

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

MARGARET YOUNG,)
)
Plaintiff,)
v.) CIVIL ACTION NO. 82-1089-A
)
)
JOHN LEHMAN, Secretary,)
Department of the Navy,)
)
Defendant.)

FINDINGS OF FACT + D
AND CONCLUSIONS OF LAW

This action is brought by Margaret Young (plaintiff), a black female and a federal employee, against the Secretary of the Navy, because she was not selected for a position as Supervisory Personnel Management Specialist in 1977. She claims that denial to this promotion violated her rights under §717 of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §2000e-16.

1. Plaintiff is a black female citizen of the United States who resides in Capitol Heights, Maryland; she commenced her employment with the Department of Navy on May 17, 1971 as a GS-9, she was promoted to GS-11 in September of 1971 and to GS-12 in September of 1972; she is presently employed as a Personnel Staffing Specialist, GS-12, with Naval Material Command (NAVMAT).

2. In late 1976 and early 1977, the Naval Ship Engineering Center (NAVSEC), which had been located in Hyattsville, Maryland,

merged with and moved to be co-located with NAVSEA in Arlington, Virginia.

3. On November 1, 1976 and November 11, 1976, NAVSEC issued vacancy announcements, each advertising a single position of Supervisory Personnel Management Specialist GS-201-13. The duty station of these two positions was to be Hyattsville, Maryland and then in Arlington, Virginia, after NAVSEC moved.

4. Plaintiff, who was then a Personnel Management Specialist GS-210-12, submitted an application for the Supervisory Personnel Management Specialist positions along with six other applicants.

5. John McCabe, Personnel Director of NAVSEA, was the selecting official for the two positions in question.

6. Nancy Panella was Acting Director of the NAVSEC Civilian Personnel Division.

7. William Fordyce, a Personnel Specialist, was designated to assist Panella and McCabe in the selection process.

8. Rosina McWhirter, a Personnel Management Specialist, replaced William Fordyce as the assistant in the selection process.

9. Yvonne T. Jones, an EEO Specialist GS-13, was assigned to the NAVSEA headquarters EEO office.

10. In October 1976, Nancy B. Panella, the then Acting Director of the NAVSEC Civilian Personnel Division, sent Margaret Young to Crystal City, 20 miles away from any type of supervision, together with a trainee to be supervised and directed by Mrs. Young.

11. Christopher Iekel was detailed from Hyattsville, Maryland to Crystal City, Virginia in the position of Supervisory Personnel

Management Specialist from November 1, 1976 until the end of March, 1977. This detail was contrary to Navy Regulations, as Regulation 335 requires that a detail of more than 60 days to a position with known promotion potential be competitive to enable all eligible candidates to apply for the detailed position.

12. Following announcement of the two Supervisory Personnel Management Specialist positions and contrary to Navy Regulations, Nancy B. Panella conducted interviews of the job applicants. When this violation of regulations became known the interviews ceased. The applicable regulations required a selection panel to be used to fill all supervisory positions regardless of grade.

13. After Ms. Panella's interviews were terminated, a selection panel was established by William Fordyce to evaluate and rank applicants for the position in question.

14. The panel consisted of Raye J. Montague (Raye Parratt at the time), Arthur L. Fuller and Louis H. Howard. Mrs. Montague had served on approximately thirty selection panels for numerous positions, Mr. Fuller during his twenty-two years of service with the Navy had served on numerous selection panels and Mr. Howard by background was qualified to be on the panel. Mr. Fuller served as chairman of the panel and was designated to be the EEO representative.

15. Preliminarily, the panel established a plan for evaluating and rating all applicants. Each panel member was given the position description for the vacancy, the standard Form 171 for each applicant and the vacancy announcement. Each panel member completed an initial rating sheet based on the Form 171 and a form based upon the results of a discussion among the panel members.

16. The procedures followed by the panel were not adopted until after discussions among the panelists and with Ms. Panella and had received her approval.

17. After the panel was formed, one member, Raye Montague, learned from the standard Form 171 application that her name had been added as a reference to plaintiff's application. Mrs. Montague had known Mrs. Young in the former's capacity of Federal Women's Program Coordinator. This matter was called to the attention of the panel chairman, and he in turn contacted Rosina McWhirter, who informed Ms. Panella. Thereafter, Ms. Panella contacted Mrs. Montague, and instructed her to serve on the panel anyway and indicated that the reference designation did not matter. The panel evaluated the seven job applicants pursuant to the system developed by Nancy Panella and the panel members. On January 24, 1977 the panel completed the Merit Promotion Certificate which reflected the final conclusions of the panel. Plaintiff and a second job applicant were listed by the panel as the best qualified applicants for the two Supervisory Personnel Management Specialist positions. Christopher Iekel and one other applicant were listed in a second grouping as being highly qualified for the two positions.

18. The panels Merit Promotion Certificate listing the qualified applicants and their rating sheets were delivered to Rosina McWhirter on January 24, 1977. I find that Rosina McWhirter and Nancy Panella were disappointed in the panels recommendation because there had been a predetermination to give the position in question to Christopher Iekel, a white male.

19. Supportive of this predetermination are the following facts: (1) the unauthorized interviews by Ms. Panella after the vacancies were announced; (2) the detailing of Iekel to one of the positions for a period in excess of that permitted by Navy Regulations; (3) the extraordinary scrutiny given to the first panels recommendations and ratings; (4) exchanges between McWhirter and Panella concerning what would happen if the plaintiff was selected for the position.

20. A series of events transpired after the original panel's Merit Promotion Certificate listing the qualified candidate that resulted in a decision to disregard the panel's recommendations and to create a new panel.

21. Notwithstanding the first panel's findings, a procedure existed whereby John McCabe, the selecting official, could have disregarded the panel's recommendation and appointed someone else from the applicant list. This required a letter explaining why the panel's recommendations were not being followed. The failure to write such a letter was due in part to a fear that the present plaintiff would bring a lawsuit, but in effect it was a poorly disguised effort to cover the selecting official's desires to have Mr. Iekel appointed to the position in question.

22. After a new panel was constituted, it established new procedures for reviewing applicants and ultimately made a determination that Mr. Iekel was the best qualified person for the position and the plaintiff was ranked number six out of eight applicants.

23. In time, the second panel's recommendations were followed

and Iekel was appointed to the disputed position.

24. Since the second panel ranked Iekel as the best qualified, their work sheets were never given the scrutiny that the first panel's findings were subjected to. Christopher Iekel was selected to the position in question on March 25, 1977, and thereafter, the plaintiff commenced an EEO complaint. This did not rectify her grievances, and on June 1, 1982, she received official notice that her complaint of discrimination was rejected and was given authority to commence the present action.

25. The second position, for a Supervisory Personnel Management Specialist GS-13, referred to in earlier findings, has never been filled.

26. Plaintiff has not been promoted to a higher grade level since 1972.

CONCLUSIONS OF LAW

1. This court has jurisdiction pursuant to 42 U.S.C. §2000e-16, Title VII, of the Civil Rights Act of 1964 as amended. This act provides the exclusive remedy for federal employees' claims of discrimination based on race. Brown v. GSA, 425 U.S. 820 (1976).

2. Plaintiff established a prima facie case by showing that the selecting officials, on a predetermined basis, had decided to hire a white male for the position in question. This created a rebuttable presumption that the employer discriminated against her. Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981); McDonnell Douglas Corporation v. Green, 441 U.S. 792 (1973).

3. After the court denied defendant's motion to dismiss at the conclusion of the plaintiff's evidence, the case took on a new dimension. As the court then, from all the evidence, had to determine whether plaintiff's rejection was discriminatory within the meaning of Title VII. United States Postal Service Board of Governors v. Aikens, NO. 81-1044 (decided April 4, 1983).

4. Plaintiff has carried her burden of persuasion by convincing the court that defendant's proffered explanation for the action taken is unworthy of credence. (Burdine and Aikens).

5. That as the prevailing party the plaintiff is entitled to the following relief:

(1) Retroactive promotion to GS-13, effective February 15, 1977 (court allows 19 days for selecting official to act on first panel's findings).

(2) Back pay from February 15, 1977 to the time plaintiff is promoted to GS-13.

(3) Attorneys fees and costs. 42 U.S.C. §2000e-5.

An order is this day being entered granting the above relief and setting a schedule for disposition of the fee and cost issues.

DATE: May 20, 1983

Richard L. Williams
UNITED STATES DISTRICT JUDGE

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FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

MARGARET YOUNG,)	
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Plaintiff,)	
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v.)	CIVIL ACTION NO. 82-1089-A
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JOHN LEHMAN, Secretary,)	
Department of the Navy,)	
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Defendant.)	

O R D E R

Based upon the attached Findings of Fact and Conclusions of Law, the Court has determined that the plaintiff was the victim of discrimination, in violation of Title VII. She is awarded the following relief:

(1) Retroactive promotion to a GS-13, effective February 15, 1977 (court allows 19 days for selecting official to act on first panel's findings).

(2) Back pay from February 15, 1977 to the time plaintiff is promoted to GS-13.

(3) Attorneys fees and costs. 42 U.S.C. §2000e-5.

Counsel for the plaintiff must file a fee and cost application by June 1, 1983. Counsel for defendant must file a response by June 12, 1983. This matter is continued on the Court's docket until the fee and cost issues are resolved.

The Clerk is directed to mail a copy of this Order and the Court's Findings of Fact and Conclusions of Law to counsel of record.

DATE: May 20, 1983

Richard L. Williams
UNITED STATES DISTRICT JUDGE