United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 08-5079 **September Term, 2008**

AUDREY SEWELL, FILED: FEBRUARY 25, 2009
APPELLANT

v.

EDWARD C. HUGLER, ACTING SECRETARY OF LABOR,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:06-cv-01534)

Before: SENTELLE, *Chief Judge*, GARLAND, *Circuit Judge*, and EDWARDS, *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 briefs filed by the parties. *See* FED. R. APP. P. 34(a)(2); D.C. CIR. R. 34(j). It is

ORDERED and **ADJUDGED** that the judgment of the district court be affirmed.

Audrey Sewell contends that the Department of Labor violated the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et seq.*, by discriminating against her on the basis of age, retaliating against her for filing a grievance and an administrative complaint, subjecting her to a hostile work environment, and constructively discharging her. The district court granted summary judgment for the Secretary of Labor. *Sewell v. Chao*, 532 F. Supp. 2d 126 (D.D.C. 2008). We affirm.

Sewell's age discrimination and retaliation claims are based on the allegation that her supervisors gave her new assignments in 2005 without providing her with adequate training. There is undisputed evidence, however, that Sewell's job description had encompassed the newly assigned responsibilities since 1999 and that she was receiving training at the time of her retirement. Moreover, as the district court correctly found, Sewell "has failed to offer any evidence of injury or harm resulting from her new assignments." *Id.* at 136. Accordingly, the

court properly concluded that her age discrimination and retaliation claims fail on the threshold question of whether she suffered an actionable adverse action. *Id.* at 135-37.

"To establish hostile work environment claims under Title VII," this court recently noted, "plaintiffs must show harassing behavior sufficiently severe or pervasive to alter the conditions of [their] employment." *Steele v. Schafer*, 535 F.3d 689, 694 (D.C. Cir. 2008) (alteration in original) (internal quotation marks omitted). The district court correctly held that "[s]tray remarks made occasionally over an approximately eight-year period do not come close to making the workplace hostile." *Sewell*, 532 F. Supp. 2d at 142. Rather, "[t]hese kinds of allegations 'constitute exactly the sort of "isolated incidents" that the Supreme Court has held cannot form the basis for a Title VII [and by extension, an ADEA] violation.'" *Id.* (alteration in original) (quoting *George v. Leavitt*, 407 F.3d 405, 417 (D.C. Cir. 2005)). The record also clearly supports the court's conclusions that "the alleged actions taken by [Sewell's superiors] do not constitute severe and pervasive ridicule, harassment, or intimidation," *id.*, and that she "has not shown that any of the hostility evidenced by [the office director] was motivated by discriminatory or retaliatory animus," *id.* at 143.

Finally, the district court correctly concluded that the failure of Sewell's constructive discharge claim follows *a fortiori* from the failure of her other claims. *Id.* at 143-44. To establish constructive discharge claims under Title VII, a plaintiff must show not only that her working environment was hostile, but also that it "'became so intolerable that her resignation qualified as a fitting response.'" *Steele*, 535 F.3d at 695 (quoting *Pennsylvania State Police v. Suders*, 542 U.S. 129, 134 (2004)). No reasonable jury could find that standard to have been met in the instant case.

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

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Deputy Clerk