

## Summary Judgment Review

**Case Name:** *Kelley v. Howden et al*

**Nature of the Order:** Magistrate's Report & Recommendation

**Magistrate Judge:** Justin S. Anand

**District Judge:** William M. Ray, II

**Claims & Outcomes:**

1. **Claim:** Race Discrimination (Section 1981)
  - a. **Outcome:** Recommend Summary Judgment Granted
2. **Claim:** Race Discrimination (Equal Protection Clause of 14<sup>th</sup> Amendment – Section 1983)
  - a. **Outcome:** Recommend Summary Judgment Granted
3. **Claim:** Race Discrimination (Title VII)
  - a. **Outcome:** Recommend Summary Judgment Granted
4. **Claim:** Retaliation (Section 1981)
  - a. **Outcome:** Recommend Summary Judgment Granted
5. **Claim:** Retaliation (Title VII)
  - 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:** N/A

### Summary

Plaintiff Christen Robinson Kelley (“Kelley” or “Plaintiff”) was hired by Defendant Georgia Emergency Management and Homeland Security Agency (“GEMA”) in October 2016 as a Communications Specialist I. Defendant Catherine Howden (“Howden”) hired Kelley and was her supervisor for most of the events of this case. (GEMA and Howden are collectively referred to as “Defendants”).

Kelley is African-American. Her starting salary was less than that offered to two non-African-American employees hired around the same time as her or shortly thereafter: Uyen Le (“Le”) and Julia Regeski (“Regeski”). They were also promoted more swiftly than her. In November 2017, Howden met with Kelley and said Kelley needed to improve her work performance and carry a bigger workload. In the same meeting, Kelley complained that Howden was treating her differently from other members of the team by excluding her from certain

meetings and emails. In January 2018, Kelley requested a raise and promotion to be “equal to her coworkers.” Howden denied the promotion/raise and instead placed Kelley on a Performance Improvement Plan (“PIP”). Kelley filed an EEOC Charge alleging race discrimination and retaliation. She also complained of the same things in an internal grievance, after which she was transferred to a different supervisor. The new supervisor found Kelley’s performance somewhat improved, but that she still had a lot of room for improvement. Ultimately, however, about 2 months later, the Deputy Director of GEMA concluded Kelley had made enough improvement and removed the PIP. Just over a month later, Kelley was granted the promotion.

Kelley ultimately filed suit against Defendants. She alleged Howden committed race discrimination against her in violation of 42 U.S.C. § 1981 and the Equal Protection Clause of the 14<sup>th</sup> Amendment. She similarly charged GEMA with race discrimination in violation of Title VII. She also claimed both Defendants committed retaliation in violation of Section 1981 (Howden) and Title VII (GEMA). Defendants moved for summary judgment on all claims.

As to the race discrimination claims, Kelley argued that Defendants paid her less than her non-African-American colleagues and waited much longer to promote her compared to those colleagues because of her race. Magistrate Judge Justin S. Anand recommended **granting** summary judgment as to the race discrimination claims. He found that Defendants’ failure to follow internal personnel policies was not direct evidence of discrimination, because it could have resulted from negligence rather than discrimination. As to circumstantial evidence, Judge Anand found that Kelley could not show Le was similarly situated enough to show that Le’s better treatment was due to race. Le simply had significantly better experience and job performance. However, Regeski’s experience and performance were not clearly better than Kelley’s, so Judge Anand held Kelley had raised a *prima facie* case of race discrimination.

However, Judge Anand ultimately found that Kelley failed to prove Defendants’ justifications for Regeski’s higher pay (unique experience working for the Governor) and earlier promotion (Kelley’s performance problems) were pretext for discrimination. Kelley argued that Howden failed to follow GEMA’s personnel policies, but Judge Anand noted that this failure was across-the-board. It did not single out Kelley. Kelley argued that Defendants’ “bent the rules” to hire and promote a non-African-American employee (Regeski) who didn’t meet the experience requirements for the job. But Judge Anand noted that Regeski had counter-balancing qualifications (experience working for the Governor) and that Kelley wasn’t denied the promotion for lack of experience, anyway. Judge Anand similarly found that the months-long gap between Howden first noting Kelley’s performance problems and placing Kelley on the PIP did not prove pretext. Howden could simply have wanted to try informal job coaching first. Finally, Howden’s seeming to single out Kelley for surveillance regarding her use of telework privileges didn’t prove the failure to promote and initial pay were discriminatory....because this incident occurred over 1.5 years after the failure to promote. In sum, Judge Anand found no basis for finding pretext.

Judge Anand also recommended **granting** summary judgment as to the retaliation claims. Kelley argued that she was placed on a PIP in retaliation for protected activity. However, her

November 2017 complaint about being treated differently than her coworkers made no reference to discrimination based on race or any other protected characteristic. And her January 2018 request for a raise or promotion not only didn't mention discrimination, it didn't mention mistreatment of any sort. Thus, Kelley did not oppose unlawful discrimination and did not engage in protected activity.

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