United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5069 **September Term, 2017**

FILED ON: MARCH 9, 2018

ADRIENNE D. CARTER,
APPELLANT

v.

BENJAMIN S. CARSON, SR., SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:16-cv-00401)

Before: GARLAND, *Chief Judge*, and KAVANAUGH and KATSAS, *Circuit Judges*.

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**.

Adrienne Carter was employed as a staff assistant in the Department of Housing and Urban Development. From 2010 to 2012, Carter missed about 1800 hours of work. In September 2012, after a series of warnings about her absences and performance, Carter was fired.

Carter later filed a complaint in the District Court raising several claims. The District Court dismissed the complaint. We affirm.

First, Carter alleged that HUD violated the Rehabilitation Act by firing her rather than accommodating her claimed disabilities. But to allege a Rehabilitation Act claim, the plaintiff must allege that he or she was qualified for the position. To be qualified, an individual must be able to perform the essential functions of the job with or without a reasonable accommodation. *See Ward v. McDonald*, 762 F.3d 24, 28 (D.C. Cir. 2014). Here, Carter did not adequately

plead that she was qualified for this staff assistant position. *See generally Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Carter did not allege that she could be at the workplace full-time and meet the attendance requirements for this staff assistant position. Nor did Carter allege that this staff assistant position actually did not require full-time attendance. Therefore, Carter did not state a cognizable Rehabilitation Act claim. *See Carr v. Reno*, 23 F.3d 525 (D.C. Cir. 1994).

Second, Carter alleged that her supervisor created a hostile work environment based on her disabilities. But Carter did not specify behavior that created a hostile work environment – that is, behavior "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101, 116 (2002) (quoting *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993)). For example, Carter did not describe any offensive comments, jokes, slurs, epithets, physical assaults or threats, or the like. *See Brooks v. Grundmann*, 748 F.3d 1273 (D.C. Cir. 2014); *Baird v. Gotbaum*, 662 F.3d 1246 (D.C. Cir. 2011); *Stewart v. Evans*, 275 F.3d 1126 (D.C. Cir. 2002). Carter's conclusory assertions did not state a hostile work environment claim.

Third, Carter alleged that she was fired in retaliation for filing various administrative complaints against her supervisor. But Carter failed to raise that claim in her arbitration proceeding or in her equal employment opportunity complaint. Carter failed to adequately exhaust her administrative remedies on her retaliation claim, as is required by law. *See Payne v. Salazar*, 619 F.3d 56 (D.C. Cir. 2010); *Guerra v. Cuomo*, 176 F.3d 547 (D.C. Cir. 1999).

We affirm the judgment of the District Court.

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. Rule 41(a)(1).

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk