

## **Summary Judgment Review**

**Case Name:** *Johnson v. American Family Insurance*

**Nature of the Order:** Order

**Magistrate Judge:** Christopher C. Bly

**District Judge:** Mark L. Brown

### **Claims & Outcomes:**

1. **Claim:** Discrimination under Title VII
  - a. **Outcome:** Summary Judgment Granted
2. **Claim:** Retaliation under Title VII
  - a. **Outcome:** Summary Judgment Granted
3. **Claim:** Discrimination under 42 U.S.C. § 1981
  - a. **Outcome:** Summary Judgment Granted
4. **Claim:** Retaliation under 42 U.S.C. § 1981
  - a. **Outcome:** Summary Judgment Granted

**Whether R&R Followed:** Adopted

### **For Race/Gender Discrimination Cases:**

**Race of Plaintiff:** African American

**Gender of Plaintiff:** N/A

### **Summary**

Plaintiff, an African American woman, was hired as an insurance agent for Defendant American Family Insurance in 2013. During plaintiff's time as an agent, several complaints were filed against her for being rude or disrespectful. The complaints came from multiple sources, including within American Family Insurance's corporate structure, from an affiliated company, and a from third party review on Google. In 2015, Plaintiff's then supervisor, Marlin, issued a warning regarding her rude behavior and in 2016 she was barred from using an affiliate service due to her unprofessional behavior. Marlin issued another warning in April 2016. In May 2016, Plaintiff complained internally of race discrimination from Marlin, but later declined to proceed with the complaint. Plaintiff was assigned new supervisors in November 2016, who were aware of her past unprofessional behavior. Three more complaints were filed about plaintiff before she was terminated in April 2017. Plaintiff did not respond to defendant's motion for summary judgment and did not submit a statement of facts. There are three potential adverse employment actions at issue: (1) the decision to bar Plaintiff from using the affiliate service, (2) the written warnings, and (3) Plaintiff's ultimate termination.

Judge Bly found no direct, circumstantial, or mixed-motive evidence of discrimination. The only possible direct evidence was a statement from Marlin calling "black women divas [and]

black men boys.” However, the context of the statement was unknown and Marlin was not involved in the adverse decision making. Therefore, Judge Bly found this comment not conclusive regarding the existence of direct evidence of discrimination. As for circumstantial evidence, Defendants argue that Plaintiff cannot establish a *prima facie* case of discrimination because she did not show that similarly situated employees outside her class were treated differently. Defendants also argue that even if Plaintiff does meet her burden for circumstantial evidence, she nonetheless fails to show that she was terminated for pretextual reasons. Judge Bly agreed on both counts, as Plaintiff’s chosen comparators did not engage in similar misconduct, and Plaintiff was terminated for a well-documented history of rude behavior. No further evidence was provided by Plaintiff, so for the same reasons, Judge Bly found insufficient evidence to prove a mixed-motive theory of discrimination. Thus, the Court recommended summary judgment in favor of the defendants on both discrimination claims.

Judge Bly also recommended granting the defendant’s summary judgment motion regarding Plaintiff’s retaliation claims. Judge Bly found that Plaintiff did not establish a strong enough causal connection between her protected activity (her complaint of racial discrimination from May 2016) and the adverse actions that took place. First, her complaint was filed in May 2016. At least one of the adverse actions, barring her from an affiliate service, occurred three months prior to her complaint. Thus, they could not have been causally connected. Second, the decision to terminate Plaintiff occurred eleven months after her complaint, too long of a gap to establish causation. Though the third adverse action, the written warnings, occurred close in time to Plaintiff’s complaint, there were well-documented reasons for the warnings that had nothing to do with her complaint. For the above reasons, the Court recommended granting summary judgment in favor of the defendants on the retaliation complaint as well. Using the same pretext analysis as in the discrimination claim, Judge Bly also found no pretextual reason for the retaliation claim.

The Court further determined that Plaintiff was an independent contractor for the insurance company, not an employee. Plaintiff set her own hours, furnished her own office space, was responsible for taxes, and had the freedom to grow her own business as she saw fit. For these reasons, Judge Bly determined she was an independent contractor. As Title VII protections are only available for employees, this finding only bolstered the recommendation of summary judgment.

The Court denied a motion for sanctions that was filed with the motion for summary judgment. Because Plaintiff did not object to the R&R, the District Court adopted the Magistrate Judge’s recommendations.