United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-5330 **September Term, 2017**

FILED ON: MARCH 27, 2018

REBA B. RANSOM,
APPELLANT

v.

DAVID J. SHULKIN, SECRETARY OF VETERANS AFFAIRS,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:14-cv-00422)

Before: TATEL and KATSAS, *Circuit Judges*, and GINSBURG, *Senior Circuit Judge*.

J U D G M E N T

This case was considered on the record from the United States District Court for the District of Columbia, and on the briefs and oral arguments of the parties. The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* Fed. R. App. P. 36; D.C. Cir. R. 36(d). It is

ORDERED and **ADJUDGED** that the judgment of the United States District Court for the District of Columbia be **AFFIRMED**.

Appellant Reba Ransom worked as a healthcare systems specialist in the Office of Healthcare Inspections ("OHI"), a component of the Office of Inspector General ("OIG") of the Department of Veterans Affairs ("VA"). In 2009, Ransom applied unsuccessfully for certain Associate Director positions within regional OHI offices. In May 2010, Ransom filed an administrative EEO complaint alleging racial discrimination by Assistant Inspector General David Daigh. A few months later, Daigh promoted Ransom to another Associate Director position.

While serving in that new supervisory role, Ransom slapped a subordinate, James Seitz, on the forehead. Ransom's immediate supervisor, Dorothy Duncan, reported the matter to OHI's headquarters, and Daigh in turn referred it to the OIG's Office of Investigations. After conducting an independent investigation into the incident, the OIG investigators concluded that Ransom had behaved inappropriately in three ways: first, she assaulted Seitz with a "forceful"

strike to the face; second, she lied about the incident to the OIG investigators; and third, she fabricated a false allegation that Seitz was mentally unstable and potentially dangerous. Based on this report, Deputy Assistant Inspector General Patricia Christ fired Ransom on July 7, 2011.

Ransom sought review of Christ's decision before the Merit System Protection Board ("MSPB"), where an Administrative Law Judge concluded that (1) the slap could not support removal because it did not rise to the level of a criminal assault, (2) Ransom deliberately attempted to mislead investigators about the incident, and (3) Ransom's allegations about Seitz were false, but nonetheless could not support removal. On remand, Christ again fired Ransom in June 2012, this time based only on her lying to OIG investigators.

After unsuccessfully seeking further relief before the MSPB, Ransom filed a four-page, single-count complaint in June 2013. The complaint alleged that the VA fired Ransom in July 2011 in retaliation for protected EEO activity. The complaint did not challenge any adverse employment action besides the July 2011 firing, did not allege that the firing was motivated by racial discrimination, and did not raise any claims under the Civil Service Reform Act ("CSRA").

In April 2014, Ransom moved to file an amended 22-page, six-count complaint. That complaint would have alleged that six different adverse employment actions undertaken by the VA between March 2011 and June 2012 were retaliatory: referring Ransom to the OIG investigators, placing her on administrative leave pending the investigation, proposing to fire her, failing to disclose certain information about her case, firing her in July 2011, and again firing her in June 2012. The proposed amended complaint further alleged that each of those six actions was motivated by racial discrimination. And it alleged four procedural violations of the CSRA arising from the VA's and the MSPB's handling of her case between February 2012 and May 2013.

The district court denied the motion to amend without explanation. Later, it denied without explanation Ransom's further motion to amend in order to add additional allegations regarding her retaliation claim. Finally, the court granted summary judgment to the VA and, in so doing, explained that it had denied the first motion to amend for reasons urged by the VA.

On appeal, Ransom challenges the denial of both motions to amend and the grant of summary judgment. Absent a ruling based on futility, we review the denial of a motion to amend for abuse of discretion. *See*, *e.g.*, *Xia v. Tillerson*, 865 F.3d 643, 649 (D.C. Cir. 2017). We review summary-judgment decisions de novo. *See*, *e.g.*, *Jones v. Bernanke*, 557 F.3d 670, 674 (D.C. Cir. 2009).

Ransom first seeks reversal based on the district court's failure to give reasons for denying the motions to amend. However, as to the first motion, the court cured any procedural error by stating its reasons in the summary-judgment order. Moreover, any error as to the second motion was harmless—on summary judgment, Ransom fully developed her claim that the July 2011 firing was retaliatory, and the district court rejected that claim for failure of proof, not for failure of pleading. *See Williams v. Lew*, 819 F.3d 466, 471 (D.C. Cir. 2016).

Ransom next argues that, explanations aside, the district court wrongly denied the first motion to amend. The parties agree that this question turns on whether the proposed amendments relate back to the original complaint within the meaning of Federal Rule of Civil Procedure 15. In pertinent part, that rule provides that a proposed amendment "relates back" to a prior pleading for limitations purposes if it "asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading." Fed. R. Civ. P. 15(c)(1)(B). The Supreme Court has held that new allegations "separated in time and type" from those in the original pleading do not relate back under Rule 15. *See Mayle v. Felix*, 545 U.S. 644, 657 (2005). Likewise, this Court has held that employment-discrimination claims based on different discrete adverse actions do not relate back. *See Jones*, 537 F.3d at 675.

Under these standards, the district court permissibly denied leave to amend. Whereas the original complaint alleged only that the July 2011 termination by Christ was retaliatory, the amended complaint sought to place at issue six different adverse employment actions undertaken by various VA officials between May 2011 and June 2012, to challenge each of those actions as not only retaliatory but also discriminatory, and to raise new CSRA claims arising from the MSPB's handling of this case between August 2012 and May 2013. Thus, the amended complaint as a whole—and indeed each of its proposed individual counts—would have improperly expanded the case to encompass new times and types of allegations.

Finally, Ransom appeals the grant of summary judgment on the retaliation claim. We perceive no error in that decision. The VA proffered a legitimate (indeed compelling) reason for firing Ransom—the OIG investigators' conclusion that she had inappropriately hit a subordinate in the face and then lied to investigators in an attempt to escape responsibility. The question here is not whether the investigators' conclusion was correct, but whether Christ—who made the decision to fire Ransom—honestly and reasonably believed it. *See Brady v. Office of Sergeant at Arms*, 520 F.3d 490, 496 (D.C. Cir. 2008). Ransom presented no evidence from which a jury could reasonably conclude that Christ did not. Instead, Ransom contends that retaliatory animus infected the decision by Duncan and Daigh to refer Ransom's case to the OIG investigators. But the OIG's own independent investigation—which Ransom concedes was itself uninfected by any improper motive—broke the causal chain between any impermissible motive by Duncan and Daigh and the ultimate termination decision by Christ. Under these circumstances, a "cat's paw" theory of liability does not apply. *See Hampton v. Vilsack*, 685 F.3d 1096, 1101-02 (D.C. Cir. 2012).

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 the 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: /s/
Ken Meadows
Deputy Clerk