

Summary Judgment Review

Case Name: *Stevenson v. Delta Air Lines, Inc.*

Nature of the Order: Magistrate's Report & Recommendation

Magistrate Judge: Linda T. Walker

District Judge: Amy Totenberg

Claims & Outcomes:

1. **Claim:** ADA Failure to Accommodate
 - a. **Outcome:** Recommend Summary Judgment Granted
2. **Claim:** ADA Disability Discrimination
 - a. **Outcome:** Recommend Summary Judgment Granted
3. **Claim:** Title VII & Section 1981 Race Discrimination
 - a. **Outcome:** Recommend Summary Judgment Granted
4. **Claim:** Title VII Gender Discrimination
 - a. **Outcome:** Recommend Summary Judgment Granted
5. **Claim:** ADEA Age Discrimination
 - a. **Outcome:** Recommend Summary Judgment Granted
6. **Claim:** Retaliation (Title VII, Section 1981, ADA, ADEA)
 - a. **Outcome:** Recommend Summary Judgment Granted

Whether R&R Followed: N/A

For Race/Gender Discrimination Cases:

Race of Plaintiff: African-American

Gender of Plaintiff: Female

Summary

Defendant Delta Air Lines, Inc. ("Delta" or "Defendant") allows its employees to use "travel passes" – free and reduced-rate travel for the employees, certain family members, and designated "travel companions." However, Delta policy prohibits use of "travel passes" for business travel. In April 2014, Delta began a campaign to investigate abuse of travel passes. This included investigating employees who shared passes with "companions" who obtained passes from multiple employees. Plaintiff Quaniah Stevenson ("Stevenson" or "Plaintiff") was investigated as part of this campaign. Delta discovered that Stevenson's designated travel companion, Jovan Dais ("Dais") used travel passes to travel all over the country, and found social media posts to indicate such travels were for Dais's concert promotion business. When confronted with these findings, Stevenson repeatedly changed her story about whether she had traveled with Dais, admitted Dais works in the music business, and claimed ignorance about his

social media posts. Delta concluded Stevenson was not truthful in the investigation and terminated her employment for that reason and for misuse of travel passes. When Stevenson appealed the termination internally, she claimed Dais's travel (the subject of the social media posts) was for his daughter's graduation instead of business, but failed to provide any proof of that.

Stevenson filed suit against Delta for a variety of discrimination and retaliation claims. Delta moved for summary judgment on all claims.

As a preliminary matter, Stevenson's counsel did not follow the local rules regarding presentation of facts and evidence at summary judgment. Plaintiff did not provide a Statement of Additional Material Facts and, when asserting facts in her brief, either failed to cite competent supporting evidence or cited to reams of evidence without explaining how the evidence supported the fact. Similarly, Plaintiff did not file a separate Response to the Defendant's Statement of Undisputed Material Facts. Rather, her brief consisted almost entirely of argumentative responses to Defendant's asserted facts, some of which did not even address the statements of fact to which they were responding. Magistrate Judge Walker held that it is not the Court's job to "dig through volumes of documents and transcripts" to find Plaintiff's evidence and refused to consider the facts set out in her brief.

As to the ADA Failure to Accommodate claim, Judge Walker noted that Stevenson never pointed to any evidence that she was "disabled" within the meaning of the ADA. She merely referred to a work injury from which she had already fully recovered and some depression, the severity of which Plaintiff did not provide evidence for. Moreover, Stevenson never requested an accommodation, so there could be no "failure to accommodate." Finally, there was no need for an accommodation because Stevenson could fully perform her job without any accommodation.

Stevenson's ADEA Age Discrimination claim failed because she offered no evidence that she was replaced by a "substantially younger" employee. In fact, she did not even mention the age of any other Delta employee.

Stevenson's ADA Disability Discrimination claim failed because, in addition to failing to show she was disabled, she also cited to no evidence that she was subject to unlawful discrimination. Instead, she cited to her Complaint, and the Local Rules do not allow pleadings to be used as evidence. She also cited to her declaration to prove, *inter alia*, Defendant's conduct caused her depression so severe she went to the hospital. But Judge Walker rejected Stevenson's declaration as a "sham" because it contradicted her deposition testimony without explanation.

Stevenson's Title VII Race and Gender Discrimination claims failed because she never mentioned the race or gender of any of the alleged comparator employees she claimed were treated better than her. And, even if the comparators were all outside Stevenson's protected class (African-American female), Judge Walker found she did not show they were similarly situated. Unlike Stevenson: (1) some were cleared of misconduct, (2) others engaged in misconduct, but not the same misconduct as Stevenson (allowing travel passes to be used for business purposes),

and (3) others allowed their travel passes to be used for business purposes, but were truthful when confronted/investigated. Also, none of the comparators were investigated by the same decisionmaker.

In addition, Judge Walker found that Stevenson had not shown that Delta's two justifications for the termination – allowing others to use her travel passes for business purposes and not being forthcoming in the investigation – were pretext for discrimination. (i) Stevenson was wrong that Delta changed its justification; these were the same reasons cited from the beginning. (ii) She was also wrong that she was treated differently from similarly situated white employees, as shown above. (iii) Her argument that Delta did not investigate her until after she exercised her ADA rights and complained of harassment and retaliation fails because she did not provide evidence that she requested an accommodation or complained of harassment/retaliation. Also, she was investigated as part of a companywide campaign and no reasonable juror would believe Delta invented that campaign just to cover for retaliating against her. (iv) Stevenson's argument that it was impossible to always know the reason a companion uses a travel pass was both untrue and irrelevant. She wasn't fired for failure to "always know" why her companion used the pass. (v) Her argument that Delta deviated from its normal management procedures was not supported by the evidence. (vi) Her argument that she had good performance history is irrelevant, as she was not terminated for poor performance. (vii) Plaintiff's argument that she was fired for a single travel pass violation ignores the fact that she was also fired for being untruthful when confronted about the violation. (viii) Finally, Plaintiff's argument that she did not violate the travel policy does not disprove the fact that, based on its investigation, Delta *honestly believed* she violated the policy and was untruthful in the investigation.

Finally, as to Stevenson's final claim – Retaliation – Judge Walker found the claim failed because Stevenson did not show she engaged in protected activity. In her summary judgment response, she asserted she "exercise[ed] her rights" without ever explaining *how* she exercised her rights or providing any *evidence* that she had done so. And, again, Plaintiff failed to show that Delta's justifications for firing her are pretext.

Judge Walker, therefore, recommended GRANTING summary judgment on all claims.