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