

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 08-5492

September Term, 2009

FILED ON: JUNE 22, 2010

ALI ASGHAR,

APPELLANT

v.

TIMOTHY F. GEITHNER, SECRETARY, DEPARTMENT OF TREASURY,  
APPELLEE

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Appeal from the United States District Court  
for the District of Columbia  
(No. 1:06-cv-00400-RJL)

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Before: ROGERS, TATEL and GRIFFITH, *Circuit Judges*.

**J U D G M E N T**

This appeal was presented to the court, and briefed and argued by counsel. The court has accorded the issues full consideration and has determined they do not warrant a published opinion. *See* D.C. CIR. RULE 36(d). It is

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

Ali Asghar, a United States citizen of Afghani origin, appeals the grant of summary judgment on the ground that he presented sufficient evidence to establish each element of his hostile work environment claim based on his race, color, and national origin. Upon *de novo* review, *Salazar v. Wash. Metro. Transit Auth.*, 401 F.3d 504, 507 (D.C. Cir. 2005), we affirm.

In 2005 Asghar filed a complaint with the Equal Employment Opportunity Commission (“EEOC”) based on an investigation by the Bureau of Engraving and Printing (“BEP”) and the FBI in 2004 that occurred upon his return from Afghanistan, and derogatory remarks by his supervisor (Ms. Jackson) concerning whether he was the father of his wife’s unborn child, since he had been in Afghanistan for several months. In the EEOC complaint, Asghar sought disciplinary action against the investigator (Mr. Alonzo) and his supervisors (Ms. Jackson and Mr. Brent). The complaint did not reference any events before 2004 in listing the “alleged discriminatory actions.” Although Asghar told the EEO investigator that his manager (Mr. Brent) had told him to get another job if he could not stand the “racial comments” made by his blue-collar coworkers, Asghar Affidavit before the EEO Investigator at 7 (Jun. 16, 2005), Asghar did not identify when this statement was made

and, although represented by counsel, referred only generally to his earlier EEOC complaint regarding a “10-year history of harassment due to retaliation, race, national origin and religion,” and “his return to work in November 2004,” *id.* at 6–7. *See* 29 C.F.R. 1614.106(c). He referred specifically only to one instance in which a coworker called him “Chemical Ali” when he returned to work in 2004. By failing in 2005 to present the earlier alleged derogatory remarks by his coworkers to the EEOC so it could investigate them and attempt conciliation, Asghar failed to exhaust his administrative remedies on incidents prior to 2004 and cannot rely on them as support for his complaint in the district court that an isolated comment by his supervisor (Ms. Jackson) in 2005 and other isolated incidents in 2004 were part of an ongoing unlawful hostile work environment. *See Macklin v. Spector Freight Sys., Inc.*, 478 F.2d 979, 985–86 (D.C. Cir. 1973); 42 U.S.C. § 2000e-5.

The incidents in 2004 and 2005 were insufficient to form the basis of a hostile work environment claim, *see Harris v. Forklift Sys.*, 510 U.S. 17, 21 (1993); *Singletary v. Dist. of Columbia*, 351 F.3d 519, 526 (D.C. Cir. 2003) (quoting *Meritor Sav. Bank FSB v. Vinson*, 477 U.S. 57, 65–66 (1986)). First, Asghar does not allege, much less proffer evidence, that the BEP Office of Security did not have a nondiscriminatory basis to launch an investigation, namely, the discrepancy between information he had previously provided stating that his parents were deceased and his stated reason for travel to a war zone in 2004. Although Asghar explained the discrepancy, he failed to show the nondiscriminatory reason was pretextual in light of BEP policy and what the Office of Security knew at the time. *See Baloch v. Kempthorne*, 550 F.3d 1191, 1198 (D.C. Cir. 2008); *Greer v. Paulson*, 505 F.3d 1306, 1316 (D.C. Cir. 2007). Second, the supervisor’s comment about the paternity of his child was unrelated to his national origin, race, or color, and Asghar proffers no evidence to suggest it might be related. *Baloch*, 550 F.3d at 1201. Third, the comment made by Asghar’s supervisor that he “could be a terrorist”, and the name-calling by a coworker were isolated incidents that no reasonable juror could find were so “severe or pervasive” to create a hostile work environment. *See Barbour v. Browner*, 181 F.3d 1342, 1348 (D.C. Cir. 1999); *see also Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986). Accordingly, Asghar failed to raise a material issue of disputed fact to survive summary judgment.

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 rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. RULE 41.

*Per Curiam*

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Michael C. McGrail  
Deputy Clerk