

Summary Judgment Review

Case Name: *Gray v. Atlanta Structural Concrete Co.*

Nature of the Order: Order Adopting the Report & Recommendation and Granting Summary Judgment

Magistrate Judge: Russell G. Vineyard

District Judge: Timothy C. Batten, Sr.

Claims & Outcomes:

1. **Claim:** Retaliation (Title VII)
 - a. **Outcome:** Summary Judgment Granted
2. **Claim:** Title VII Sex Discrimination – Disparate Pay
 - a. **Outcome:** Summary Judgment Granted

Whether R&R Followed: Yes

For Race/Gender Discrimination Cases:

Race of Plaintiff: N/A

Gender of Plaintiff: Female

Summary

Plaintiff Shana Krishel Gray (“Plaintiff” or “Gray”) was hired by Defendant Atlanta Structural Concrete Company (“Defendant” or “ASCC”) as a laborer in October 2016, when she was paid \$10.00/hr. In January 2017, she transferred to the tool room, where she was responsible for keeping track of ASCC’s inventory of tools, including checking tools out and making people return tools before getting new tools. In March 2017, Gray received a standard \$0.30/hr pay raise upon completing her probationary period. Gray claims her supervisor promised her a \$1.25 pay raise during an April 2017 performance review, but she never received it. In August 2017, the company implemented a new pay structure, under which Gray was given a \$0.70/hr pay raise to \$11.00/hr. Also around August 2017, ASCC created a new “forklift operator” position and Gray asked to be transferred to it. On August 11, she watched a forklift training video and took a test. On August 29, Gray complained that a coworker was sexually harassing her. There was an investigation and the harassing coworker was fired the same day. ASCC then allowed Gray to take time off to recover from the harassment. She returned to work on September 14, 2017. On that day, she was instructed to use the forklift to clear some Styrofoam from a shed to make the place look nice for a September 19 tour of industry representatives. Gray said it would take her “forever” to do this task, given her amount of training, but she didn’t begin until late in the day. She was told to work overnight if necessary, but she left the task incomplete, saying she was afraid to stay at work alone because the harasser might come back. Someone else finished the

task on September 16. Gray resigned on September 20, 2017. She filed an EEOC Charge on March 13, 2018 alleging retaliation (assignment of a dangerous task with insufficient training in retaliation for her complaint of sexual harassment) and pay discrimination (paid less/smaller raises than her male counterparts). Gray later brought suit on these same claims.

ASCC moved for summary judgment on all of Gray's claims. Magistrate Judge Russell G. Vineyard recommended granting summary judgment on all claims. None of the parties objected to this recommendation, and District Judge Timothy C. Batten, Sr. therefore adopted the recommendation as the opinion of the Court. Thus, the reasoning that follows is from Judge Vineyard's Report & Recommendation.

As a preliminary matter, Gray did not file a Statement of Additional Material Facts. Therefore, Judge Vineyard did not consider any facts set forth only in Gray's brief. In addition, Gray only disputed 6 of the 165 claims in ASCC's Statement of Undisputed Material Facts.

As to the retaliation claim, there was no dispute that Gray's complaint of sexual harassment was protected activity. However, Judge Vineyard found that Gray did not suffer from a materially adverse action. Gray argued that ASCC retaliated against her by assigning her the Styrofoam-moving project with inadequate training, such that it would be impossible for her to complete the assignment during the workday, knowing that she was afraid the harasser would come after her if she worked alone at night. However, Judge Vineyard cited case law holding that assignment of jobs within one's job description and inadequate training are ordinary tribulations of the workplace and not sufficient to dissuade a reasonable person from filing a charge of discrimination. (Judge Vineyard also noted that Gray was not, in fact, dissuaded from filing an EEOC Charge.) Judge Vineyard also found that Gray could not show her complaint caused the allegedly materially adverse action, since she requested the transfer to forklift operator and received the allegedly inadequate training before her complaint of sexual harassment. Finally, Judge Vineyard found that Gray had not shown that ASCC's reason for assigning her the Styrofoam-moving task – that the space needed to be cleaned up for a pending industry tour – was pretext. Gray hadn't refuted that justification with any evidence.

As to the sex-based pay discrimination claim, Judge Vineyard first found that it was untimely. Gray had alleged that the March and April 2017 pay raises were discriminatory, but hadn't filed an EEOC Charge within 180 days of those raises. While the Lily Ledbetter Fair Pay Act renews the statute of limitations each time an employee receives a paycheck subject to a discriminatory pay decision, the statute still begins to run once that pay scheme ends. Here, a new pay scheme was put in place – and Gray received another raise – in August 2017 and she didn't file an EEOC Charge within 180 days of that.

As to the merits of the pay discrimination claim, Judge Vineyard found that Gray had not identified any similarly situated male comparator who was paid better than her. All the comparators she identified had supervisory responsibilities and had worked for ASCC much longer than she had. Gray's attempts to call herself a "supervisor" because she controlled when people had to check-out and return tools was not sufficient to make herself similarly situated to people who actually supervised the work of others on a day-to-day basis. Finally, Judge

Vineyard found that Gray hadn't even attempted to rebut ASCC's justification that Gray's initial pay and raises were in accordance with its typical pay scheme that was applied equally to male laborers.

Judge Vineyard, therefore, recommended that summary judgment be granted on all of Gray's claims.

District Judge Batten, following the recommendation of Magistrate Judge Vineyard, GRANTED summary judgment on all claims.