

Summary Judgment Review

Case Name: *Dabney v. Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security*

Nature of the Order: Final Report and Recommendation

Magistrate Judge: Walter E. Johnson

District Judge: Charles A. Pannell Jr.

Claims & Outcomes:

1. **Claim:** Hostile Work Environment (Title VII – race, color, sex and protected activity)
 - a. **Outcome:** Summary Judgment Recommended
2. **Claim:** Discrimination (race, color, and sex – denial of promotion, issued a letter, and investigated)
 - a. **Outcome:** Summary Judgment Recommended
3. **Claim:** Retaliation for engaging in protected speech (Title VII)
 - a. **Outcome:** Summary Judgment Recommended

Whether R&R Followed: Granted in part, denied in part

For Race/Gender Discrimination Cases:

Race of Plaintiff: African American

Gender of Plaintiff: Male

Summary

Patrick Dabney (“Plaintiff”) began working for the Transportation Security Administration (“Defendant”), which is a component of the DHS, at its Office of Law Enforcement/Federal Air Marshal Service (“OLE/FAMS” or “FAMS”) in the Atlanta Field Office (“AFO”) in 2002; he has been a Supervisory Federal Air Marshal (“SFAM”) since 2008.

Plaintiff is an African American male who, at the time, had an African American Supervisory Air Marshal in Charge (“SAC”), Arnold Cole.

In 2016, Plaintiff applied to become the Assistant Supervisory Air Marshal in Charge (“ASAC”), was deemed qualified, and placed on a candidate referral list. As part of the process, SAC Cole ranked Plaintiff as his first-choice recommendation for the AFO ASAC position. Two Caucasian males were ranked as his second and third choices (Brian Beverly and James Punchard). SAC Maria Perez from the Miami Field Office ranked Plaintiff as her fifth choice, and the eventual selectee, Mark Bishop, as number one. Rankings then go to a Promotion Panel, who then selects the recipient of the promotion. While Plaintiff’s resume was discussed, ultimately the Panel noticed that he only had experience in one field office and didn’t have a secondary J-Band role outside of the field office. Bishop and Punchard both had served in positions outside of their field

offices. The Panel voted unanimously to select Bishop and Punchard the ASAC positions. The senior leadership team concurred with the selections and gave the two Caucasian men the promotions.

The following month, three divisions within the TSA received an anonymous letter from “Atlanta Field Office employees” alleging that Plaintiff abused, harassed, intimidated, blackmailed, and sexually harassed “women at every level at the ATL field office.” The letter also complained about SAC Cole (African American) because he “favored and shielded” Plaintiff, the ombudsman (non-African American) and the Office of Inspections (“OOI” - leadership of which was non-African American). In accordance with TSA Management Directive, allegations of sexual harassment involving FAMS were referred to OOI for investigation. The following month, Plaintiff received a cease-and-desist order, notifying him of the allegations against him and instructing him to refrain from any misconduct or retaliation. OOI investigated over the next four months, which did not result in discipline against Plaintiff. OOI issued a statement regarding the results, which included that Plaintiff failed to treat employee[s] with dignity and respect, created a hostile (non-gendered based) work environment, and employees believed that he would retaliate against them for providing information to OOI about him. Plaintiff was issued Plaintiff the LOR for “conduct unbecoming a supervisor.” Due to the anonymous nature of the letter, it was impossible to separate Plaintiff from the alleged victims.

The magistrate judge determined that Plaintiff’s hostile work environment claim was insufficient to survive summary judgment, because Plaintiff did not point to any conduct that was sufficiently severe or pervasive to alter the terms or conditions of his employment and create an abusive working environment.

The magistrate judge also determined that summary judgment should be granted for Defendant on Plaintiff’s race/color discrimination claim because (1) the Panel’s unanimous decision based off others’ rankings of candidates and resumes was not countered by evidence showing that the disparity in qualifications was such that no reasonable person could have choice Bishop or Punchard over him; (2) Plaintiff pointed to no similarly-situated TSA employee outside his protected class against whom anonymous allegations were made who was not investigated; and (3) there was no evidence suggesting that Plaintiff’s race or color had anything to do with why the TSA opened the investigation (especially since the person who recommended it was African American).

Finally, the magistrate judge also recommended summary judgment be granted on Plaintiff’s retaliation claim because no evidence was offered to show that Plaintiff had been harmed, and no evidence was offered that Defendant dissuaded Plaintiff from making or supporting an EEOC complaint.