

United States Court of Appeals For the First Circuit

No. 08-1724

GARY DOLAN,
Plaintiff, Appellant,

v.

SUNGARD, d/b/a SUNGARD SECURITIES FINANCE, LLC,
Defendant, Appellee,

GLOBAL COMPLIANCE SERVICES, INC.,
Defendant.

Before

Boudin, Lipez and Howard,
Circuit Judges.

JUDGMENT

Entered: January 29, 2009

Before the court is pro se appellant Gary Dolan's appeal from the district court's entry of summary judgment dismissing all of his claims against his former employer, appellee SunGard Securities Finance, LLC ("SunGard"), and appellee Global Compliance Services, Inc., a SunGard contractor. After careful de novo review of the record and consideration of the parties' pleadings, and indulging every inference in appellant's favor as the non-moving party, we are persuaded that the district court's judgment, which was handed down in three carefully reasoned and detailed opinions, is correct. We therefore affirm the judgment for substantially the reasons set forth by the district court, adding only the following.

Appellant's case rests on his claim of impermissible sex discrimination under Title VII, 42 U.S.C. § 2000e, and its state-law analog, New Hampshire Rev. Stat. Ann. chapter 354-A. Despite extensive discovery and briefing in the district court, appellant was never able to show that any of the conduct or comments by his supervisor that he found objectionable were sexual in nature or

were directed at him because of his gender. Rather, the record shows that at his deposition, appellant described his supervisor as "terrible at managing people" and related incidents during which his female co-workers also bore the brunt of her displeasure. It is well-established that Title VII prohibits harassment and hostile conduct based on a protected characteristic such as sex, but it does not establish a "general civility code" for the workplace. Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 81 (1998). Moreover, we have explained that "a supervisor's unprofessional managerial approach and accompanying efforts to assert her authority are not the focus of the discrimination laws." Lee-Crespo v. Schering-Plough Del Caribe, Inc., 354 F.3d 34, 46-47 (1st Cir. 2003). It is not enough that appellant was the only male in his department; he had to show that he was treated differently because of his gender.

Appellant has only been able to identify four incidents, all of which occurred during his last year of employment (and no incidents that occurred during the previous three and one-half years, when he claims his supervisor constantly harassed and abused him) that he asserts created a hostile work environment. There is no showing that these isolated incidents -- a disagreement about a co-worker's authority during his supervisor's absence that led to his supervisor telling him to "shut up"; once being called "useless" when he failed to complete an assignment; once being denied his requested vacation time; and once failing to get his supervisor's support when he complained that a co-worker had discarded his printout from the office's shared printer -- occurred because of appellant's gender, and they simply do not add up to the severe, pervasive, physically-threatening conduct that impedes an employee's work performance and constitutes a hostile work environment under Title VII. Lee-Crespo, 354 F.3d at 46; Billings v. Town of Grafton, 515 F.3d 39, 48 (1st Cir. 2008).

Appellant's retaliation claim rests on a similarly shaky factual foundation. The passage of time between appellant's formal complaint against his supervisor and his termination more than seven months later undercuts any inference of retaliation. Benoit v. Technical Mfg. Corp., 331 F.3d 166, 175 (1st Cir. 2003); Lewis v. Gillette Co., 22 F.2d 22, 25 (1st Cir. 1994). In addition, the fact that appellant received a favorable performance review and a raise just months after complaining "cut[s] against any plausible inference of retaliation." Bennett v. Saint-Gobain Corp., 507 F.3d 23, 32 (1st Cir. 2007). There are simply no facts in the record to support appellant's claim that he was discharged in retaliation for filing his complaint, rather than for the legitimate, non-discriminatory reasons cited by SunGard: his increasingly hostile and negative attitude in the workplace, coupled with his statements about owning a gun.

Finding that the district court appropriately granted appellees' motions for summary judgment, we summarily **affirm**. See 1st Cir. R. 27.1. Appellant's motion for reconsideration of our denial of his request for oral argument is **denied**.

By the Court:

/s/ Richard Cushing Donovan, Clerk.

cc:
Dolan, Gary
Hannum, William E., III
Lynch, Shannon M.