

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

RONALD A. VALENTI	:	
Plaintiff,	:	CIVIL ACTION
	:	
vs.	:	NO. 04-CV-5369
	:	
R.L. BROWNLEE, ACTING	:	
SECRETARY OF THE ARMY	:	
Defendant	:	

MEMORANDUM AND ORDER

JOYNER, J.

July 13, 2005

This employment discrimination case is now before the Court for resolution of Defendant Acting Secretary of the Army R.L. Brownlee's Motion for Summary Judgment regarding Plaintiff's claims. For the reasons which follow, the Motion is granted.

Factual Background

Since 1989, Plaintiff Ronald Valenti worked as a GS-9 accountant in the Finance and Accounting section of the Army Corps of Engineers. (Transcript "Tr." of the EEO hearing 9:4-16). Plaintiff's immediate supervisors were William Cassady and Ray Donnelly. (Tr.9:17-21). By this lawsuit, Plaintiff alleges that he was wrongfully denied promotion from GS-9 to GS-11 grade employment in August 2001. Plaintiff contends that he assumed certain duties at that time which entitled him to a non-competitive promotion. Plaintiff argues that he was denied the promotion due to his age (52) and/or disability (post-traumatic stress disorder, hearing loss). (Tr.29:2-4).

In August 2001, Dolores Kessler, a GS-11 accountant, retired. (Tr.15:1-11). Kessler's position was not filled, as there was insufficient work to fill a full-time position. (Tr.70:6-71:5). Instead, Kessler's duties were distributed among several employees, including Plaintiff. (Tr.16:7-13;50:20-51:1). Specifically, Plaintiff assumed "credit card functions" and other clerical tasks, including sending invoices in for processing and ensuring that credit card holders were paying their bills on time. (Tr.47:20-50:19). Plaintiff did not, however, assume more extensive duties previously assigned to Kessler, such as auditing travel orders and applying travel regulations in particular situations. (Tr.18:12-17;95:15-21).

After being assigned some of Kessler's previous duties, Plaintiff filed a grievance because he had not been automatically promoted from GS-9 to GS-11. (Tr.51:2-7). After reviewing Plaintiff's duties, however, Donnelly concluded that Plaintiff's additional responsibilities were not "grade-controlling," and therefore did not occupy enough of Plaintiff's time to control his grade or pay status. (Tr.51:2-16). Likewise, Donnelly found that the credit card functions Plaintiff was completing were not GS-11 duties, pursuant to the applicable Office of Personnel Management classification standards. (Tr.54:23-55:16;66:13-22).

Plaintiff remains employed by the Army Corps. In fact, he was promoted competitively to GS-11 grade on December 15, 2002.

By this lawsuit, Plaintiff alleges that during the course of his employment at the Army Corps of Engineers he was unlawfully denied an automatic noncompetitive promotion due to his age and/or disability. (Complaint, ¶ 1). Specifically, Plaintiff alleges in Count I that Defendant violated the Rehabilitation Act of 1973 by denying him the promotion because he suffers from post-traumatic stress disorder and hearing loss. (Id. at ¶¶ 21-27). Plaintiff further alleges in Count II that Defendant violated the Age Discrimination in Employment Act ("ADEA") by denying his request for a noncompetitive promotion, while giving several younger employees grade level promotions. (Id. at ¶¶ 28-35). At the time when Plaintiff's request was denied, he was 53 years old. (Id. at ¶ 29).

Standards Governing Summary Judgment Motions

In deciding a motion for summary judgment under Fed.R.Civ.P. 56(c), a court must determine "whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." Medical Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (internal citation omitted). Indeed, Rule 56(c) provides that summary judgment is properly rendered:

[I]f the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone

although there is a genuine issue as to the amount of damages.

Stated more succinctly, summary judgment is appropriate only when it is demonstrated that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322-32 (1986).

In deciding a motion for summary judgment, all facts must be viewed and all reasonable inferences must be drawn in favor of the non-moving party. Troy Chemical Corp. v. Teamsters Union Local No. 408, 37 F.3d 123, 125-26 (3d Cir. 1994); Oritani Savings & Loan Assn. v. Fidelity & Deposit Co. of Md., 989 F.2d 635, 638 (3d Cir. 1993). An issue of material fact is said to be genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

In Celotex Corp. v. Catrett, supra, the Supreme Court articulated the allocation of burdens between a moving and nonmoving party in a motion for summary judgment. Specifically, the Court in that case held that the movant had the initial burden of showing the court the absence of a genuine issue of material fact, but that this did not require the movant to support the motion with affidavits or other materials that negated the opponent's claim. Celotex, 477 U.S. at 323. The Court also held that Rule 56(e) requires the nonmoving party to

"go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Id. at 324 (quoting Fed.R.Civ.P. 56(e)). This does not mean that the nonmoving party must produce evidence in a form that would be admissible at trial in order to avoid summary judgment. Obviously, Rule 56 does not require the nonmoving party to depose its own witnesses. Rather, Rule 56(e) permits a summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Rule 56(c), except the pleadings themselves, and it is from this list that one would normally expect the nonmoving party to make the required showing that a genuine issue of material fact exists. Id. See, also, Morgan v. Havir Mfg. Co., 887 F. Supp. 759 (E.D. Pa. 1994); McGrath v. City of Phila., 864 F. Supp. 466, 472-73 (E.D. Pa. 1994).

Discussion

I. Analytical Framework for Summary Judgment Motions in Discrimination Cases

As noted, Plaintiff claims that he was discriminated against in violation of the Rehabilitation Act and the ADEA. In McDonnell Douglas Corp. v. Green, the United States Supreme Court established a three-part burden shifting test to analyze cases where the plaintiff attempts to prove discrimination using indirect evidence. 411 U.S. 792 (1973). Although the claim in McDonnell was based on Title VII, courts also apply its burden

shifting test to discrimination claims arising under the Rehabilitation Act and ADEA. See, e.g., Reeves v. Sanderson Plumbing Prod Inc., 530 U.S. 133, 134 (2000)(explaining that the McDonnell three-part burden shifting formula is applicable where a plaintiff brings an employment discrimination claim under the ADEA); Ritchie v. Henderson, 161 F. Supp. 2d 437, 444 (E.D. Pa. 2001)(explaining that the McDonnell test is used when a plaintiff alleges a Rehabilitation Act violation). Under this three-part analysis, the burden of proof shifts as follows:

[t]he plaintiff must first establish by a preponderance of the evidence a prima facie case of discrimination . . . The plaintiff can establish a prima facie case by showing that [he] is a member of a protected class; that [he] was qualified and rejected for the position; and that non-members of the protected class were treated more favorably . . . After the plaintiff has established a prima facie case, the burden shifts to the defendant to produce evidence of a legitimate, nondiscriminatory reason for the employee's rejection . . . Then, the plaintiff, since [he] retains the ultimate burden of persuasion, must prove, by a preponderance of the evidence, that the defendant's proffered reasons were a pretext for discrimination.

Ezold v. Wolf, Block, Schorr and Solis-Cohen, 983 F.2d 509, 522 (3d Cir. 1992). Where the plaintiff cannot establish a prima facie case of discrimination, the defendant is entitled to summary judgment as a matter of law. Martinez v. Quality Value Convenience, Inc., 37 F. Supp. 2d 384, 387 (E.D. Pa. 1999); Read v. Stone & Webster Engr. Co., 6 F. Supp. 2d 398, 403 (E.D. Pa. 1998). Where the plaintiff does establish a prima facie case, the defendant must meet its "relatively light burden" of

providing a legitimate, nondiscriminatory reason for its employment action. Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994). When the defendant provides a nondiscriminatory reason, the plaintiff cannot survive summary judgment unless he "point[s] to some evidence, direct or circumstantial, 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." Id. at 764.

To avoid summary judgment, the plaintiff must provide evidence which would "allow a factfinder reasonably to infer that each of the employer's proffered non-discriminatory reasons . . . was either a post-hoc fabrication or otherwise did not actually motivate the employment action." Id. The plaintiff cannot, however, "simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent or competent." Id. at 765. Rather, the plaintiff must demonstrate "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them to be 'unworthy of credence,' and hence infer 'that the employer did not act for [the asserted] non-discriminatory

reasons.'" Id. at 765 (quoting Ezold, 983 F.2d at 531; Josey v. John R. Hollingsworth Corp., 996 F.2d 632, 638 (3d Cir. 1993)). Finally, a plaintiff's mere disagreement with his employer's conclusion does not prove pretext where the decision was based on legitimate business concerns. Martin v. Gen. Elec. Co., 891 F. Supp. 1052, 1058 (E.D. Pa. 1995).

II. Plaintiff Fails to Establish a Prima Facie Case of Discrimination

A. Disability Discrimination Claim

Plaintiff in this action alleges that Defendant violated the Rehabilitation Act by failing to promote him noncompetitively from a GS-9 to GS-11 grade level. The Rehabilitation Act forbids federal employers from discriminating against persons with disabilities in matters of hiring, placement, or advancement. Shiring v. Runyon, 90 F.3d 827, 830-31 (3d Cir. 1996).

Specifically, Section 504 of that Act provides:

[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

29 U.S.C. §794(a). To establish a prima facie case under the Rehabilitation Act, a plaintiff must prove that (1) he is disabled, (2) he is otherwise qualified for the position sought, (3) he suffered an unfavorable employment action solely because of his disability, and (4) the defendant agency receives federal

financial assistance. Eric H. ex rel. John H. Methacton Sch. Dist., 265 F. Supp. 2d 513, 521 (E.D. Pa. 2003). A plaintiff is disabled within the language of the Rehabilitation Act if he:

- has a physical or mental impairment that substantially limits a major life activity; or
 - has a record of such an impairment; or
 - is regarded or perceived as having such an impairment
- AND
- is qualified to perform the essential functions of the job either with or without reasonable accommodation.

29 U.S.C. §705(9)(B). Merely having an impairment does not make one disabled. Toyota Motor Mfg., Ky., Inc. v. Williams. 534 U.S. 184, 195 (2002). Moreover, a plaintiff may not prove disability status by merely "submit[ting] evidence of a medical diagnosis of an impairment." Id. at 198. Instead, a plaintiff must "[offer] evidence that the extent of the limitation [caused by their impairment] in terms of their own experience . . . is substantial." Id. (quoting Albertson's Inc. v. Kirkingburg, 527 U.S. 555, 567 (1999)). Similarly, a plaintiff cannot prevail in claiming that his employer regarded him as disabled unless he can prove that either:

- the defendant mistakenly believed that [plaintiff] had a physical or mental impairment that substantially limited one or more major life activities; or
- the defendant mistakenly believed that an actual non-limiting impairment substantially limited one or more major life activities.

Sutton v. United Air Lines, 527 U.S. 471, 489 (1999).

Plaintiff in this action alleges that he suffers from four disabilities which he incurred in combat during the Vietnam War,

specifically hearing loss, a ringing in the ears called tinnitus, problems resulting from a concussion originating in 1969, and post-traumatic stress disorder. (Tr.10:2-13). Plaintiff further alleges that as a result of his post-traumatic stress disorder he experiences nightmares and panic/anxiety attacks. (Tr.11:4-6). Plaintiff also notes that he is sometimes distant from people, and he argues that such action results from post-traumatic stress disorder and/or his concussion. (Tr.11:6-9). Finally, Plaintiff notes that he sometimes annoys people, which he attributes to his hearing problems. (Tr.11:12-14). To deal with his impairments, Plaintiff wears a hearing aid and attends group therapy sessions. (Tr.12:24-13:2). While Plaintiff asserts that his family must live with the effects of his impairments, he explicitly states that none of his impairments affect his work-related performance. (Tr.11:18-12:1).

Plaintiff fails to provide evidence from which a reasonable factfinder could conclude that Plaintiff has, previously had, or was regarded by his employer as having an impairment which substantially limited a major life activity. Significantly, Plaintiff admits that his impairments do not affect his ability to complete job-related responsibilities. (Tr.11:18-12:15). In addition, although Plaintiff alleges that he obtained a certificate from the Veteran's Administration stating that he is forty percent disabled, he fails to provide medical documentation

concerning his impairments. (Tr.13:12-14:2). Plaintiff likewise fails to provide evidence indicating that his employer perceived him to be so impaired. (See, Tr.47:2-5) (Donnelly's testimony indicating that Plaintiff's impairments did not hinder his job performance). Instead, Defendant's later competition-based promotion of Plaintiff to GS-11 grade clearly indicates that it did not view Plaintiff's abilities as negatively impacted by his impairments. See, Cameron v. Community Aid For Retarded Children, Inc., 335 F.3d 60, 65 (2d Cir. 2003)(finding that promoting an employee to a position of greater responsibility indicates the employer's belief that the employee is not substantially limited by his impairment).

Just as Plaintiff is unable to show that he is disabled and thereby satisfy the first element of a prima facie case, Plaintiff likewise fails to meet the second element by showing that his duties satisfied GS-11 standards. In fact, Plaintiff admits that the additional responsibilities assigned to him were not GS-11 duties. (Tr.40:12-16). Rather, Kessler's G-11 duties were relegated to others. (Tr.126:10-23). In fact, Donnelly confirmed the GS-9 status of Plaintiff's duties by consulting the applicable Office of Personnel Management classification standards. (Tr.66:19-22). Specifically, Plaintiff's additional responsibilities included clerical tasks such as sending invoices for processing, ensuring that credit card holders were paying

bills on time, and answering users' questions about their credit card limits. (Tr.47:20-50:19). Conversely, other employees were assigned more extensive duties, such as auditing travel orders and applying travel regulations. (Tr.18:12-17;95:15-21).

Furthermore, Plaintiff fails to satisfy the third element of a prima facie case because he provides no evidence which would give rise to an inference of discrimination. Plaintiff supplies no evidence indicating that he was denied an automatic promotion because of his alleged disabilities. Rather, similarly situated non-disabled persons were not promoted ahead of him. (Tr.70:6-71:5). In fact, no one was promoted to fill Kessler's position. (Id.). Thus, because Plaintiff fails to satisfy the necessary elements, he cannot establish a prima facie case of discrimination based on any disability.

B. Age Discrimination Claim

Plaintiff further claims that he was discriminated against because of his age, in violation of the ADEA. The ADEA prohibits age discrimination in employment against any person over the age of forty. See, 29 U.S.C. §633(a) (applying to federal government employees). Specifically, Section 633(a) provides:

[a]ll personnel actions affecting employees . . . who are at least 40 years of age . . . in military departments . . . shall be made free from any discrimination based on age.

To prevail on an ADEA claim, a plaintiff must show that "age played a role in the employer's decision making process and that

it had a determinative effect on the outcome of that process.”
Miller v. CIGNA Corp., 47 F.3d 586, 598 (3d Cir. 1995) (en banc).
In order to establish a prima facie case under the ADEA, a
plaintiff must show that he was (1) over the age of 40, (2)
qualified for the position in question, (3) rejected for the
position, and that (4) the position was filled by a sufficiently
younger person to permit an inference of age discrimination.
Bray v. Marriott Hotels, 110 F.3d 986, 990 (3d Cir. 1997).

Plaintiff in this action satisfies the first and third
elements of a prima facie case, as he received some of Kessler’s
prior duties when he was 52 years old, and was subsequently
denied GS-11 status. Plaintiff fails, however, to establish the
necessary second and fourth elements. Plaintiff argues that the
sum of his work-related responsibilities totaled GS-11 level.
(Tr.19:6-9). Specifically, Plaintiff argues that he deserved a
noncompetitive promotion to GS-11 grade merely because he was
given additional duties. (Tr.21:13-15). Plaintiff’s only other
evidence is his observation that GS-11 employees had previously
been assigned the clerical tasks. (Tr.19:6-15). These previous
employees, however, also engaged in more extensive tasks which
warranted their GS-11 status. (Id.). In fact, Plaintiff admits
that his additional tasks alone did not qualify as GS-11 duties.
(Tr.40:12-16). Thus, Plaintiff does not present sufficient
evidence to confirm his allegation that he was performing GS-11

level work.

Plaintiff also fails to present adequate evidence to enable a reasonable factfinder to infer that age discrimination occurred. Plaintiff's allegation of age discrimination is simply based on his belief that he was the "oldest gentleman down there." (Tr.28:23-29:4). Although plaintiff further alleges that four younger coworkers, ranging in age from mid-30s to late 40s, were promoted noncompetitively, he admits that his knowledge is based solely on "rumor." (Tr.29:20-31:4). Moreover, Plaintiff admits that these coworkers were promoted from GS-11 to GS-12, whereas he was a GS-9 employee seeking a promotion to the GS-11 level. (Id.) Finally, Plaintiff fails to present any evidence indicating that the circumstances surrounding these promotions paralleled his situation. (Id.) Accordingly, Plaintiff's failure to satisfy the necessary elements renders his prima facie case invalid on age discrimination grounds.

III. Defendant Has Provided a Legitimate Reason for its Employment Action, and Plaintiff Has Failed to Prove that the Reason is Merely a Pretext for Discrimination

Even if Plaintiff had established a prima facie case, Defendant has met its burden of providing a legitimate, nondiscriminatory reason for not promoting Plaintiff noncompetitively to GS-11 grade. Defendant asserts that Plaintiff was not promoted noncompetitively because his duties did not rise to the GS-11 level. (Tr.21:17-20;25:19-21).

Specifically, Plaintiff's additional duties included low-level clerical tasks such as sending invoices for processing, ensuring that credit card holders were paying bills on time, and answering users' questions about their credit card limits. (Tr.47:20-50:19). Indeed, Plaintiff admits that his additional responsibilities did not rise to the GS-11 level. (Tr.40:12-16). Conversely, other employees were assigned more extensive GS-11 duties, such as auditing travel orders and applying travel regulations. (Tr.18:12-17;95:15-21). Supervisor William Cassady first denied Plaintiff's request for an automatic promotion on the ground that Plaintiff's additional duties did not constitute GS-11 responsibilities. (Tr.21:17-20). In response to an Administrative Grievance later filed by Plaintiff, Supervisor Ray Donnelly affirmed the determination that Plaintiff's work-related obligations did not qualify for GS-11 compensation. (Tr.51:2-16). Donnelly reached this determination by following the standard procedure of consulting the applicable Office of Personnel Management classification standards, which indicated that Plaintiff's duties were not GS-11 level. (Tr.54:23-55:16;66:13-22). Thus, Defendant provides a legitimate nondiscriminatory reason for not automatically promoting Plaintiff from GS-9 to GS-11.

Plaintiff fails to supply any evidence which could lead a reasonable factfinder to conclude that Defendant's explanation is

merely a pretext for unlawful discrimination. As this Court found Plaintiff's evidence insufficient to establish a prima facie case of discrimination, such evidence is moreover inadequate to undermine Defendant's legitimate reason for not increasing Plaintiff's grade. Specifically, Defendant's speculation that Donnelly and Cassady may have known about his impairments is clearly insufficient to prove that such knowledge caused a discriminatory employment action. Similarly, Plaintiff's belief that he is the oldest man in his department does not show that Defendant's explanation is a pretext for discrimination. Also, Plaintiff's reference to noncompetitive promotions received by younger coworkers does not establish discrimination, namely because such coworkers were not similarly situated, as they started at GS-11 positions and were clearly assigned GS-12 responsibilities which warranted their promotions. Indeed, Plaintiff admits that his additional duties were merely GS-9 level or lower clerical tasks, whereas Kessler's GS-11 auditing and regulatory responsibilities were assigned to others. Furthermore, Plaintiff remains employed by the Army Corps of Engineers and earned a GS-11 promotion competitively on December 15, 2002. Thus, Plaintiff's inability to produce evidence indicating that an invidious discriminatory motive motivated Defendant's action leads this Court to grant Defendant's Motion for Summary Judgment.

An order follows.

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

RONALD A. VALENTI	:	
Plaintiff,	:	CIVIL ACTION
	:	
vs.	:	NO. 04-CV-5369
	:	
R.L. BROWNLEE, ACTING	:	
SECRETARY OF THE ARMY	:	
Defendant	:	

ORDER

AND NOW, this 13th day of July, 2005, upon consideration of Defendant Acting Secretary of the Army R.L. Brownlee's Motion for Summary Judgment (Doc. No. 4), and Plaintiff's response thereto (Doc. No. 5), it is hereby ORDERED that the Motion is GRANTED and Judgment as a matter of law is entered in favor of Defendant and against Plaintiff in no amount.

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.