IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RODOLFO MARTINEZ,

Plaintiff,

v.

STATE OF WISCONSIN DEPARTMENT OF HEALTH AND FAMILY SERVICES,

Defendant.

OPINION AND ORDER

99-C-748-C

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In this civil action for monetary and declaratory relief, plaintiff Rodolfo Martinez contends that defendant State of Wisconsin Department of Health and Family Services violated his rights under 42 U.S.C. § 1983; the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634; and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e)-2(a)1. Subject matter jurisdiction is present. See 28 U.S.C. § 1331. Now before the court is defendant's motion for summary judgment. I conclude that plaintiff's claims under 42 U.S.C. § 1983 and the Age Discrimination in Employment Act are barred by the Eleventh Amendment. Furthermore, I find that because no trier of fact could conclude reasonably that

defendant discriminated against plaintiff on the basis of his national origin, plaintiff has not met his burden to establish that a claim exists under 42 U.S.C. § 2000(e)-2(a)1. As a result, defendant's motion for summary judgment will be granted.

Despite being warned to propose facts in opposition to defendant's motion for summary judgment in an order entered on August 2, 2000, plaintiff has not done so. Instead, he has cited to affidavits presented in another case, Case No. 99-C-762-C. As was explained in the Procedures to be Followed on a Motion for Summary Judgment, a copy of which plaintiff received with the Preliminary Pretrial Conference Order on March 15, 2000, defendant's proposed facts not properly disputed will be considered undisputed for the purpose of deciding the motion for summary judgment. From facts proposed by defendant, I find the following to be material and undisputed.

UNDISPUTED FACTS

Plaintiff is a Mexican-American male who is over 40 years old. He applied for an Equal Opportunity Specialist 7 - Confidential (EOS7-Confidential) position with defendant State of Wisconsin Department of Health and Family Services on March 6, 1998. Plaintiff was one of seven applicants interviewed for the position on May 11, 1998 and he was one of five applicants to proceed to a final interview on July 29, 1998.

The interview process was structured. Each candidate was asked the same set of job-related questions, and each panelist took written notes of the candidate's responses, using identical benchmark criteria. Panelists were not advised of the age, race, or national origin of any of the candidates. Two of the five candidates, Cleo Eliason and Isadore Knox, were selected for final consideration and reference checks, and all reference sources provided by both candidates gave very positive references.

The position was initially offered to Eliason who declined the position because of the salary. The position was then offered to Knox and he was appointed to the position on September 27, 1998. The work history resumes and interview panel notes indicated that both Eliason and Knox had extensive work experience in the area of civil rights compliance involving contractors with public agencies in a service delivery system, which the EOS7-Confidential position description indicates is the largest and most important part of the job. Plaintiff's work history resume and interview notes indicated that most of his job experience was in the area of equal employment opportunity. Although plaintiff has some work experience as a supervisor, this is not relevant to the knowledge and skills necessary to perform the functions and tasks of the EOS7-Confidential position since it is not a supervisory position. The panelists' reasoning was non-discriminatory and was not based in any manner on plaintiff's race, national origin, or age.

Defendant is required to take affirmative action when there is a significant underutilization of women, minorities or persons with disabilities in any job group, but there was no underutilization of such persons for the EOS7-Confidential position. Nevertheless, both of the individuals offered the job were members of affirmative action target groups. Eliason, the first person to be offered the job, is a white female who is disabled. Knox, who accepted the job, is an African-American male. Plaintiff was 47 years old, Knox was 43 years old and Eliason was 62 years old at the time of this hiring action in 1998.

OPINION

To succeed on a motion for summary judgment, the moving party must show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. See Celotex v. Catrett, 477 U.S. 317, 322 (1986). In employment cases, where intent and credibility are especially crucial, summary judgment standards are rigorously applied. See Sarsha v. Sears, Roebuck & Co., 3 F.3d 1035, 1038 (7th Cir. 1993). However, even in employment discrimination cases, the non-moving party must carry his burden with more than mere conclusions and allegations. See Celotex, 477 U.S. 321-22.

The Eleventh Amendment prevents federal courts from hearing claims brought against state agencies for monetary and declaratory relief under 42 U.S.C. § 1983, see Quern v. Jordan,

440 U.S. 332, 337 (1979), or under the Age Discrimination in Employment Act, see Kimel v. Florida Board of Regents, 120 S.Ct. 631, 650 (2000). Accordingly, plaintiff's claims against defendant under those statutes are barred under the Eleventh Amendment and must dismissed.

Plaintiff's remaining claim is that he was discriminated against on the basis of his national origin in violation of Title VII, specifically in violation of 42 U.S.C. § 2000(e)-2(a)1. In the absence of direct evidence, plaintiff must prove discrimination by indirect evidence, which is usually done through the burden-shifting formula established in McDonnell Douglas Corp v. Green, 411 U.S. 792, 802-805 (1973). However, because "the prima facie elements were never meant to be applied rigidly," Pilditch, 3 F.3d at 1116, the court "may advance to the ultimate issue in a summary judgment analysis and consider the discrimination question" regardless whether plaintiff has established a prima facie case, see E.E.O.C. v. Our Lady of Resurrection Med. Center, 77 F.3d 145, 149 (7th Cir. 1996). When a plaintiff has not met the burden of showing that a defendant's nondiscriminatory reason for its actions is a pretext, it is not necessary to decide whether the plaintiff established a prima facie case of discrimination. See Holmberg v. Baxter Healthcare Corp., 901 F.2d 1387, 1391 (7th Cir. 1990). To expedite the process, the court may proceed directly to the pertinent issue: whether the plaintiff can show that the defendant illegally discriminated against him. See Jayasinghe

v. Bethlehem Steel Corp., 760 F.2d 132, 135 (7th Cir. 1985). I need not consider whether plaintiff can establish a prima facie case of illegal discrimination because I find that even if he could, he cannot establish by a preponderance of the evidence that defendant's articulated reasons for its actions are pretextual. See id.

It is undisputed that plaintiff was not similarly situated to the candidates who were picked. Defendant indicates that it selected the other candidates over plaintiff because those candidates had extensive work experience in the area of civil rights compliance involving contractors with public agencies in a service delivery system; plaintiff does not have experience in that area. Because the EOS7-Confidential position description indicates that this type of work is the largest and most important aspect of the job, defendant presents a legitimate reason for selecting the other candidates over plaintiff. This reason for selecting other candidates over plaintiff is unrelated to plaintiff's race or national origin. Defendant is not required to take affirmative action steps in hiring a person for the EOS7-Confidential position because the position is not underutilized for minorities or women. Nevertheless, the candidates who were selected were members of affirmative action groups.

"The issue of pretext does not address the correctness or desirability of reasons offered for employment decisions. Rather it addresses the issue of whether the employer honestly believes the reasons it offers." Richter v. Hook-SupeRx, Inc., 142 F.3d 1024, 1029 (7th Cir.

1998) (quoting McCoy v. WGN Continental Broadcasting Co., 957 F.2d 368, 373 (7th Cir. 1992)). Pretext is not simply a bad or stupid reason; it is "a lie, specifically a phony reason for some action." Wolf v. Buss (America), Inc., 77 F.3d 914, 919 (7th Cir. 1996). Plaintiff has produced no evidence that suggests defendant did not genuinely believe its stated reasons for failing to hire him. Accordingly, defendant's motion for summary judgment will be granted.

ORDER

IT IS ORDERED that the motion of defendant State of Wisconsin Department of Health and Family Services for summary judgment is GRANTED. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 12th day of September, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge