

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

ABDUL AZIZ, : CIVIL ACTION  
Plaintiff, :  
 : NO. 97-1134  
v. :  
 :  
THE PENNSYLVANIA STATE :  
UNIVERSITY, :  
Defendant. :

M E M O R A N D U M

BUCKWALTER, J.

October 15, 1997

Before the Court is Plaintiff's motion for summary judgment (Dkt. #11), and Defendant's cross-motion for summary judgment (Dkt. #12). Because the motions and attachments thereto demonstrate the absence of any genuine issue of material fact regarding Plaintiff's employment discrimination claims, the Court will deny Plaintiff's motion and grant Defendant's cross-motion and enter judgment in favor of Defendant.

**I. BACKGROUND**

In December 1994, Plaintiff Abdul Aziz applied for a tenure-track assistant professorship in Mechanical Engineering at the Berks County campus of Defendant Pennsylvania State University ("Penn State"). Penn State published a "Position Description" stating in part that:

A masters degree and a minimum of three years of industrial experience is required. Preference will be given to candidates with Ph.D. degrees, professional licensure, teaching experience, and a record of scholarly activity.

In July 1995, Penn State notified Aziz by letter that he had not been hired for the position. The letter listed four persons who had been hired at the University, but it did not state which of them had been given the job for which Aziz applied. In fact, the position had been given to Chang-Xue Feng, whom Aziz describes as a Chinese national of Mongolian ancestry.

In February 1996, Aziz filed an employment discrimination claim with the Equal Employment Opportunity Commission ("EEOC"), in which he alleged only age discrimination. Although the EEOC did not issue a right to sue letter to Aziz, for reasons which are unclear from the record, he filed a pro se complaint under the Age Discrimination in Employment Act, 29 U.S.C. section 623 ("ADEA"), and Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e et seq., alleging that Penn State discriminated against him "because he is non-white by color, Indian by race, Bangladeshi by national origin, and he is older than 40 and older than the person hired."<sup>1</sup>

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1. Defendant has attached documents filed with the EEOC which make clear that he limited his discrimination claim to age and did not raise either race or national origin. Aziz has not countered these documents. This Court rejected Defendant's motion to dismiss the claim on the grounds that the EEOC had not issued a right to sue letter on June 17, 1997. The Court will not reach the issue of whether Aziz has properly exhausted any or all of his administrative remedies because, even if he had, his discrimination claims would not withstand Defendant's motion for summary judgment.

Defendant opposes Aziz's motion for summary judgment and has filed a cross-motion for summary judgment, to which it has attached complete versions of the two men's resumes; Aziz's incomplete responses to interrogatories; portions of his deposition testimony; and an affidavit from Thomas Gavigan, who was Chair of the Engineering Faculty in 1995 and had responsibility for the hiring decision.

## II. DISCUSSION

### A. Legal Standards

Summary judgment is appropriate "if 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." Fed. R. Civ. P. 56(c). A fact is material if it might affect the outcome of the case under the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A disputed factual matter presents a genuine issue "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. In considering a summary judgment motion, the court is required to accept as true all evidence presented by the non-moving party, and to draw all justifiable inferences from such evidence in that party's favor. Id. at 255. Once the moving party has fulfilled its initial burden of showing that no genuine

issue of material fact exists, the nonmoving party must go beyond the mere repetition of the conclusory allegations contained in its pleadings. Pastore v. Bell of Pa., 24 F.3d 508, 511 (3d Cir. 1994).

In order to establish a prima facie case under Title VII that Defendant failed to hire Aziz because of his race or national origin, Aziz must demonstrate, by a preponderance of the evidence, that (1) he belongs to the protected class; (2) he applied for and was qualified for the position; (3) he was rejected; and (4) someone similarly situated from outside the protected class was treated more favorably than he. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 506 (1993); Texas Dept. Of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981). Aziz must make a similar showing to establish a prima facie case under the ADEA: (1) he is over 40; (2) he is qualified for the position in question; (3) he was rejected for the position; and (4) Penn State instead hired someone sufficiently younger to create an inference of age discrimination. Sempier v. Johnson & Higgins, 45 F.3d 724, 728 (3d Cir.), cert. denied, 515 U.S. 1159 (1995). If a plaintiff establishes a prima facie case, he creates a presumption of discrimination and the burden shifts to the defendant to rebut the presumption by showing that its actions were taken for a legitimate nondiscriminatory reason. Id. To meet its burden, the defendant "must clearly set forth,

through the introduction of admissible evidence, the reasons for the plaintiff's rejection." Burdine, 450 U.S. at 255. Aziz retains the ultimate burden of convincing the trier of fact that Penn State intentionally discriminated against him. Id. At 507, quoting Burdine, 450 U.S. at 253.

#### 1. Race and National Origin Discrimination

In support of his motion for summary judgment, Aziz asserts that Feng was less-qualified than he for the position because Feng lacked the required masters degree in mechanical engineering. The two men's resumes indicate that Aziz has both a Masters and a Ph.D. in Mechanical Engineering, while Feng has a B.S. in Mechanical Engineering and higher degrees in Manufacturing Engineering (M.S.) and Industrial Engineering (M.S. and Ph.D.). Aziz also reasserts his claim that Feng is younger than he, and he describes a racial hierarchy in which Mongolians trump Indians. The Court will deny Aziz's motion for summary judgment because he has failed to demonstrate that he is entitled to judgment as a matter of law. It is questionable whether Aziz has established a prima facie case of discrimination, and Penn State has absolutely rebutted any presumption of discrimination, while Aziz has failed to meet his ultimate burden of proving discrimination.

Similarly, the Court will grant Defendant's cross-motion for summary judgment, because, viewing the record in the

light most favorable to Aziz as the non-moving party, and mindful of his pro se status, the Court can find no evidence which might support his claims or undercut Penn State's rebuttal of discriminatory intent. Aziz claims that he was discriminated against, despite being more qualified than Feng, because he is older, ethnically Indian and from Bangladesh. Penn State questions whether Aziz has made out even a prima facie case of discrimination, because his deposition testimony, viewed together with Professor Gavigan's affidavit and a comparison of the two men's resumes, indicates that Aziz was not qualified for the position. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). Gavigan stated that Penn State received over 160 resumes for the position, and that he did not move beyond initial consideration of Aziz because "his resume did not demonstrate any training or experience in the area I was interested in, industrial engineering and manufacturing science." In contrast, Feng was qualified in these two fields, both of which, Aziz has admitted, are branches of Mechanical Engineering.

Aziz has not opposed these assertions. While he has claimed some relevant experience, he admitted in his deposition that his resume did not include this experience, and that he did not submit either an updated or amended resume containing this information. Additionally, Aziz has admitted that, when he filed this suit, he did not know who had gotten the job, and he

therefore did not know Feng's age or nationality. He has admitted that Feng's masters degrees are in fields which are components of mechanical engineering, and that while the position description called for applicants with "scholarly experience," i.e., a history of published articles, Aziz's resume and "Brief List of [his] Accomplishments" indicated none, while Feng's listed several scholarly articles in relevant areas. Finally, Aziz stated that he has not based his discrimination claims on specific facts, but rather on inferences from the existence of federal and state anti-discrimination laws, and from "state statistics" on discrimination.

Thus, even assuming that Aziz has made out a prima facie case sufficient to create the presumption of race or national origin discrimination, Penn State has more than satisfied its burden of demonstrating a legitimate, nondiscriminatory reason for its failure to hire Aziz. See Burdine, 450 U.S. at 256. While Penn State has rebutted any presumption of discrimination which may have been established, Aziz has failed to adduce any evidence, and the record contains none, which would show or tend to show that Defendant's proffered legitimate nondiscriminatory reasons are false, or "that a discriminatory reason more than likely motivated Defendant." Burdine, 450 U.S. at 256. The Court accordingly holds that no rational trier of fact could find that Defendant denied the

position to Aziz for other than legitimate, non-discriminatory reasons, and the Court will enter judgment on the Title VII claims in Defendant's favor.

## 2. Age Discrimination

Aziz's ADEA claims face similar problems. While he has shown that he is over 40 and that he was rejected for the position, his qualification for the position was at best questionable, as discussed above, and he has made no showing regarding Feng's age. Even assuming a prima facie case, however, the Court finds that Penn State has sufficiently rebutted any presumption of age discrimination, and that Aziz has failed to adduce any evidence which might "establish[] a reasonable inference that [Penn State]'s proffered explanation is unworthy of credence," Sempier, 45 F.3d at 728, or that its decision not to hire Aziz was motivated by age discrimination. Id. at 731. Accordingly, the Court will enter judgment for Penn State as to Aziz's age discrimination claim, as well as his race and national origin discrimination claims.

An appropriate order follows.

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

ABDUL AZIZ,	:	CIVIL ACTION
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	:	NO. 97-1134
v.	:	
	:	
THE PENNSYLVANIA STATE	:	
UNIVERSITY,	:	
Defendant.	:	

O R D E R

AND NOW, this 15th day of October 1997, upon consideration of Plaintiff's Motion for Summary Judgment (Dkt. #11) and Defendant's Cross-motion for Summary Judgment (Dkt. #12), and upon further review of the entire record, it is hereby **ORDERED** that Plaintiff's Motion is **DENIED**, and Defendant's Motion is **GRANTED**. Judgment is entered for Defendant on all claims, and the Clerk shall mark this case **CLOSED**.

BY THE COURT:

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RONALD L. BUCKWALTER, J.