

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

March 23, 1995

CHESTER MACKENTIRE, JR.,)
Complainant,)
)
v.) 8 U.S.C. 1324b Proceeding
) OCAHO Case No. 93B00081
RICOH CORPORATION, et al,)
Respondents.)
_____)

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY
DECISION

I. Procedural/Factual Background

On July 25, 1988, Chester A. Mackentire, Jr. (complainant), filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC) against Ricoh Corporation, et al, (respondent) alleging racial discrimination. EEOC issued a determination finding cause to believe a violation of Title VII had been committed and a right-to-sue letter. On February 13, 1990, complainant filed a civil action entitled Mackentire v. Ricoh Corporation, et al. in the United States District Court for the Northern District of California. He alleged that he was hired by respondent on August 31, 1987, and discharged on or about July 15, 1988 because of his race or national origin, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq.

By order date February 27, 1992, The District Court granted summary judgment in Ricoh's favor. (Summary Judgment). It was granted on the basis of the factual finding that Mackentire's discrimination claims lacked merit as Ricoh articulated a legitimate, non-discriminatory reason for his dismissal (specifically, that the

5 OCAHO 746

department Mackentire worked in was losing money and that it was a legitimate business decision to scale down that department's staff, including laying off Mackentire).

The Court of Appeals for the Ninth Circuit affirmed the Summary Judgment on June 28, 1993.

While the appeal was pending, complainant initiated this proceeding under the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986), enacted as an amendment to the Immigration and Nationality Act of 1952 (INA), as amended by the Immigration Act of 1990 (IMMACT), Pub. L.

No. 101-649, Nov. 29, 1990, 104 Stat. 4978 (1990). On July 20, 1992 the Department of Justice's Office of Special Counsel (OSC) accepted a charge of discrimination referred by the EEOC, alleging that complainant was discharged because of citizenship discrimination. On January 21, 1993, OSC informed complainant that it had decided not to file a complaint on his behalf in this matter, but that he is entitled to file a complaint on his own behalf with the Office of the Chief Administrative Hearing Officer (OCAHO). On April 20, 1993, complainant timely filed his complaint with OCAHO alleging that respondent violated 8 U.S.C § 1324b by knowingly and intentionally discriminating against him on the basis of both citizenship and national origin discrimination.

On April 27, 1993, the Chief Administrative Hearing Officer (CAHO) issued a Notice of Hearing in which he assigned this case to Administrative Law Judge (ALJ) Milton Frosburg. Following an extension granted for good cause shown, respondent timely filed its answer on July 11, 1993.

In its answer, respondent denied the substantive allegations in the complaint that it violated 8 U.S.C. § 1324b. In addition, respondent asserted multiple affirmative defenses, including that the complaint is barred by res judicata and collateral estoppel based on the Summary Judgment in the District Court.

On August 13, 1993, ALJ Frosburg dismissed the national origin claims for lack of subject matter jurisdiction.

On August 16, 1994 the CAHO reassigned this case to the undersigned.

On December 15, 1994, respondent filed its motion for summary decision with a supporting memorandum of points and authorities and declaration of counsel. In that motion respondent alleged that summary decision should be granted in its favor because the complaint is barred by the doctrine of collateral estoppel, and failed to comply with the applicable statute of limitations.

Complainant requested and received an extension of time until March 15, 1995, to file its response to respondent's motion. In a letter dated March 14, 1995, which was not received by this office until March 20, 1995, five days after complainant's response to the motion was due, complainant requested an additional extension of time to respond to respondent's motion for summary decision on the grounds that respondent has not responded to his discovery request and that he has not received a pending disclosure under the Freedom of Information Act. Complainant asserts that these disclosures are relevant to factual issues alleged in the motion for summary decision. Respondent has countered by arguing that the two grounds asserted for the granting of the summary decision are legal, not factual ones.

II. *Standards of Decision*

The rules of practice and procedure governing these proceedings provide for the entry of summary decision if the pleadings, affidavits, and material obtained by discovery or otherwise show that there is no genuine issue as to any material fact. 28 C.F.R. § 68.38(c).

Because this rule is similar to and based upon Rule 56(c) of the Federal Rules of Civil Procedure, which provides for the entry of summary judgment in Federal court cases, it has been held that case law interpreting Rule 56(c) is instructive in determining whether summary decision under section 68.38 is appropriate in proceedings before this Office. Alvarez v. Interstate Highway Construction, 3 OCAHO 430 at 17 (1992).

An issue of material fact is genuine only if it has a real basis in the record. Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356 (1986); Hensel v. Oklahoma City Veterans Affairs Medical Ctr., 3 OCAHO 532 at 7 (1993). A genuine issue of fact is material if, under the governing law, it might affect the outcome of the suit. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986).; Hensel, 3 OCAHO 532 at 7.

In determining whether there is a genuine issue as to a material fact, all facts and reasonable inferences to be derived therefrom are to be viewed in the light most favorable to the non-moving party. Matsushita, 475 U.S. at 587, 106 S. Ct. at 1356 (1986); Wells v. General Elec. Co., 807 F. Supp. 1202, 1204 (D. Md. 1992); Sepahpour v. Unisys, Inc., 3 OCAHO 500 at 3 (1993); U.S. v. Lamont St. Grill, 3 OCAHO 442 at 9 (1990); Egal v. Sears Roebuck & Co., 3 OCAHO 442 at 9 (1990).

The movant bears the initial responsibility of demonstrating the absence of any issues of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553 (1986); Temkin v. Frederick County Comm'rs, 945 F.2d 716, 718 (4th Cir. 1991); Hodge v. Carroll County Dep't of Social Servs., 812 F. Supp. 593, 596 (D. Md. 1992); Morales v. Cromwell's Tavern Restaurant, 3 OCAHO 524 at 4 (1991).

Once the movant has carried its burden, the burden shifts to the party opposing the motion to come forward with "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). See Anderson, 477 U.S. at 250, 106 S. Ct. at 2511; Matsushita, 475 U.S. at 587, 106 S. Ct. at 1356; Temkin, 945 F.2d at 719; Hensel, 3 OCAHO 532 at 8; Morales, 3 OCAHO 524 at 4; Sepahpour, 3 OCAHO 500 at 3.

In adjudicating respondent's motion for summary decision, I find that respondent's contentions are legal arguments as to why this case should be dismissed. This would more properly be adjudged as a motion to dismiss, however, as respondent has filed a motion for summary decision I will analyze it as such. In addition, as this motion involves legal issues, I am able to resolve it without complainant's response, which was not filed in a timely manner.

III. Discussion, Findings, and Conclusion

In filing this unfair immigration-related discrimination practice charge against Ricoh based upon citizenship status, complainant relies upon the provisions of 8 U.S.C. § 1324b(a)(1)(B), which provides:

"Unfair Immigration-Related Employment Practices"

Sec. 274B. [8 U.S.C. 1324b] (a) Prohibition of Discrimination Based on National Origin or Citizenship Status.-

(1) GENERAL RULE.-It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien, as defined in Section 274A(h)(3)) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment- . . .

(B) in the case of a protected individual (as defined in paragraph (3)), because of such individual's citizenship status.

(emphasis added)

In deciding respondent's pending motion for summary decision, it is necessary to make an initial determination as to whether complainant has the requisite standing to assert a citizenship discrimination claim under § 1324b, i.e. whether he is a "protected individual," as that term is defined in the provisions of 8 U.S.C. § 1324b(a)(3):

(3) Definition of Protected Individual.- As used in paragraph (1), the term "protected individual" means an individual who-

- (A) is a citizen or national of the United States, or
- (B) is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 210(a), 210A(a), or 245A(a)(1), is admitted as a refugee under section 207, or is granted asylum under section 208; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after the date of the enactment of this section and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

Complainant is a citizen and national of the United States. As such he meets the requirements of 8 U.S.C. § 1324b(a)(3) and is a protected individual with standing to bring a citizenship discrimination claim.

Having found that complainant has standing, as a "protected individual," to assert his claim of citizenship status discrimination, it is in order to determine whether the respondent has met its initial responsibility of demonstrating the absence of any issues of material fact and, if respondent has done so, whether complainant has come forward with "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

Respondent's motion for summary decision contends that: (1) the complaint should be dismissed as it is barred by collateral estoppel; and, (2) that the complaint is also barred by the applicable statute of limitations, 8 U.S.C. § 1324b(d)(3).

A. Collateral Estoppel

Respondent alleges that complainant is attempting to relitigate issues already finally determined against him in his Title VII action and as such that this citizenship status discrimination claim is barred by the doctrine of collateral estoppel. The essence of the doctrine of collateral estoppel "is that some question or fact is dispute has been judicially and finally determined by a court of competent jurisdiction between the same parties or their privies." Walker v. United Air Lines, Inc., 4 OCAHO 686 at 52 (1994) (citing 1B Moore's Federal Practice ¶ 0.441(2), at 3777 (2d ed. 1974)).

The doctrine of collateral estoppel precludes relitigation of issues in subsequent proceedings when the following criteria are met:

- (1) The issue decided in the prior adjudication was identical with the one presented in the later action;
- (2) There was a final judgment on the merits in the prior adjudication;
- (3) The party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication; and
- (4) The party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in question in the prior action.

United States v. Power Operating Company, Inc., 3 OCAHO 580 at 27 (1993), and cases cited therein.

(1) Identity of Issues

Collateral estoppel applies only where the same issue is involved in the prior and present proceeding. Power Operating Company, 3 OCAHO 580 at 28. This requirement applies to both issues of fact and law. Id. (citing Restatement (Second) of Judgments § 27).

The District Court determined that complainant was not discriminated against based on his race or national origin because respondent terminated complainant for reasonable, non-discriminatory reasons. Specifically, the District Court held that, "Plaintiff was terminated in a reasonable manner necessitated by business conditions, Plaintiff's termination was for good cause." Mackentire v. Ricoh Corporation and Ricoh Co., Ltd., Case No. C-90-20077-SW, Order Granting Defendant's Motion for Summary Judgment, 8 (February 27, 1992).

Complainant argues that "Respondent postures national origin and citizenship discrimination is (sic.) the same and both were fully

mitigated (sic.) in a prior court action precluding this tribunal from hearing the merits. Determination of citizenship requires determination of fact." Complainant's (3/13/95) Letter Pleading. While complainant did not expressly argue that collateral estoppel is not appropriate because the issues in the present case involving citizenship discrimination are not identical to those in the prior District Court case, this argument may be gleaned from the pleadings.

To determine claims of citizenship status discrimination under IRCA, OCAHO case law has reviewed and adopted the burdens of proof and production, and standards of decision developed in those decisions involving parallel claims of discrimination under Title VII. See, e.g., Jackai v. Dallas County-Data Services, 3 OCAHO 569 (1993); Alvarez v. Interstate Highway Construction, 3 OCAHO 430 (1992); Huang v. Queens Motel, 2 OCAHO 364 (1991); Williams v. Lucas & Associates, 2 OCAHO 357 (1991); Ryba v. Temple Steel Company, 1 OCAHO 289 (1991); U.S. v. LASA Marketing Firms, 1 OCAHO 141 (1990).

Under Title VII, courts have developed a system of shifting burdens of proof to establish discrimination, which has been adopted by OCAHO in adjudicating IRCA discrimination claims in the above- mentioned cases. Initially, a complainant must show the following facts in order to establish a prima facie case of discrimination: (i) that he is a member of a protected class; (ii) that his job performance was satisfactory; (iii) that he was discharged; and (iv) that, after he was discharged, the position remained open and the respondent sought applications from persons with complainant's qualifications. Salerno v. ICL Retail Systems, 3 OCAHO 481 at 10 (1993) (citing Meiri v. Dacon, 259 F.2d 989, 995 (2d Cir. 1985)). Should complainant meet this burden and establish a prima facie case of citizenship discrimination, the burden production then shifts to the respondent. Respondent can rebut the inference of discrimination created by the prima facie case by articulating with specificity a legitimate, non-discriminatory reason for the discharge. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 255, 101 S. Ct. 1089, 1094 (1981). The burden would then shift to complainant to show that the reasons proffered by respondent were pretext for intentional discrimination. Id.

Complainant is correct that the cause of action litigated in the District Court Title VII action is not identical to the IRCA claim. However, the doctrine of collateral estoppel examines a judicially decided issue of fact or law necessary to a judgment, not an entire claim on the same cause of action. United States v. Mendoza, 464 U.S. 154, 158, 104 S. Ct. 568, 571 (1984). Collateral estoppel differs from res judicata in that res-

judicata operates to bar further claims by parties or privies on the same cause of action when there has been a final judgment on the merits. Kunzelman, 799 F.2d at 1176 (citing Whitley v. Seibel, 676 F.2d 245, 248 & n.1 (7th Cir. 1982); cert. denied, 259 U.S. 942, 103 S. Ct. 254, 74 L.Ed.2d 198; Restatement (Second) of Judgments § 27 (1982) (res judicata is claim preclusion; collateral estoppel is issue preclusion).

Focusing on the specific issue decided in the Title VII action, that respondent can articulate a reasonably valid non-discriminatory reason for complainant's dismissal, demonstrates the applicability of collateral estoppel and the satisfaction of this first element in the present action. Specifically, complainant cannot meet its burden of either establishing a prima facie case of discrimination or to rebut the non-discriminatory reason offered by respondent for complainant's dismissal. The prior Summary Judgment conclusively determined that respondent did not seek to replace complainant after his dismissal. Rather, it eliminated complainant's middle-management position out of business necessity and handed his duties to two lower-level employees (both American citizens). These findings preclude complainant from establishing the fourth element of the prima facie case. Moreover, the District Court's determination that complainant was fired for non-discriminatory reasons defeats the possibility of complainant establishing that these reasons were merely pretext.

The specific issues resolved by the District Court in granting the Summary Decision are central to the decision in this action. As these issues are identical and conclusive in both the Title VII action decided by the District Court and the IRCA citizenship discrimination action before this tribunal, the initial requirement of identity of issues has been satisfied.

(2) Final Judgment on the Merits

A Summary Judgment, affirmed on appeal, is a final judgment on the merits. Exhibitors Poster Exchange, Inc. v. Nat'l Screen Serv. Corp., 421 F.2d 1313, 1319 (5th Cir. 1970).

(3) Party or in Privity with a Party to Prior Action

Complainant, the party against whom collateral estoppel is asserted, was the plaintiff in the Title VII action. Therefore the requirement that the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication is satisfied.

(4) Full and Fair Opportunity to Litigate

In addressing this requirement for the assessment of collateral estoppel, the Supreme Court stated:

If the defendant in the first action was forced to defend in an inconvenient forum and therefore was unable to engage in full scale discovery or call witnesses, application of offensive collateral estoppel may be unwarranted. Indeed, differences in available procedures may sometimes justify not allowing a prior judgment to have estoppel effects in a subsequent action even between the same parties, or where defensive estoppel is asserted against a plaintiff who has litigated and lost. (Emphasis added).

Parklane Hosiery v. Shore, 439 U.S. 322, 331, 99 S. Ct. 642, 651 n. 15; see also Restatement (Second) of Judgments § 29(2) and Comment d.

Respondent is attempting to use collateral estoppel in a defensive manner to prevent complainant from relitigating issues previously judicially decided. Relevant factors in determining whether complainant had the full and fair opportunity to litigate the issue in the District Court include that complainant brought the suit and in so doing selected the forum, that complainant had all discovery tools afforded by the Federal Rules of Civil Procedure available to him, that the issue determined by the District Court (that complainant was dismissed for non-discriminatory reasons) was the central issue to that case, and that complainant was represented by counsel in the District Court case and had every motivation to litigate it fully.

After examining the totality of these factors it is clear that complainant had a full and fair opportunity to litigate the issue in the prior District Court action.

Since the criteria for the application of collateral estoppel have been satisfied, that doctrine is being applied.

IV. Decision

In view of the foregoing, it is found that complainant's citizenship discrimination claim is barred by the doctrine of collateral estoppel, the issue of his dismissal being due to a legitimate reduction in staff caused by business necessity having been fully and finally disposed of by the District Court for the Northern District of California. It is unnecessary to rule upon respondent's statute of limitations argument.

Accordingly, respondent's motion for summary decision is granted, and the complainant's April 21, 1993 Complaint alleging immigration-

5 OCAHO 746

related employment practices based upon citizenship discrimination, in violation of 8 U.S.C. § 1324b(a)(1)(B) is hereby ordered to be and is dismissed with prejudice to refiling.

JOSEPH E. MCGUIRE
Administrative Law Judge

Appeal Information

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order seeks a timely review of this Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after entry of this Order.