

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

BAHRI BEGOLLI,

Plaintiff,

v.

THE HOME DEPOT,

Defendant.

ORDER

11-cv-380-bbc

On July 7, 2011, I dismissed plaintiff Bahri Begolli's proposed civil rights action against defendant The Home Depot because his complaint violated Fed. R. Civ. P. 8. (I also dismissed defendant Matt Spencer from the case because individual employees and supervisors cannot be sued for discrimination under Title VII. Robinson v. Sappington, 351 F.3d 317, 332 n.9 (7th Cir. 2003); Williams v. Banning, 72 F.3d 552, 553-54 (7th Cir. 1995). Now before the court is plaintiff's proposed amended complaint, dkt. #6, in which he alleges that defendant refused to hire him as a master electrician because of his Albanian national origin.

Because plaintiff is proceeding in forma pauperis under 28 U.S.C. § 1915, I must screen the complaint to determine whether it states a claim upon which relief may be

granted. Having reviewed the complaint, I conclude that plaintiff states a claim under Title VII of the Civil Rights Act.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)(1), makes it unlawful for an employer to “fail or refuse to hire . . . any individual . . . because of such individual’s race, color, religion, sex, or national origin.” Plaintiff alleges that he applied for a position of master electrician with defendant and that defendant refused to hire him even though he was qualified for the position. Instead, defendant offered the position to two unqualified and unlicensed white applicants. Plaintiff believes that defendant refused to hire him because he is from Albania and speaks with an accent. At this stage, plaintiff’s allegations of discrimination are sufficient to state a claim upon which relief may be granted. Swanson v. Citibank, N.A., 614 F.3d 400, 405 (7th Cir. 2010) (to state a claim for discrimination, plaintiff must identify “type of discrimination that [the plaintiff] thinks occur[red] . . ., by whom . . . and when.”).

Plaintiff should know that he will not be able to stand on his allegations at later stages in the case. To prove his claims at summary judgment or trial, he will have to come forward with specific facts showing that a reasonable jury could find in his favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Fed. R. Civ P. 56. In particular, plaintiff will have to show that his national origin was one of the reasons defendant refused to hire him. Hossack v. Floor Covering Associates of Joliet, Inc., 492 F.3d 853, 860 (7th Cir. 2007).

Discrimination claims are classic examples of claims that are easy to allege but hard to prove. Many pro se plaintiffs make the mistake of believing that they have nothing left to do after filing the complaint, but that is far from accurate. A plaintiff may not prove his claim by relying on the allegations in his complaint, Sparing v. Village of Olympia Fields, 266 F.3d 684, 692 (7th Cir. 2001), or his personal beliefs, Fane v. Locke Reynolds, LLP, 480 F.3d 534, 539 (7th Cir. 2007).

A plaintiff can prove discrimination claims in various ways. For example, plaintiff may adduce evidence that a decision maker made discriminatory statements, that defendant treated similarly situated applicants who are not of Albanian origin better than they treated him, Scaife v. Cook County, 446 F.3d 735, 739 (7th Cir. 2006), or that defendant consistently refused to hire applicants of Albanian descent. Hasan v. Foley & Lardner LLP, 552 F.3d 520, 529 (7th Cir. 2008). A “similarly situated” applicant is someone who is “directly comparable” to the plaintiff in all material respects.” Grayson v. O'Neill, 308 F.3d 808, 819 (7th Cir. 2002). Relevant factors may include whether the applicants had comparable experience, education and other qualifications. Bio v. Federal Express Corp., 424 F.3d 593, 597 (7th Cir. 2005).

Evidence of discrimination may include a showing that defendant’s reasons for its actions are pretextual. Simple v. Walgreen Co., 511 F.3d 668, 671 (7th Cir. 2007). A pretext is more than just a mistake or a foolish decision; it is a lie covering up a true

discriminatory motive. Forrester v. Rauland-Borg Corp., 453 F.3d 416, 419 (7th Cir. 2006). “[T]he question is never whether the employer was mistaken, cruel, unethical, out of his head, or downright irrational in taking the action for the stated reason, but simply whether the stated reason *was* his reason: not a good reason, but the true reason.” Id. at 417-18. A plaintiff may show that a decision is pretextual with evidence that an employer’s stated motive did not actually motivate the decision, Freeman v. Madison Metropolitan School District, 231 F.3d 374, 379 (7th Cir. 2000), that defendant “grossly exaggerated” the seriousness of an incident, Peirick v. Indiana University-Purdue University Indianapolis Athletics Dept., 510 F.3d 681, 693 (7th Cir. 2007), that defendant violated its own policies and procedures, Davis v. Wisconsin Dept. of Corrections, 445 F.3d 971, 976-77 (7th Cir. 2006), or with any other evidence tending to show that the employer’s stated reason is false.

ORDER

IT IS ORDERED that

1. Plaintiff Bahri Begolli is GRANTED leave to proceed on his claims that defendant The Home Depot violated his rights under Title VII of the Civil Rights Act by refusing to hire him because of his national origin.

2. For the remainder of this lawsuit, plaintiff must send defendant a copy of every

paper or document that he files with the court. Once plaintiff learns the name of the lawyer that will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendant or to defendant's attorney.

3. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.

4. I am sending copies of plaintiff's complaint and this order to the United States Marshal for service on defendant.

Entered this 23d day of August, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge