

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION**

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

Civil Action No. 5:15-cv-05079-JLV

THE SOUTH DAKOTA)

DEPARTMENT OF SOCIAL)

SERVICES,)

Defendant.)

AMENDED COMPLAINT

Plaintiff, United States of America (“United States”), alleges:

1. This action is brought on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the action under 42 U.S.C. §§ 2000e-5(f) and 2000e-6(a), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in the Western Division of the United States District Court for the District of South Dakota, pursuant to 28 U.S.C. § 1391, because defendant South Dakota Department of Social Services (“DSS”) maintains a place of

business in this judicial district and a substantial part of the events giving rise to this action took place in this judicial district.

PARTIES & CHARGE OF DISCRIMINATION

4. Defendant DSS is a governmental agency created pursuant to the laws of the State of South Dakota.

5. DSS is a person within the meaning of 42 U.S.C. § 2000e(a), and an employer within the meaning of 42 U.S.C. § 2000e(b).

6. DSS has offices throughout South Dakota, including an office on the Pine Ridge Native American Reservation, which primarily serves Native Americans living on the reservation. DSS's Pine Ridge Office offers assistance to these South Dakotans in the following areas: Adult Services and Aging; Supplemental Nutrition Assistance; Medical Eligibility; Children and Families; Long-Term Care; Medicare Savings; and Temporary Assistance for Needy Families.

7. DSS has designated certain jobs on its workforce as "Specialist." Those jobs include the following three positions: Employment Specialist, Economic Assistance Benefits Specialist, and Adult Services and Aging Specialist. There are 23 Specialist positions in DSS's Pine Ridge Office.

8. Upon information and belief, Specialist positions are among the higher-paying positions at DSS.

9. In October 2010, Cedric Goodman ("Goodman"), a Native American,

applied for the Employment Specialist position with DSS at its Pine Ridge Office. On or about December 10, 2010, he was not selected for the vacancy. DSS informed Goodman that he had not been selected for the vacancy by letter dated December 14, 2010.

10. Upon receiving notice of his non-selection, Goodman filed a timely charge of discrimination (EEOC Charge No. 440-2012-00129) with the Equal Employment Opportunity Commission (“EEOC”), in which he alleged, among other things, that DSS discriminated against him because of his race (Native American) when he was not selected for an Employment Specialist position.

11. In his charge of discrimination, Goodman further alleged that DSS has a policy of hiring white applicants in the higher-paying Specialist positions, such as Employment Specialist, while only hiring Native-American applicants for lower paying positions.

12. Pursuant to Section 706 of Title VII, 42 U.S.C. § 2000e-5, the EEOC investigated the charge of discrimination and found reasonable cause to believe that a Title VII violation had occurred with respect to Goodman.

13. The EEOC further found reasonable cause to believe that DSS had violated Title VII with respect to a class of Native American applicants who had been discriminated against and denied hire for employment with the defendant.

14. The EEOC attempted unsuccessfully to achieve a voluntary resolution of the

charge through conciliation, and subsequently referred the charge to the United States Department of Justice.

15. All conditions precedent to the filing of this Complaint have been performed or have occurred.

STATEMENT OF FACTS

16. Upon information and belief, from January 1, 2010 to December 31, 2012, DSS posted 19 Specialist positions at its Pine Ridge Office. Although approximately 40% of the applicants in this time period were Native American, DSS ultimately hired 11 (92%) white candidates and one (8%) Native American candidate. DSS canceled the other nine vacancies without making a selection. Moreover, from January 1, 2007 to December 31, 2013, DSS posted to the general public 38 Specialist positions at its Pine Ridge Office. Although approximately 45% of the applicants in this time period were Native American, DSS ultimately extended offers to hire 20 (91%) white candidates and two (9%) Native American candidates. DSS canceled the other 18 vacancies without making a selection. In some cases, DSS passed over a well-qualified Native American candidate in favor of a white applicant with lesser qualifications. In others, DSS canceled vacancy announcements rather than select a well-qualified Native American candidate.

17. On or around September 21, 2010, DSS posted a vacancy announcement for an Employment Specialist at its Pine Ridge Office.

18. According to the employer's vacancy announcement, an Employment Specialist with DSS works with individuals who receive benefits based on economic need to reduce barriers to employment, and assists individuals in locating employment opportunities.

19. Among the employer's preferred qualifications for the vacant Employment Specialist position were: a bachelor's degree in any of a number of various fields of study; knowledge of the principles, practices, and methods of social programs; knowledge of career counseling methods and techniques; and knowledge of Native American culture.

20. The hiring official for the Employment Specialist position was Employment Specialist Supervisor Keith Kearns ("Kearns"). Kearns indicated to the EEOC that the criteria he used in evaluating candidates for the job were analytical skills, effective communication skills, knowledge of Native American culture, work experience in a similar capacity, and a bachelor's degree.

21. In October 2010, Goodman applied for the Employment Specialist position with DSS.

22. At the time of his application, Goodman met all of the objective qualifications for the Employment Specialist position at Pine Ridge. Goodman has

bachelor's degrees in Human Services and Business Administration and has completed approximately 30 credit hours towards a master's degree.

23. Goodman also has five years of experience as a social worker, three-and-a-half years of experience as a supervisory social worker with the Bureau of Indian Affairs, and four years of experience as an Employment Specialist with the South Dakota Job Seeker Services.

24. DSS interviewed six applicants for the position, including Goodman. Five of those interviewed were Native Americans.

25. Many of these other Native American applicants were also well qualified for the Employment Specialist position.

26. After interviewing Goodman and the other Native Americans for the position, DSS decided to hire no one for the Employment Specialist position and cancelled its requisition for the Employment Specialist position on December 10, 2010.

27. The next business day, December 13, 2010, DSS continued to seek applicants for the Employment Specialist position by opening another vacancy announcement for an Employment Specialist at Pine Ridge.

28. As with the vacancy announced in or around September 2010, Kearns was the hiring official for the Employment Specialist vacancy at Pine Ridge that was announced in December 2010.

29. Kearns selected a white applicant for the position of Employment Specialist at Pine Ridge. At the time of her selection, the white applicant was a 2010 college graduate with limited work experience mostly centered in a retail and office environment. She had no work experience that met the employer's preferred qualifications.

30. Upon information and belief, qualified Native American applicants have been rejected by DSS for other jobs as Specialist based upon their race.

COUNT I

(DSS Discriminated against Goodman and Similarly-Situated Applicants)

31. DSS discriminated against Goodman in violation of Title VII, 42 U.S.C. § 2000e-2(a), by failing to select him as an Employment Specialist for the vacancy announced in or around September 2010.

32. DSS discriminated against Goodman and similarly-situated Native Americans in violation of Title VII, 42 U.S.C. § 2000e-2(a), among other ways, by:

- a. cancelling vacancy announcements for Specialist positions at its Pine Ridge Office rather than hiring well-qualified Native American applicants; and
- b. using subjective and arbitrary hiring practices to reject qualified Native American job applicants from a series of Specialist positions in the Pine Ridge Office in favor of less qualified non-native applicants.

PRAYER FOR RELIEF FOR COUNT I

WHEREFORE, the United States prays that this Court grant the following relief for Count I of its Complaint:

- A. Enjoin DSS from further discriminating against Goodman and other similarly-situated Native American applicants in hiring for its Specialist positions;
- B. Require DSS to adopt a selection process that complies with Title VII;
- C. Place Goodman in the next available Employment Specialist position at DSS's Pine Ridge Office;
- D. Award backpay and all other appropriate monetary relief to Goodman and other similarly-situated Native American applicants in an amount to be determined at trial to make them whole for the loss they suffered as a result of the discriminatory conduct alleged in this Complaint;
- E. Award Goodman and other similarly-situated Native American applicants any prejudgment interest on the amount of lost wages and benefits determined to be due;
- F. Order DSS to institute policies, practices, and procedures to ensure a non-discriminatory workplace, including but not limited to implementing appropriate applicant screening and interviewing policies to ensure equal employment opportunity for all applicants, and providing adequate training to all employees and officials regarding discrimination;

G. The United States prays for such additional relief as justice may require, together with its costs and disbursements in this action.

COUNT II
(DSS Engaged in a Pattern or Practice of Disparate Treatment)

33. The acts, policies and practices of DSS described above constitute a pattern or practice of intentional resistance to the full enjoyment of the rights of Native American applicants to equal employment opportunities without discrimination based on race. Under both Sections 706 and 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f) and § 2000e-6(a), the United States has authority to bring a civil action requesting relief.

34. DSS engaged in a pattern or practice of discrimination against Native American applicants in violation of Title VII, 42 U.S.C. § 2000e-2(a), among other ways, by:

- a. cancelling vacancy announcements for Specialist positions at its Pine Ridge Office rather than hiring well-qualified Native American applicants; and
- b. using subjective and arbitrary hiring practices to reject qualified Native American job applicants from a series of Specialist positions in the Pine Ridge Office in favor of less qualified non-native applicants.

PRAYER FOR RELIEF FOR COUNT II

WHEREFORE, the United States prays that this Court grant the following relief for Count II of its Complaint:

- H. Enjoin DSS from further discriminating against Native American applicants in hiring for its Specialist positions at its Pine Ridge Office;
- I. Require DSS to adopt a selection process that complies with Title VII;
- J. Place Native American applicants who previously were discriminated against by DSS in the next available Specialist positions at DSS's Pine Ridge Office;
- K. Award backpay and all other appropriate monetary relief to Native American applicants in an amount to be determined at trial to make them whole for the loss they suffered as a result of the discriminatory conduct alleged in this Complaint;
- L. Award Native American applicants any prejudgment interest on the amount of lost wages and benefits determined to be due;
- M. Order DSS to institute policies, practices, and procedures to ensure a non-discriminatory workplace, including but not limited to implementing appropriate applicant screening and interviewing policies to ensure equal employment opportunity for all applicants, and providing adequate training to all employees and officials regarding discrimination;

N. The United States prays for such additional relief as justice may require,
together with its costs and disbursements in this action.

Date: November 30, 2016

Respectfully submitted,

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

BY: DELORA L. KENNEBREW
Chief

/s/ Jeffrey Morrison
JOHN P. BUCHKO
(D.C. Bar No. 452745)
Deputy Chief
JEFFREY MORRISON
(MO Bar No. 44401)
CATHERINE SELLERS
(WA Bar No. 44563)
ALISA PHILO
(CA Bar No. 295892)
Trial Attorneys
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
PHB 4518
Washington, D.C. 20530
Telephone: (202) 353-1845
Facsimile: (202) 514-0655
Email: Jeffrey.Morrison@usdoj.gov

Attorneys for the United States of America

CERTIFICATE OF SERVICE

I, Jeffrey Morrison, hereby certify that on November 30, 2016, a true and correct copy of the foregoing Amended Complaint was served on the following attorneys of record for the South Dakota Department of Social Services via the Court's Electronic Case Filing (ECF) system:

Gary P. Thimsen
Woods, Fuller, Shultz & Smith, P.C.
300 S. Phillips Ave., Suite 300
Sioux Falls, SD 57104
(605) 336-3890
Fax: 605-339-3357

Joel E. Engle III
Woods, Fuller, Shultz & Smith, P.C.
300 S. Phillips Ave., Suite 300
Sioux Falls, SD 57104
(605) 336-3890
Fax: 605-339-3357

/s/ Jeffrey Morrison
Jeffrey Morrison (MO Bar No. 44401)
Trial Attorney
United States Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4613
Washington, D.C. 20530
Telephone: (202) 353-1845
Facsimile: (202) 514-1005
Jeffrey.morrison@usdoj.gov