United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5014 **September Term, 2004**

FILED ON: MARCH 21, 2005 [884958]

VERNA MUCKLE, (No. 00cv02626)

APPELLANT

v.

ALBERTO GONZALES, ATTORNEY GENERAL OF THE UNITED STATES,

APPELLEE

Appeal from the United States District Court
for the District of Columbia

Before: RANDOLPH and ROBERTS, *Circuit Judges*, and WILLIAMS, *Senior Circuit Judge*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the parties' briefs and arguments. For the reasons stated in the attached memorandum, it is

ORDERED and ADJUDGED that the district court's grant of summary judgment on December 11, 2003, is affirmed.

Pursuant to Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

Per Curiam
FOR THE COURT:
Mark J. Langer, Clerk

BY:

Michael C. McGrail
Deputy Clerk

MEMORANDUM

Verna Muckle, an African American, filed a complaint alleging that she was subject to race discrimination and retaliation while employed at the Department of Justice. Muckle's complaint also included counts of pattern and practice disparate treatment and disparate impact. The district court granted summary judgment to the defendant on all claims. Muckle appeals the judgment only with respect to her race discrimination claim.

To survive a motion to dismiss, a plaintiff in a Title VII case must allege (1) that she is a member of a protected class; (2) that she suffered an adverse employment action; and (3) that "the unfavorable action gives rise to an inference of discrimination." *Brown v. Brody*, 199 F.3d 446, 452 (D.C. Cir. 1999). If the plaintiff has alleged a prima facie case of discrimination, the burden at summary judgment is on the employer to produce evidence of a non-discriminatory reason for the employment action. If the employer does so, the burden shifts to the plaintiff to "discredit the employer's explanation." *Aka v. Washington Hosp. Ctr.*, 156 F.3d 1284, 1288 (D.C. Cir. 1998) (en banc).

Muckle was hired as a Deputy Executive Officer of the Criminal Division in 1994. In 1996, Muckle's then-supervisor Robert Bratt transferred Muckle from the Executive Office, where she had principal oversight over budget, fiscal, and procurement matters, to Management Information Staff ("MIS"), where, as Director, she had oversight responsibility for management information systems. Bratt gave Muckle the option of either transferring to MIS or transferring to the International Criminal Investigative Training Assistance Program to oversee administrative functions. Muckle chose MIS. Muckle claims that this transfer constitutes an adverse employment action because it resulted in the loss of her supervisory responsibility. It is true that a reassignment accompanied by a loss of supervisory duties constitutes an adverse employment action. *See Burke v. Gould*, 286 F.3d 513, 522 (D.C. Cir. 2002). Here, however, Muckle was not divested of supervisory duties; rather one set of supervisory duties was substituted for another. Therefore, her transfer from the Executive Office to MIS did not result in any "materially adverse consequences" and cannot form the basis of a discrimination claim. *Brown*, 199 F.3d at 457.

In May 1998, Muckle's then-supervisor Sandra Bright transferred Muckle from MIS back to the Executive Office. As a result of this transfer, the duty of supervising MIS was given to a different employee, and Muckle's job description was changed to "program manager." Although it is not clear from the record, we assume that this

transfer resulted in a loss of supervisory power and thus constitutes an adverse employment action. Bright testified that she transferred Muckle because of "communication problems" with Muckle and because of complaints from various computer users about JCON, an automation system for which MIS was responsible. Muckle acknowledges the problems, but argues that her positive employment evaluations establish that those complaints could not have been the basis for her transfer. Those employment evaluations, however, covered the period before and after the time that Muckle served as Director of MIS; thus they do not contradict Bright's decision to transfer Muckle. (Muckle received performance awards but no evaluations during her time at MIS.) Since Muckle failed to discredit the proffered reasons for her transfer from MIS, summary judgment was appropriate.

We find it unnecessary to examine Muckle's other complaints -- such as Bright's practice of speaking to Muckle's subordinates without her knowledge -- because none of those incidents constitute adverse employment actions. At most, those allegations demonstrate that Bratt and Bright undermined Muckle's authority. As we explained in *Forkkio v. Powell*, 306 F.3d 1127, 1132 (D.C. Cir. 2002), such a complaint does not rise to the level of an adverse action.