

Summary Judgment Review

Case Name: *Alexander v. Georgia State University*

Nature of the Order: Magistrate Judge's Final Report & Recommendation

Magistrate Judge: Regina D. Cannon

District Judge: Eleanor L. Ross

Claims & Outcomes:

1. **Claim:** Race Discrimination under Title VII
 - a. **Outcome:** Summary Judgment Granted
2. **Claim:** Sex Discrimination under the EPA
 - a. **Outcome:** Summary Judgment Granted
3. **Claim:** Age Discrimination under the ADEA
 - a. **Outcome:** Summary Judgment Granted

Whether R&R Followed:

For Race/Gender Discrimination Cases:

Race of Plaintiff: African American

Gender of Plaintiff: Female

Summary

Plaintiff Kelley Denise Alexander (“Ms. Alexander”) filed her employment-discrimination action against Defendant Georgia State University (“GSU”) under Title VII of the Civil Rights Act of 1964, the Equal Pay Act (“EPA”), and the Age Discrimination in Employment Act, insisting that GSU unlawfully failed to provide written evaluations, failed to promote her, failed to award merit increases commensurate with other white male GSU employees, subjected her to harassment, and terminated her employment. GSU moved for summary judgment as to all claims.

The Court primarily used GSU’s Statement of Material Facts, as Ms. Alexander only disputed two paragraphs, which the Court determined were immaterial to its recommended disposition. Ms. Alexander also failed to provide an argument in favor of her failure-to-promote and wrongful-termination claims, thereby abandoning them. Thus, the Court only reviewed her claims regarding omitted performance evaluations, discriminatory merit increases, and harassment.

Ms. Alexander, an African American female, served as the Ombudsperson for GSU from September 2009 through January 31, 2018. She headed the office of, at most, four individuals – Ms. Alexander, two Assistant Ombudspersons, and an administrative assistant.

During her 8 years with GSU, Ms. Alexander never received a formal written performance evaluation, whereas a white, male colleague did. Dr. Palm testified that she did not rely on written performance evaluations to make salary and

merit-increase decisions for any of the administrative staff reporting to her, including Ms. Alexander. Importantly, Dr. Palm awarded Ms. Alexander merit increases each year that funds were available.

The Court looked at whether the lack of performance evaluation constituted an adverse employment action. It stated that, “Not all employer actions that negatively impact an employee qualify as adverse employment actions.” When performance evaluations and compensation are “inextricably intertwined,” they may constitute an adverse employment action, however, in the present case, Ms. Alexander did not show that the lack of performance evaluation caused any significant change in her employment status. Ms. Alexander did not present evidence that the absence of evaluations had or would have prevented her from obtaining a serious and material improvement in the terms, conditions, or privileges of employment or has resulted in actions taken against her.

Regardless, GSU was able to articulate a “clear and reasonably specific” non-discriminatory basis for its actions by explaining that the nature of the Ombudsperson’s office requires that it be independent and confidential, and thus, Dr. Palm lacked sufficient knowledge to provide feedback. Ms. Alexander, on the other hand, was not able to satisfy her burden of demonstrating “such weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in the employer’s proffered legitimate reasons for its actions that a reasonable factfinder could find them unworthy of credence.” Therefore, the Court found Ms. Alexander to have failed to establish a prima facie case of discrimination.

Regarding her wage discrimination claim, the Court determined GSU’s argument that the claim was administratively barred because it wasn’t included in the EEOC charge to be flawed. Because courts are “extremely reluctant to allow procedural technicalities to bar claims brought under [Title VII],” “the scope of an EEOC complaint should not be strictly interpreted.” The key question is whether a plaintiff’s claim is “like or related to, or grew out of, the allegations contained in her EEOC charge.”

However, the Court also determined Ms. Alexander did not establish a prima facie case of wage discrimination because she did not identify a suitable comparator. The two white male comparators she offered shared no meaningful similarities. Their positions had different responsibilities from Ms. Alexander’s, which required different skills and efforts.

Ms. Alexander also claimed that GSU was responsible for a hostile work environment created by her subordinate. The Court found that Ms. Alexander failed to provide sufficient evidence to support her claim. An employer violates Title VII when “the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim’s employment.” Ms. Alexander only complained of three isolated

incidents, following the subordinate being placed on a performance improvement plan. The Court stated that the incidents involved shouting, finger pointing, and accusations of misconduct, but there was nothing in the record that indicated they were motivated by Ms. Alexander's race or sex. Even Ms. Alexander suggested that the subordinate's conduct was motivated by his being placed on a performance improvement plan.

Finally, the Court also granted GSU summary judgment on Ms. Alexander's Equal Pay Act claim. To establish a prima facie case of discrimination under this statute, a plaintiff must show that the employer paid employees of opposite sexes different wages for equal work for jobs requiring "equal skill, effort, and responsibility, and which are performed under similar working conditions." Although the jobs compared need not be identical, a plaintiff must demonstrate "that she performed substantially similar work for less pay," with the focal point of comparison on the "primary duties of each job." The Court stated Ms. Alexander's EPA claim failed for the same reasons as her Title VII wage-discrimination claim did. Specifically, Ms. Alexander did not provide a suitable comparator.

Thus, GSU was granted summary judgment on all of Ms. Alexander's non-abandoned claims.