

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DON DRENNON-GALA,

Petitioner,

v.

MEMORANDUM and ORDER
06-C-529-S

JOHN ASHCROFT, UNITED STATES
DEPARTMENT OF JUSTICE and
FEDERAL BUREAU OF PRISONS,

Respondents.

Petitioner Don Drennon-Gala filed the above entitled matter in the United States District Court for the District of Columbia on August 24, 2004. On September 21, 2006 the case was transferred to this Court.

On October 30, 2006 respondents moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of fact, conclusions of law, affidavits and a brief in support thereof. This motion has been fully briefed and is ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding respondents' motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Petitioner Don Drennon-Gala currently resides in Hixson, Tennessee. In June 1989 he applied for a GS-9 Case Manager position with the U.S. Bureau of Prisons (BOP). While being considered for an FCI-Oxford position in October 1989, petitioner was declared ineligible under an agency rule that disqualified applicants for employment who had either been dismissed for cause

or resigned in lieu of dismissal in the previous three years. In March 1987 petitioner was dismissed from his position with the United States Post Office because of his inability to maintain a regular schedule.

Following his disqualification petitioner filed an EEO complaint alleging he was disqualified on the basis of his nationality and physical disability (knee injury). On January 3, 1995 the Administrative Law Judge (ALJ) found that the BOP had violated the Rehabilitation Act when it declared petitioner ineligible for employment without any attempt to accommodate his known medical needs. The ALJ recommended that petitioner be offered a Case Manager position along with "make-whole" relief. The BOP adopted the ALJ's recommendation on March 17, 1995 with one modification that petitioner take and pass a physical examination to ensure fitness for duty as a Case Manager. On June 13, 1995 after petitioner passed his physical examination the BOP offered him a Case Manager position at FCI-Oxford.

On July 27, 1995 petitioner accepted the BOP's offer but requested that the BOP allow him to fulfill a nine month teaching contract he had signed with the Fayetteville State University in North Carolina and report for duty at FCI-Oxford on June 1, 1996. The BOP never gave him a date certain to report to duty.

On January 30, 1996 the BOP issued a final decision finding that petitioner was entitled to back pay for the period between

October 1989 and December 31, 1990 and between January 1, 1995 and July 27, 1995. The BOP found that petitioner was not entitled to back pay for calendar years 1991-1994 because he made little or no effort to secure alternative employment during those years.

Petitioner appealed these decisions stating that he was entitled to instatement and that the agency had not provided him the required "make-whole" relief. On June 16, 1998 the EEOC ordered that petitioner be offered instatement with retroactive seniority to October 1989 as a Case Manager at FCI-Oxford at a grade and step he would have achieved but for the discrimination. The EEOC found that petitioner was entitled to back pay from July 27, 1995 until the date he must accept or reject the offer of reinstatement. The BOP was also directed to post a notice of the decision and file a report of compliance.

On November 22, 1998 petitioner began work at FCI-Oxford as a case manager. He was placed on one year probation and was terminated on November 17, 1999.

On August 14, 2002 petitioner petitioned the EEOC for enforcement of its June 16, 1998 decision. This petition for enforcement was denied on May 13, 2004.

On February 22, 2000 petitioner filed a complaint with the EEOC claiming that his November 17, 1999 termination was in retaliation for prior EEO activity. An EEOC Administrative Law Judge found that the agency discriminated against the petitioner on

the basis of reprisal when he was terminated from the case manager position in November 1999. The ALJ also ordered that petitioner be reinstated and provided back pay. On May 14, 2004 the EEOC affirmed the decision of the ALJ. The EEOC ordered that the Agency reinstate petitioner to the position of Case Manager at FCI-Oxford without being required to serve an additional probationary period. The BOP was further directed to submit a report of compliance.

Petitioner filed a civil action in the United States District Court for the District of Columbia claiming that the Bureau of Prisons did not fully comply with the EEOC's June 16, 1998 order. Specifically, he raises issues of benefits, pay adjustments and the effective date of the instatement order.

MEMORANDUM

Petitioner claims that the Bureau of Prisons has not fully complied with the EEOC's June 16, 1998 decision. He filed a petition for enforcement of this decision which the EEOC denied on May 13, 2004 because it found that the BOP had fully complied with the June 1998 decision.

This Court does not have jurisdiction of petitioner's request for enforcement because 29 C.F.R. §1614.503(g) provides judicial enforcement only when the Commission determines an agency failed to comply with a prior decision.

The regulation provides as follows:

Where the Commission has determined that an agency is not complying with a prior decision or where an agency has failed or refused to submit any required report of compliance, the Commission shall notify the complainant of the right to file a civil action for enforcement of the decision.

In this case, however, on May 13, 2004 the EEOC found that the Bureau of Prisons had complied with the June 16, 1998 decision and denied petitioner's request for enforcement. Accordingly, this Court does not have jurisdiction of petitioner's request for enforcement. Tsudy v. Potter, 350 F. Supp 2d 901 (D.N. M. 2004).

Petitioner argues for the first time in his brief in opposition that this Court has jurisdiction pursuant to 29 C.F.R. § 1614.503(g) because the BOP failed to submit a required report of compliance which was required by the June 16, 1998 decision. The EEOC found that the Bureau of Prisons had complied with its June 16, 1998 order which would have included the filing of the report of compliance. Had petitioner not received this report he could have moved reconsideration from the EEOC. Since the EEOC never concluded that the BOP failed to submit the report, the Court lacks jurisdiction of this claim.

The EEOC denied petitioner's petition for enforcement on May 13, 2004. This Court lacks jurisdiction of petitioner's request for enforcement of the June 16, 1998 decision. Accordingly, respondents' motion for summary judgment will be granted.

ORDER

IT IS ORDERED that respondents' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of respondents against petitioner DISMISSING his complaint and all claims contained therein for lack of jurisdiction.

Entered this 29th day of November, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge