

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

ERIC RAMSEY

Plaintiff

v.

UNIVERSITY OF AKRON

Defendant

Case No. 2013-00048

Judge Patrick M. McGrath
Magistrate Robert Van Schoyck

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} On December 17, 2013, plaintiff filed a motion for summary judgment pursuant to Civ.R. 56(A). On December 20, 2013, defendant filed a combined memorandum in opposition and motion for summary judgment pursuant to Civ.R. 56(B).

The motions are now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." See also

Gilbert v. Summit Cty., 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} Plaintiff, who has been employed with defendant since 1998 and currently serves in the position of Maintenance Repair Worker, brings this action claiming that defendant unlawfully discriminated against him because of his race by failing to give him a promotion to the position of Master Maintenance Repair Worker, which he applied for in October 2010.

{¶5} Defendant asserts that plaintiff's claim is barred by the statute of limitations set forth at R.C. 2743.16(A), which states as follows: "Subject to division (B) of this section, civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties." "A claim of discrimination accrues 'when the discriminatory act or practice occurs.'" *Williams v. Bur. of Workers' Comp.*, 10th Dist. Franklin No. 09AP-1076, 2010-Ohio-3210, ¶ 26, quoting *Tablack v. Wellman*, 7th Dist. Mahoning No. 04-MA-218, 2006-Ohio-4688, ¶ 99; see also *Kozma v. AEP Energy Servs., Inc.*, 10th Dist. Franklin No. 04AP-643, 2005-Ohio-1157. According to the factual allegations attached as a supplement to plaintiff's form complaint, "Rosalyn Pinkard of HR" explained to him at some point in December 2010 that he would not be interviewed for the position because he did not meet the minimum qualifications. Indeed, in support of its motion, defendant submitted an affidavit from Pinkard, who avers that she is a coordinator and recruiter in defendant's Human Resource Office, where her duties include "reviewing applications for job postings for accuracy and qualifications and forwarding on the applications of qualified applicants so that interviews may be scheduled." Pinkard avers that on or about December 7, 2010, plaintiff contacted the Human Resource Office and "[h]e was aware at that time that he would not be

interviewed or awarded the position.” Plaintiff did not present any evidence to contest this averment by Pinkard. Accordingly, it can only be concluded that plaintiff was informed he would not be promoted on or about December 7, 2010. Because plaintiff filed his complaint in this action more than two years later, on January 23, 2013, his claim is barred by the applicable statute of limitations.

{¶6} Even if the complaint had been timely filed, however, defendant is entitled to judgment as a matter of law on plaintiff’s claim of unlawful employment discrimination.

{¶7} R.C. 4112.02 states, in part:

{¶8} “It shall be an unlawful discriminatory practice:

{¶9} “(A) For any employer, because of the race * * * of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.”

{¶10} “‘To prevail in an employment discrimination case, a plaintiff must prove discriminatory intent’ and may establish such intent through either direct or indirect methods of proof.” *Dautartas v. Abbott Labs.*, 10th Dist. Franklin No. 11AP-706, 2012-Ohio-1709, ¶ 25, quoting *Ricker v. John Deere Ins. Co.*, 133 Ohio App.3d 759, 766 (10th Dist.1998). In this case, plaintiff has not presented direct evidence of discrimination. “In the absence of direct evidence, discrimination claims are subject to a version of the burden shifting analysis set forth by the United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). * * * Under *McDonnell Douglas*, a plaintiff must first present evidence from which a reasonable jury could conclude that there exists a prima facie case of discrimination.” *Turner v. Shahed Ents.*, 10th Dist. Franklin No. 10AP-892, 2011-Ohio-4654, ¶ 11-12.

{¶11} “In the context of a failure-to-promote claim, a plaintiff seeking to use indirect evidence must demonstrate that: (1) he is a member of a protected class; (2) he

applied for and was qualified for a promotion; (3) he was considered for and denied the promotion; and (4) other employees of similar qualifications who were not members of the protected class received promotions at the time the plaintiff's request for promotion was denied." *Brown v. Worthington Steel, Inc.*, 10th Dist. Franklin No. 05AP-01, 2005-Ohio-4571, ¶ 13. "If the plaintiff meets [his] initial burden, the burden then shifts to the defendant to offer 'evidence of a legitimate, nondiscriminatory reason for' the adverse action. * * * If the defendant meets its burden, the burden then shifts back to the plaintiff to demonstrate that the defendant's proffered reason was actually a pretext for unlawful discrimination." *Turner* at ¶ 14.

{¶12} With respect to the first element of plaintiff's prima facie case, there appears to be no dispute that plaintiff is African American and is thus in a protected class. The third element is also satisfied inasmuch as it is undisputed that plaintiff was denied the promotion.

{¶13} As to the second element, there is no dispute that plaintiff applied for a promotion to the position of Master Maintenance Repair Worker in October 2010. Defendant asserts, however, that plaintiff was not qualified for the promotion because he lacked the requisite experience. By way of her affidavit, Pinkard authenticates a copy of the job description that defendant posted for the Master Maintenance Repair Worker position, which states, in part: "QUALIFICATIONS: Requires high school diploma/GED, and *four years* experience/knowledge performing semi-skilled repairs in plumbing, electrical, carpentry and roofing." (Emphasis sic.) Pinkard avers, in part: "Mr. Ramsey did not qualify to be interviewed because of inaccuracies in his application and because of his lack of the prerequisite experience. Specifically, though Mr. Ramsey's application indicated that he had been a Maintenance Repair Worker since 1998, he had actually been a *groundskeeper*, and not a *maintenance repair worker* from 1998 through September 24, 2007." (Emphasis sic.) Pinkard also authenticates

copies of the job descriptions for the Groundskeeper and Maintenance Repair Worker positions, which demonstrate that only the latter position involves the skills at issue in the Master Maintenance Repair Worker job description. Defendant thus contends that plaintiff only began to accrue the relevant experience when he was promoted to the position of Maintenance Repair Worker on September 24, 2007, meaning that he had less than four years' experience by the time he applied for the promotion in October 2010.

{¶14} Plaintiff has presented no affidavit or other evidence permissible under Civ.R. 56 to demonstrate that he met the stated minimum qualification of having four years' experience in plumbing, electrical, carpentry, and roofing work. While plaintiff asserts that the job should have required just three years' experience pursuant to the collective bargaining agreement between defendant and his union, he cannot obtain relief in the court of claims for an alleged violation of a collective bargaining agreement "because R.C. 4117.09 grants exclusive jurisdiction over such actions to the courts of common pleas." *Crabbe v. Ohio Dept. of Youth Servs.*, 10th Dist. Franklin No. 09AP-191, 2010-Ohio-788, ¶ 12. Accordingly, it must be concluded that plaintiff did not meet the minimum qualifications for the promotion and therefore cannot establish the second element of his prima facie case.

{¶15} Furthermore, it does not appear that plaintiff can establish the fourth element of his prima facie case because he has presented no evidence showing that the employee to whom defendant awarded the promotion, Larry Howley, is outside the protected class. Moreover, defendant has presented evidence showing that plaintiff's qualifications were not similar to Howley's. Specifically, while Pinkard avers that Howley's tenure as a Maintenance Repair Worker exceeded plaintiff's by just one week, she also authenticates copies of Howley's application for the promotion and his resume, which show that he had several years of experience dating back to the 1980s in

plumbing, electrical, carpentry, and roofing work before he began working for defendant in 2007, and plaintiff has presented no evidence to challenge Howley's qualifications.

{¶16} In short, plaintiff has not met his burden of establishing the elements of his prima facie case, and reasonable minds therefore can only conclude that plaintiff cannot prevail on his claim of employment discrimination.

{¶17} Based upon the foregoing, the court concludes that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. Accordingly, plaintiff's motion for summary judgment is DENIED and defendant's motion for summary judgment is GRANTED. Any claim for the alleged violation of a collective bargaining agreement is DISMISSED without prejudice, and judgment is otherwise rendered in favor of defendant. All previously scheduled events are VACATED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

cc:

Cynthia A. Kravitz
Randall W. Knutti
Assistant Attorneys General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Eric Ramsey
408 Kildare Drive
Akron, Ohio 44313

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