UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Chappell-Johnson v. Bair

358 F. App'x 200 (D.C. Cir. 2009) · Decided December 22, 2009

SUMMARY

The D.C. Circuit affirmed summary judgment for the Federal Deposit Insurance Corporation in an employment discrimination and retaliation case. The court held that the plaintiff failed to present sufficient evidence that the FDIC’s stated reason for not selecting her was pretextual or that the decision resulted from discrimination based on age or sex or retaliation for prior protected activity.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Per curiam; Brown; Kavanaugh; Williams
JURISDICTION	Federal
DECIDED	December 22, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of Columbia after summary judgment for the Federal Deposit Insurance Corporation.
STANDARD OF REVIEW	Summary judgment is overcome only by sufficient evidence for a reasonable jury to find that the employer's asserted nondiscriminatory reason was not the actual reason and that the employer intentionally discriminated or retaliated.
PRECEDENTIAL VALUE	Nonprecedential unpublished disposition under D.C. Circuit Rule 36.
PARTIES	Chappell-Johnson v. Bair

TOPICS

employment discrimination · age discrimination · retaliation · federal employment law · appellate procedure

PRACTICE AREAS

employment discrimination · retaliation · federal employment law · civil rights

QUESTIONS PRESENTED

1. Whether Chappell-Johnson produced sufficient evidence that the FDIC's legitimate, nondiscriminatory explanation for not selecting her was pretextual and that the non-selection resulted from age or sex discrimination.
2. Whether Chappell-Johnson produced sufficient evidence that the FDIC retaliated against her for filing a prior discrimination complaint.

HOLDINGS

1. Chappell-Johnson failed to produce sufficient evidence for a reasonable jury to conclude that the FDIC's stated reason for selecting other candidates was pretextual or that the non-selection was the product of intentional discrimination.
2. Chappell-Johnson failed to produce sufficient evidence for a reasonable jury to conclude that the FDIC retaliated against her for filing a prior discrimination complaint.

KEY QUOTATIONS

> *“In short, ChappellJohnson has not produced evidence sufficient to allow a reasonable jury to conclude that her non-selection was the product of discrimination or retaliation.”* (202)

FACTUAL BACKGROUND

Chappell-Johnson applied for a Human Resources Specialist position at the Federal Deposit Insurance Corporation but was not selected. The hiring committee narrowed the applicant pool to two candidates, and Chappell-Johnson was not among them before the selecting official became involved. She alleged that the non-selection resulted from age and sex discrimination and retaliation for a prior discrimination complaint, relying on alleged procedural deviations, superior qualifications, subjective selection criteria, and the selecting official's knowledge of her prior complaint.

PROCEDURAL HISTORY

Chappell-Johnson challenged her non-selection for a Human Resources Specialist position, alleging age and sex discrimination and retaliation for a prior discrimination complaint. The district court entered judgment against her, and she appealed. The D.C. Circuit affirmed the district court's judgment.

DISPOSITION

affirmed

CASES CITED

- Brady v. Office of Sergeant at Arms, 520 F.3d 490, 494 (D.C. Cir. 2008)
- George v. Leavitt, 407 F.3d 405, 413 (D.C. Cir. 2005)
- Johnson v. Lehman, 679 F.2d 918, 922 (D.C. Cir. 1982)
- Holcomb v. Powell, 433 F.3d 889, 897 (D.C. Cir. 2006)

- Jackson v. Gonzales, 496 F.3d 703, 709 (D.C. Cir. 2007)

OPINION

PER CURIAM.

PER CURIAM. JUDGMENT This appeal was considered on the record from the United States District Court for the District of Columbia and the briefs and oral arguments of the parties. For the reasons stated below, it is ORDERED and ADJUDGED that the judgment of the District Court be affirmed. Chappell-Johnson applied for a position as a Human Resources Specialist at the Federal Deposit Insurance Corporation and was not selected.

She alleges that her non-selection was the result of discrimination based on age and sex and constituted retaliation for her filing of a prior discrimination complaint. FDIC asserts that Chappell-Johnson was not selected because none of the members of the interview panel viewed her as one of the top two candidates.

Because FDIC offers a legitimate non-discriminatory reason for its hiring decision, Chappell-Johnson — in order to overcome summary judgment— must produce “sufficient evidence for a reasonable jury to find that” FDIC’s “asserted non-discriminatory reason was not the actual reason” and that FDIC “intentionally discriminated against” her. Brady v. Office of Sergeant at Arms, 520 F.3d 490, 494 (D.C.Cir.2008).

Chappell-Johnson attempts to meet this burden by providing evidence suggesting that FDIC’s proffered reason was merely pretext. See George v. Leavitt, 407 F.3d 405, 413 (D.C.Cir.2005). First, ChappellJohnson argues that FDIC violated its own hiring procedures because the selecting official did not participate in the initial interview process. Significant departures from normal hiring procedures can constitute evidence supporting a finding of discriminatory intent, Johnson v. Lehman, 679 F.2d 918, 922 (D.C.Cir.1982), but FDIC guidelines state that the selecting official “should participate in the interviews” — not that she must.

J.A. at 104. Second, Chappell-Johnson asserts that she was more qualified than the individual ultimately selected for the HR Specialist position. But the record does not show that Chappell-Johnson was better qualified, much less “significantly better qualified,” for the job than the person selected, as required by our precedents. Holcomb v. Powell, 433 F.3d 889, 897 (D.C.Cir.2006).

Third, Chappell-Johnson contends that subjective factors like communication skills were relied on in making the hiring decision. But there is no bar to considering subjective factors; moreover, oral and written communication skills were two traits specifically enumerated in the hiring announcement as being necessary to selection for the position. J.A. at 181; see Jackson v. Gonzales, 496 F.3d 703, 709 (D.C.Cir.2007).

Fourth, in support of her retaliation claim, Chappell-Johnson points *202to the fact that the selecting official was aware that she had filed a previous discrimination complaint with FDIC. But Chappell-Johnson was no longer in consideration for the position by the time that selecting official became involved.

The hiring committee had already narrowed the pool to two applicants at that point and Chappell-Johnson was not one of them. Finally, Chappell-Johnson asserts that the selecting official made conflicting statements with respect to her knowledge of Chappell-Johnsoris prior discrimination complaints at FDIC. But a thorough reading of the record does not reveal any material discrepancies.

In short, ChappellJohnson has not produced evidence sufficient to allow a reasonable jury to conclude that her non-selection was the product of discrimination or retaliation. Pursuant to D.C. Circuit Rule 36, this disposition will not be published.

The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. See Fed. R.App. P. 41(b); D.C.Cir. R. 41(b).
