

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES H. HURST, JR. : CIVIL ACTION
: :
v. : :
: :
PNC BANK, ET AL. : NO. 02-6733

MEMORANDUM

Dalzell, J.

May 5, 2004

James H. Hurst, Jr. alleges that PNC Bank ("PNC") discriminated against him because of his race, sex, and age, and PNC denies these allegations. The parties' motions for summary judgment¹ and Hurst's motion for jury trial are now before us.

Factual Background

Hurst is an African-American man who, at all relevant times, was at least forty years old.

On May 8, 2000, PNC hired Hurst as a Check Receiving Processor II in its Proof Encoding Department. Hurst reported directly to Juanita West, and West reported to the manager of the

¹ Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In ruling on a motion for summary judgment, the Court must view the evidence, and make all reasonable inferences from the evidence, in the light most favorable to the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). The moving party bears the initial burden of proving that there is no genuine issue of material fact in dispute. Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 585 n.10 (1986). Once the moving party carries this burden, the nonmoving party must "come forward with 'specific facts showing there is a genuine issue for trial.'" Id. at 587 (quoting Fed. R. Civ. P. 56(e)). The task for the Court is to inquire "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." Liberty Lobby, 477 U.S. at 251-52; Tabas v. Tabas, 47 F.3d 1280, 1287 (3d Cir. 1995) (en banc).

Proof Encoding Department, Arnold Schiavi. In turn, Schiavi reported to Thomas Starke, the Shift Manager IV, and Starke reported to Mario Nicolai, the Senior Check Processing Department Manager.

Hurst's complaint describes several examples of how PNC treated him differently from younger employees, white employees, and female employees beginning in the summer of 2001.² Frustrated with what he perceived as disparate treatment, Hurst approached Valerie Walton-Singer, a Human Resources Specialist, to discuss his concerns. Walton-Singer arranged for Hurst to meet with Starke three times during November of 2001. Starke investigated Hurst's allegations of discrimination and took corrective action where he felt it was warranted.

Unsatisfied with Starke's response, Hurst contacted Walton-Singer again on December 5, 2001, and she arranged for him to meet with Nicolai. To prepare for the meeting, Nicolai reviewed and investigated the allegations that Hurst had presented to Walton-Singer and Starke. Hurst met with Nicolai on December 27, 2001, and, after listening to Hurst's complaints and explaining his investigation, Nicolai told Hurst that he had found no evidence of discrimination.

Walton-Singer convened a final meeting with Hurst, Schiavi, and Starke on January 11, 2002 to reiterate that PNC found no evidence of discrimination. PNC placed Hurst on

² We shall discuss these examples in detail when they become relevant to our legal analysis.

administrative leave on January 30, 2002, and he never returned to work.

After some preliminary activity in this case, Hurst filed an amended complaint against PNC, Starke, Schiavi, West, and Nicolai. That pro se complaint includes six causes of action: (1) race and sex discrimination in violation of Title VII of the Civil Rights Act of 1964 ("Title VII")³ against PNC⁴; (2) age discrimination in violation of the Age Discrimination in Employment Act ("ADEA")⁵ against PNC⁶; (3) wrongful discharge

³ See 42 U.S.C. § 2000e-2(a) (2004) ("It shall be an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race [or] sex").

⁴ Compl. ¶¶ i(1), i(3)-(5). Although the complaint also includes allegations that Starke, Schiavi, and West violated Title VII, see id. ¶¶ iii(1)-(2), iv(1), iv(4), v(1)-(2), v(5) (describing conduct as "intentional tort" and "willful misconduct" but sounding in sex and age discrimination), individual employees may not be held liable for violations of Title VII, Sheridan v. E.I. Dupont de Nemours & Co., 100 F.3d 1061, 1078-79 (3d Cir. 1996) (en banc). Thus, we shall grant summary judgment to Starke, Schiavi, and West on Hurst's claims for race and sex discrimination.

⁵ See 29 U.S.C. § 623(a) (2004) ("It shall be unlawful for an employer . . . to . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age").

⁶ Compl. ¶ i(2). Hurst also alleges that Starke and West discriminated against him because of his age, see id. ¶¶ iii(3), v(3), v(5) (describing conduct as "intentional tort" and "willful misconduct" but sounding in sex and age discrimination), but individual employees cannot be held liable under the ADEA, see, e.g., Cohen v. Temple Physicians, Inc., 11 F. Supp. 2d 733, 736-37 (E.D. Pa. 1998) (Joyner, J.). We shall, therefore, grant summary judgment to Starke and West on Hurst's age discrimination claims.

against PNC⁷; (4) negligence against all defendants⁸; (5) fraud against PNC, Nicolai, and Starke⁹; and (6) breach of fiduciary duty against PNC and Schiavi.¹⁰ Following discovery, Hurst and the defendants filed the motions for summary judgment now before us.¹¹ Hurst also filed a motion for jury trial.

Analysis

A. Federal Discrimination Claims

As we have observed, Hurst alleges that PNC violated Title VII by discriminating against him based on his race and sex as well as ran afoul of the ADEA by discriminating against him based on his age. In evaluating motions for summary judgment, "[t]he familiar McDonnell Douglas burden shifting analysis applies to . . . claims of discrimination under both Title VII and the ADEA." Sarullo v. United States Postal Serv., 352 F.3d 789, 797 (3d Cir. 2003); see also McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973).

In this framework, the plaintiff bears the initial burden of establishing a prima facie case of discrimination.

⁷ Compl. ¶ i(9).

⁸ Compl. ¶¶ i(7)-(8), ii(1), iii(4), iv(3), v(4).

⁹ Compl. ¶¶ i(6), ii(2), iii(5).

¹⁰ Compl. ¶¶ i(10), iv(2). Though Hurst styles these as claims for "willful and malicious injury," "intentional tort," and "willful misconduct," we read these parts of the complaint as alleging breaches of fiduciary duty (or as merely reiterating the other claims against PNC and Schiavi).

¹¹ This action, with its pending motions, was transferred from Judge Hutton's docket to ours on April 6, 2004.

McDonnell Douglas, 411 U.S. at 802, 93 S. Ct. 1824. A male plaintiff generally may carry this burden by showing that (i) he belongs to a protected class; (ii) he was qualified for the position; (iii) he was subject to an adverse employment action despite being qualified; and (iv) the adverse employment action occurred under circumstances that raise an inference of unlawful discrimination. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253, 101 S. Ct. 1089, 1094 (1981); see also Potence v. Hazleton Area Sch. Dist., 357 F.3d 366, 370 (3d Cir. 2004); Sarullo, 352 F.3d at 797. Still, the facts necessary to establish a prima facie case will vary depending on the circumstances of a particular case. McDonnell Douglas, 411 U.S. at 802 n.13, 93 S. Ct. at 1824 n.13; see also Geraci v. Moody-Tottrup, Int'l, Inc., 82 F.3d 578, 581 (3d Cir. 1996) ("The elements of that prima facie case, however, must not be applied woodenly, but must rather be tailored flexibly to fit the circumstances of each type of illegal discrimination.").

Whenever the plaintiff establishes a prima facie case, "[t]he burden of production (but not the burden of persuasion) shifts to the defendant, who must then offer evidence that is sufficient, if believed, to support a finding that it had a legitimate, nondiscriminatory reason" for the adverse action. Keller v. Orix Credit Alliance, Inc., 130 F.3d 1101, 1108 (3d Cir. 1997). Should the defendant fail to satisfy this burden, we will enter summary judgment for the plaintiff.

If the defendant provides sufficient evidence of a legitimate reason for its action, however, the burden of

production shifts back to the plaintiff to proffer evidence "from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994).

With these principles in mind, we now consider each of the five ways in which Hurst alleges that PNC discriminated against him based on his age, race, and/or sex.

1. Dress Code

Hurst's first claim of discrimination is that PNC selectively enforced its dress code against him. Most significantly, he reports an incident where his supervisor, West, asked him to change out of a replica Philadelphia 76ers basketball jersey that he had worn to work, even though Kimberly Poland, an African-American woman, was permitted to wear an identical jersey. Compl. ¶ i(1). Hurst concedes that the jersey violated PNC's dress code and that he received no formal discipline for the violation. Hurst Dep. at 52, 140.

Although Hurst chafed at the allegedly disparate treatment, our Court of Appeals has explained that "not everything that makes an employee unhappy qualifies as retaliation." Robinson v. City of Pittsburgh, 120 F.3d 1286, 1300 (3d Cir. 1997) (quotations and citations omitted). In this case, PNC's request that Hurst change clothing that admittedly violated the dress code was not severe enough to amount to an "adverse employment action," as the Court of Appeals has used

that phrase, because there was only one such request and Hurst endured no formal discipline.

Apart from the jersey incident, Hurst also claims that PNC discriminatorily enforced the dress code by allowing Lauren White, an African-American woman, to wear flip-flop sandals and Philip Mastroddi, a white man, to wear a baseball cap, even though the dress code prohibited those articles. See Compl. ¶¶ i(1), (3). Lax enforcement in these cases, however, cannot constitute an "adverse employment action" because Hurst suffered no ill effects from the leniency allegedly granted White and Mastroddi. Hurst never attempted to wear flip-flops or a baseball cap to work, Hurst Dep. at 199, 201, so he cannot know whether PNC would have required him to change. To the extent that Hurst alleges discrimination from PNC allowing White and Mastroddi to violate the dress code in their own ways while requiring him to comply fully, we hold, for the reasons articulated above, that the effect on Hurst was so insubstantial as not to constitute an "adverse employment action."

In short, PNC's enforcement (or lack thereof) of its dress code was not an "adverse employment action." Since Hurst has not shown that PNC took an adverse employment action, he has failed to make out a prima facie case that PNC's enforcement of the dress code was discriminatory. Thus, PNC is entitled to summary judgment on that aspect of Hurst's discrimination claims.

2. Training

Hurst alleges that he repeatedly requested training for an Automation Proof Corrections Specialist ("APCS") position, but he never received it. Hurst Dep. at 144-46. According to Hurst, an APCS position was "better" than his Check Receiving Processor II role, and PNC discriminated against him by giving the training that he requested to Antonio Hanton, a younger employee with a shorter tenure than Hurst. Compl. ¶ i(2). PNC, however, offers a valid business reason for training Hanton: he was hired specifically for an APCS role, not as a Check Receiving Processor II. Walton-Singer Aff. ¶ 16. Moreover, PNC claims that it made several attempts to train Hurst, but he did not cooperate. Starke Aff. ¶ 13. Hurst himself admits telling PNC employees that he would not be able to accept any additional responsibilities until after he concluded his employment discrimination lawsuit against Jiffy Lube. Hurst Dep. at 30, 147-48.

From these allegations, it is clear that Hurst made out a prima facie case of age discrimination with respect to PNC's refusal to train him for an APCS position and that PNC has offered legitimate, nondiscriminatory justifications for its refusal. Hurst, however, has failed to point to evidence from which a factfinder could reasonably either disbelieve PNC's explanations or believe that a discriminatory reason was more likely than not a motivating or determinative cause of PNC's refusal to train Hurst, so we shall grant PNC's motion for summary judgment with respect to Hurst's training claim.

3. Reduced Hours

PNC hired Hurst to work a shift that ran from 6:00 p.m. to "completion,"¹² but he regularly worked much longer -- at least until West informed him that PNC would be "cutting back" his hours. Hurst Dep. at 85-90, 101-02. In spite of his reduced hours, Hurst alleges that PNC allowed Hanton and Latoya Robinson, both of whom are younger than Hurst, to work longer hours. Compl. ¶ i(2); see also Pl.'s Mem. Supp. Mot. for Summ. J. at 3. These allegations suffice to satisfy Hurst's burden of making out a prima facie case of discrimination.

To rebut this prima face case, PNC explains that it reduced overtime hours for all part-time employees in Hurst's department, including Hanton and Robinson. Starke Aff. ¶ 10. Occasionally, Robinson worked late,¹³ but only because of "unforeseen circumstances such as staff absences and courier delays." Id. ¶ 11. According to PNC, Hanton sometimes began his shift early, but only to perform "work for which Mr. Hurst had not been trained." Id.

Hurst has not submitted evidence from which a factfinder could reasonably disbelieve these legitimate explanations for why PNC occasionally allowed Robinson and Hanton to work overtime or believe that a discriminatory reason was more likely than not a motivating or determinative cause of PNC's

¹² Hurst and his co-workers generally "completed" their work between midnight and 2:00 a.m. See Hurst Dep. at 86-87.

¹³ Like Hurst, Robinson worked as a Check Receiving Processor II. Walton-Singer Aff. ¶ 15. Her regular shift was from 1:00 p.m. until 6:00 p.m. Starke Aff. ¶ 11.

action. Both Robinson and Hurst worked as Check Receiver Processor II's and, after PNC cut back on overtime, both began their shifts at the scheduled times. If Robinson continued to work overtime, it was only because she stayed past the scheduled end of her shift. Hurst could not work any later than his scheduled end time because his shift ran until "completion." As for Hanton's overtime, Hurst concedes that Hanton had received APCS training which PNC had denied to him, so a reasonable factfinder would not doubt that PNC allowed Hanton to begin his work early to perform work for which Hurst had not been trained.¹⁴

Thus, we shall grant PNC's motion for summary judgment on Hurst's claim that it discriminated against him by reducing his hours.

4. Misplaced Deposit

As a Check Receiver Processor II, Hurst would receive deposits from couriers, verify the amount of each deposit, and mark PNC's manifest log with a personal stamp to show that he had received each deposit. Hurst Dep. at 59. In October of 2001, a large deposit was misplaced, and PNC's investigation revealed

¹⁴ We recognize that PNC claims to have allowed Hanton to come in early "to perform check encoding work for which Mr. Hurst had not been trained," Starke Aff. ¶ 11, and that Hurst claims to have been trained in "check encoding," Hurst Dep. at 91. Still, Hurst's only evidence that he actually received check encoding training was his statement in a September, 2000, performance evaluation that he "believe[d] that [his] learning how to key was a good contribution to customer service." Pl.'s Mot. Summ. J. Ex. 5. We do not find this uncorroborated statement sufficient evidence for a reasonable factfinder to doubt PNC's nondiscriminatory justification for not offering Hurst as much overtime as Hanton.

that Hurst's stamp appeared in the manifest log entry for the missing deposit. Id. at 66.

For Hurst's role in the incident, Schiavi gave him a written reprimand stating that he failed to follow the proper deposit processing procedures. PNC imposed written -- rather than oral -- discipline because "[r]e-training was conducted . . . prior to this incident . . . during a staff meeting conducted by three members of the management team." Pl.'s Mot. Summ. J. Ex. 11; see also Hurst Dep. at 62-64; Starke Aff. ¶ 6 ("Mr. Hurst received the written warning because he had mishandled work on the very day that proper verification procedures had allegedly been discussed in a staff meeting.").

When Hurst challenged the basis for the written reprimand, Starke investigated the timing of the alleged training, but he could not verify "any specific details." Starke Aff. ¶ 7. Giving Hurst "the benefit of a doubt," Starke reduced the written discipline, which Schiavi had issued fewer than thirty days earlier, to a verbal warning. Starke Aff. Ex. B. Starke also "ensured that the written warning was destroyed and never placed in Mr. Hurst's personnel file." Starke Aff. ¶ 7. Notwithstanding the revocation of the written discipline, Hurst contends that PNC discriminated against him throughout its handling of the incident because Joseph Galardi, a white man, did not receive written discipline when he committed similar errors. Compl. ¶ i(3); see also Hurst Dep. at 73-78.

These alleged facts fail to state a prima facie case of discrimination because PNC did not take an "adverse employment

action" against Hurst. Many courts have found that "criticisms of an employee's job performance -- written or oral -- that do not lead to tangible job consequences will rarely form a permissible predicate for a Title VII suit." Davis v. Town of Lake Park, 245 F.3d 1232, 1241 (11th Cir. 2001) (collecting cases). Here, it is undisputed that Starke revoked his subordinate's decision to issue the written discipline because he could not verify the subordinate's asserted reason for meting out formal discipline. It is also undisputed that the written reprimand reposed in Hurst's file for less than one month, during which there is no evidence of diminished pay, more onerous working conditions, or other adverse action. Because Hurst has not suggested any tangible job consequences from the written discipline, we hold that Hurst suffered no "adverse employment action" from the incident with the misplaced deposit. See also Coney v. Dept. of Human Resources, 787 F. Supp. 1434, 1442 (M.D. Ga. 1992) ("The court finds that a nonthreatening written reprimand, which is later removed from an employee's personnel file, is not an adverse employment action."). We shall, therefore, grant PNC's motion for summary judgment on that aspect of his discrimination claim.

5. Suspension and Termination

In early 2002, allegations about sexual harassment at PNC began to surface. As part of PNC's attempt to investigate the allegations, it sought to interview Hurst. Although he was aware that PNC policy obliged him to cooperate with such investigations, Hurst Dep. at 156, Hurst failed to take the

interview seriously¹⁵ and unilaterally terminated it when he realized that the allegations might have been made against him.¹⁶ See id. at 162-63. On January 30, 2002, PNC placed Hurst on unpaid administrative leave because of his refusal to cooperate with the harassment investigation. Walton-Singer Aff. ¶ 13.

Over the following weeks, Hurst allegedly attended to a medical problem, but he eventually arranged a meeting with Walton-Singer. At that February 20, 2002 meeting, Hurst attempted to record the discussion over Walton-Singer's objections. When they could not reach an agreement over whether the meeting was to be recorded, they parted. Hurst Dep. at 177-82. PNC scheduled a third meeting with Hurst for February 26, 2002, but he cancelled the meeting hours before it was to begin. Id. at 184-85. On February 27, 2002, Walton-Singer sent Hurst a letter instructing him to contact her by noon on March 1, 2002 or face termination. When Hurst called Walton-Singer after noon on March 1, 2002, she informed him that PNC had terminated his employment. Id. at 185-88.

Hurst claims that PNC discriminated against him by suspending him without pay and ultimately terminating him while Galardi, a white man who was also involved in the sexual harassment incident, received only a paid suspension. Compl. ¶

¹⁵ For example, when PNC asked Hurst if he spoke any languages other than English, he responded in Korean and Spanish, rather than in English. Hurst Dep. at 157-59.

¹⁶ Hurst claims to have believed initially that PNC was investigating allegations that Joeseeph Galardi had committed the harassment. Hurst Dep. at 155, 161, 178-79.

i(4). We will not dignify this claim by referring to it as merely baseless. Hurst has submitted no evidence regarding Galardi's involvement in the harassment and has not substantiated his allegation that Galardi received a paid suspension. Moreover, he offers no evidence that Galardi was as uncooperative with PNC's investigation as he was. It also seems disingenuous for Hurst to claim the protection of federal anti-discrimination statutes when he stonewalled PNC's attempt to address a co-worker's sexual harassment complaint for the entire month of February, 2002.

Even if Hurst had made out a prima facie case of discrimination, PNC would have rebutted it because Hurst's uncooperativeness was a legitimate nondiscriminatory justification for his suspension and ultimate termination. Since Hurst offers no evidence from which a factfinder could reasonably doubt this explanation or reasonably believe that discriminatory animus was more likely than not a motivating cause of the suspension and termination, we shall grant PNC's motion for summary judgment on the suspension and termination claims.

B. State Law Claims

In addition to his federal discrimination claims, Hurst also seeks to recover under several common law theories.¹⁷

¹⁷ We look to Pennsylvania's common law for the principles governing his claims because Pennsylvania has the most significant contacts with the issues involved in this case. See Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487, 496 (1941) ("The conflict of laws rules to be applied by the federal court . . . must conform to those prevailing in . . . courts [of the state where the federal court sits]."); see also In re Estate of (continued...)

Specifically, we read the complaint, however phrased, as stating claims for wrongful discharge, negligence, breach of fiduciary duty, and fraud. We shall analyze each in turn.

1. Wrongful Discharge

Pennsylvania recognizes the doctrine of at-will employment, so "[a]bsent a statutory or contractual provision to the contrary, the law has taken for granted the power of either party to terminate an employment relationship for any or no reason." Geary v. United States Steel Corp., 456 Pa. 171, 175, 319 A.2d 174, 176 (1974). Though Hurst cites many alleged violations of anti-discrimination law, these violations serve as the predicate for the discrimination claims that we discussed above and do not support an independent claim for wrongful discharge. Moreover, Hurst has not alleged that he had an employment contract that PNC might have violated when it discharged him. Thus, his wrongful discharge claim can succeed only if his termination violated public policy. See Shick v. Shirey, 552 Pa. 590, 595, 716 A.2d 1231, 1233 (1998) ("[An] employer's privilege to dismiss an employee with or without cause is not absolute . . . and may be qualified by the dictates of public policy."). Hurst, however, fails to explain how his

¹⁷(...continued)

Agostini, 457 A.2d 861, 871 (Pa. Super. Ct. 1983) (explaining that Pennsylvania choice-of-law rules "call for the application of the law of the state having the most significant contacts or relationships with the particular issue"). Pennsylvania has the most significant contacts here because Hurst is a Pennsylvania citizen, PNC does business in Pennsylvania, and the allegedly wrongful conduct took place in Pennsylvania.

termination contravened Pennsylvania public policy,¹⁸ so we shall grant summary judgment to PNC on the wrongful discharge claim.

2. Negligence and Breach of Fiduciary Duty

Hurst also alleges that PNC and the other defendants acted negligently and breached their fiduciary duties¹⁹ to him by discriminating against him and by failing to investigate his discrimination claims with "due care." Pennsylvania courts have explained, however, that "where a cause of action involves a violation of public policy for which a remedy already exists by statute, a common law cause of action will not be recognized." McGovern v. Jack D's, Inc., No. 03-5547, 2004 WL 228667, at *5 (E.D. Pa. Feb. 3, 2004) (VanAntwerpen, J.) (citing Murray v. Commercial Union Ins. Co., 782 F.2d 432, 436-37 (3d Cir. 1986)). Since the Pennsylvania Human Relations Act imposes liability for the discriminatory conduct of which Hurst complains and establishes the appropriate procedures for adjudication of such claims,²⁰ it preempts any common law causes of action based on an

¹⁸ To the extent that Hurst alleges that his discharge violated Pennsylvania's public policy against discrimination based on race, sex, and/or age, we read his allegations as reiterating the discrimination claims that we have already considered at length.

¹⁹ Hurst alleges only that PNC and Schiavi breached their fiduciary duties to him.

²⁰ See 43 Pa. Cons. Stat. § 955 (2003) ("It shall be an unlawful discriminatory practice . . . [f]or any employer because of the race, . . . age, [or] sex . . . of any individual . . . to refuse to hire or employ or contract with, or to bar or to discharge from employment such individual or independent contractor, or to otherwise discriminate against such individual or . . . with respect to compensation, hire, tenure, terms, conditions or privileges of employment").

employer's alleged discrimination, including Hurst's claims for negligence and breach of fiduciary duty. Thus, defendants are entitled to summary judgment on those claims.

3. Fraud

Finally, Hurst argues that PNC, Nicolai, and Starke committed fraud when they made false statements before the EEOC. For a fraud claim to succeed, the plaintiff must prove that the defendant made "(1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance." Gibbs v. Ernst, 647 A.2d 882, 889, 538 Pa. 193, 207 (1994); see also Sowell v. Butcher & Singer, Inc., 926 F.2d 289, 296 (3d Cir. 1991). Because Hurst has not produced any evidence that the defendants made a misrepresentation before the EEOC, we shall grant summary judgment to PNC, Nicolai, and Starke on the fraud claim.

C. Jury Trial

While the motions for summary judgment were pending, Hurst filed a motion "demanding trial by jury." Although parties to a civil action have "the right of trial by jury," see U.S. Const. amend. VII, that right extends only to those cases where there are genuine disputes of material fact, see Fed. R. Civ. P. 56; see also Koski v. Standex Int'l Corp., 307 F.3d 672, 676 (7th Cir. 2002) ("The Seventh Amendment does not entitle parties to

litigate before a jury when there are no factual issues for a jury to resolve."). For the reasons stated above, this case presents no genuine issues of material fact, so we shall deny Hurst's motion for jury trial.

Conclusion

Hurst claims that PNC violated federal anti-discrimination laws and that it and the other defendants committed several common law torts. We shall enter summary judgment in favor of the defendants, however, because Hurst has failed to present any genuine issues of material fact.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES H. HURST, JR. : CIVIL ACTION
: :
v. : :
: :
PNC BANK, ET AL. : NO. 02-6733

ORDER

AND NOW, this 5th day of May, 2004, upon consideration of plaintiff's pro se motion for summary judgment (docket entry # 23), his pro se motion for jury trial (docket entry # 56), his pro se motion for oral argument (docket entry # 58)²¹, and defendants' motion for summary judgment (docket entry # 32), and in accordance with the accompanying Memorandum, it is hereby ORDERED that:

1. Plaintiff's motion for summary judgment is DENIED;
2. Plaintiff's motion for jury trial is DENIED;
3. Plaintiff's motion for oral argument is DENIED;
4. Defendants' motion for summary judgment is

GRANTED; and

²¹ We treat the motion for oral argument as a second motion for reconsideration of our Order of April 8, 2004 (docket entry # 50). For the same reasons that we denied the first motion for reconsideration, see Order of April 20, 2004 (docket entry # 55), we shall deny the second.

5. The Clerk shall CLOSE this civil action statistically.

BY THE COURT:

Stewart Dalzell, J.

