

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-5310

September Term, 2018

1:14-cv-02109-JDB

Filed On: August 9, 2019

Andrew P. Moore, Ph.D.,

Appellant

v.

Benjamin S. Carson, Sr., Secretary, U.S.
Department of Housing and Urban
Development, in his official capacity, et al.,

Appellees

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Millett, Pillard, and Wilkins, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing, and the motion to dispense with the filing of an appendix, it is

ORDERED that the motion to dispense with the filing of an appendix be granted.
It is

FURTHER ORDERED AND ADJUDGED that the judgment of the district court be affirmed. The district court correctly concluded that Title VII of the Civil Rights Act provides the exclusive remedy for claims of federal workplace discrimination on the basis of membership in classes protected by Title VII. See, e.g., Great American Fed. Sav. & Loan Ass'n v. Novotny, 442 U.S. 366, 378 (1979); Brown v. Gen. Servs. Admin., 425 U.S. 820, 829 (1976). Appellant's claims of race-based workplace discrimination against the individual appellees (Counts VI, VII, and VIII of the complaint), raised under various statutes other than Title VII, were therefore improper.

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The court also correctly dismissed 12 of appellant's claims of discrimination based on race, sex, and age under Title VII and the Age Discrimination in Employment Act ("ADEA") (Counts I and II), and six of his claims of retaliation under Title VII (Count III), for failure to exhaust administrative remedies. See Steele v. Schafer, 535 F.3d 689, 693 (D.C. Cir. 2008); 29 U.S.C. § 633a(d).

Next, the district court correctly dismissed six of appellant's claims of discrimination based on race, sex, and age (Counts I and II) on the ground that he failed to demonstrate that they were based on incidents that resulted in "materially adverse consequences affecting the terms, conditions or privileges of [his] employment or [his] future employment opportunities such that a reasonable trier of fact could conclude that the plaintiff has suffered objectively tangible harm." Youssef v. FBI, 687 F.3d 397, 401 (D.C. Cir. 2012).

The court also properly rejected appellant's hostile work environment claims (Count IV), because he failed to raise a triable factual issue as to whether he "was subjected to discriminatory intimidation, ridicule, and insult that was sufficiently severe or pervasive to alter the conditions of his employment and create an abusive working environment," on account of his race, age, or sex. Brooks v. Grundmann, 748 F.3d 1273, 1276 (D.C. Cir. 2014).

Furthermore, the district court properly granted summary judgment for appellees on appellant's remaining claims of discrimination (Counts I and II), as well as his claim of retaliatory and discriminatory discharge (Count V). The court correctly concluded that appellees proffered non-discriminatory explanations for each of the actions alleged by appellant in those claims, and that appellant failed to point to any material factual dispute in the record as to whether the "asserted non-discriminatory reason was not the actual reason and that the employer intentionally discriminated against [appellant] on the basis of" his membership in a protected class. See Brady v. Office of Sergeant at Arms, 520 F.3d 490, 494 (D.C. Cir. 2008).

Appellant's other claims of retaliation in violation of Title VII (Count III) lacked merit, because he failed to point to evidence from which a jury could find "that a causal connection existed between" his protected EEO activities and appellee's directive that appellant work remotely, appellee's assignment of appellant to an allegedly undesirable position, or appellee's failure to appoint a management-level mentor for appellant. Singletary v. District of Columbia, 351 F.3d 519, 524 (D.C. Cir. 2003); see also Smith v.

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Lanier, 726 F.3d 166, 169 (D.C. Cir. 2016) (“[W]e can affirm a district court judgment on any basis supported by the record.”).

Finally, the rest of appellant’s arguments with respect to alleged improprieties in the proceedings before the district court lack merit. There is no factual basis in the record that could support a finding that the district judge was biased against him. See Liteky v. United States, 510 U.S. 540, 555 (1994) (“[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion.”). Appellant has furthermore failed to demonstrate that the district court erred in declining to grant him more time for discovery; appellant did not explain in the district court what particular evidence he sought to discover and why he had previously been unable to discover it. See Fed. R. Civ. P. 56(d); Convertino v. U.S. Dept. of Justice, 684 F.3d 93, 99-100 (D.C. Cir. 2012). And appellant’s contention that the district court improperly allowed an Assistant United States Attorney who was not a member of the District of Columbia Bar to enter an appearance in this case lacks merit; the district court’s local rules specifically permit such an appearance. See D.D.C. LCvR 83.2(e).

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 petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam