United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-5363 **September Term, 2019**

FILED ON: July 7, 2020

HARRIETT A. AMES,

APPELLANT

v.

CHAD F. WOLF, ACTING SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY AND UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:13-cv-01054)

Before: TATEL and RAO, *Circuit Judges*, and SILBERMAN, *Senior Circuit Judge*.

J U D G M E N T

This case was considered on the record from the district court and on the briefs of the parties. *See* FED. R. APP. P. 34(a)(2); D.C. CIR. R. 34(j). The court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). For the reasons stated below, it is

ORDERED AND ADJUDGED that the judgment of the district court be **AFFIRMED**.

Plaintiff Harriett Ames is the former Chief of the Personnel Security Branch of the Federal Emergency Management Agency, a component of the Department of Homeland Security. She was removed from her job and reassigned in response to a Department investigation that revealed serious problems with the Branch's security-clearance practices. After less than three months in her reassigned position, Ames resigned and brought this suit under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., alleging discrimination on the basis of sex and race, retaliation for engaging in prior protected activity, and constructive discharge. At trial, Ames presented little evidence of discrimination, instead attempting to impeach Department officials, who testified that they reassigned Ames in order to improve the Branch's efficiency and effectiveness. At the close of her case-in-chief, the district court granted judgment as a matter of law for the Department on Ames's constructive-discharge claim, *see* Joint Appendix (J.A.) 1349–58, 1388–94, and the jury returned a verdict in the Department's favor on Ames's remaining

claims, *see Ames v. Nielsen*, No. 13-cv-1054, 2018 WL 5777391, at *1 (D.D.C. Nov. 2, 2018). Ames now appeals several of the district court's trial and post-trial rulings.

We begin with Ames's challenge to the district court's decision to grant judgment for the Department on her constructive-discharge claim, which we review de novo. *See Borgo v. Goldin*, 204 F.3d 251, 254 (D.C. Cir. 2000) ("We review de novo . . . the district court's decision . . . to grant judgment as a matter of law pursuant to Rule 50(a)."). Such a claim requires proof that "an employer discriminate[d] against an employee to the point such that his 'working conditions become so intolerable that a reasonable person in the employee's position would have felt compelled to resign.'" *Green v. Brennan*, 136 S. Ct. 1769, 1776 (2016) (quoting *Pennsylvania State Police v. Suders*, 542 U.S. 129, 141 (2004)). "[V]iew[ed] . . . in the light most favorable to [Ames]," *Borgo*, 204 F.3d at 254, the single incident of maltreatment she cites—which involved her supervisor chastising her and hitting his desk, *see* J.A. 1376–78—falls well short of demonstrating constructive discharge, *see Veitch v. England*, 471 F.3d 124, 130–31 (D.C. Cir. 2006) (finding that plaintiff failed to state a constructive-discharge claim despite his allegations that, among other things, his supervisor "did not assign [him] collateral duties" for a thirteen-month period, "repeatedly criticized" him, and "spoke to [him] in a 'curt' manner").

Ames also insists that the district court erred in admitting the testimony of Kimberly Lew, Chief of the Department's Personnel Security Division, and an email written by Lew, arguing that both constituted inadmissible hearsay. The district court, however, admitted Lew's testimony and email only for the non-hearsay purposes of establishing that Lew recommended Ames's transfer and the justification Lew provided in support of that recommendation. *See Ames*, 2018 WL 5777391, at *3–5. On multiple occasions, the district court also gave a limiting jury instruction to this effect. *Id.* at *4. We detect no abuse of discretion. *See Desmond v. Mukasey*, 530 F.3d 944, 965–66 (D.C. Cir. 2008) (finding that district court did not abuse its discretion by admitting report containing employee-misconduct allegations for non-hearsay purpose and subject to a limiting instruction).

In a related claim, Ames contends that the district court should have granted her a new trial because the Department improperly referenced Lew's testimony and email in its closing jury argument. *See Ames*, 2018 WL 5777391, at *5–6 (rejecting this claim). It is true that the Department attempted to rely on Lew's testimony for its truth once during its closing. But the district court immediately sustained Ames's objection, *see* J.A. 1989, and by that point had repeated its limiting instruction three times—including immediately before closing arguments began, *see* J.A. 1948–49. "As the district court was entitled to presume that the jurors 'followed the instructions they were given,' its denial of [Ames's] motion for a new trial was well within its discretion." *United States ex rel. Miller v. Bill Harbert International Construction, Inc.*, 608 F.3d 871, 906–07 (D.C. Cir. 2010) (alterations omitted) (quoting *United States v. Mouling*, 557 F.3d 658, 665 (D.C. Cir. 2009)).

Finally, Ames contests the denial of her motion for judgment as a matter of law on her discrimination and retaliation claims. Reviewing this Rule 50 claim de novo and "resolv[ing] all reasonable inferences in [the Department's] favor," *Radtke v. Lifecare Management Partners*, 795 F.3d 159, 163 (D.C. Cir. 2015), however, we find that the record easily supports the jury's verdict.

Most significantly, Ames's supervisor testified that (1) he recommended Ames be transferred in order "to improve efficiencies and effectiveness," J.A. 1069; (2) while Ames was out of the office, staff were "less stressed" and that "workflow production didn't slow down," J.A. 1078; and (3) "Ames was precluding . . . training" intended to improve the Branch's security-clearance procedures, J.A. 1090. At least two other Department employees offered testimony consistent with this account. *See* J.A. 1546–49; J.A. 1815–17. On this record, Ames "ha[s] not shown, as [she] must to prevail, that the evidence is 'so one-sided that reasonable men and women could not have reached a verdict in [the Department's] favor.'" *Radtke*, 795 F.3d at 165 (quoting *Muldrow v. Re-Direct, Inc.*, 493 F.3d 160, 165 (D.C. Cir. 2007)).

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: /s/
Michael C. McGrail
Deputy Clerk