

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JEFFREY L. CROOM,	:
Plaintiff,	:
	:
-vs-	: Civ. No. 3:00cv1805 (PCD)
	:
WESTERN CONNECTICUT STATE	:
UNIVERSITY,	:
Defendant.	:

RULING ON MOTION FOR SUMMARY JUDGMENT

Defendant moves for summary judgment on plaintiff’s complaint alleging a violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e *et seq.*¹ For the reasons set forth herein, the motion is granted.

I. BACKGROUND

Plaintiff is an African-American male over forty years of age employed by defendant from January 1992 through July 20, 1999² as the Assistant Housing Director, a state Level II administrative position. Plaintiff was guaranteed employment unless removed through formal proceedings or by his resignation.

In the fall of 1999, plaintiff’s residence hall was scheduled to be closed for renovations. Plaintiff’s supervisor, John Wallace, asked plaintiff during staff meetings between fall of 1998 and early 1999 whether he intended to return. In the fall of 1999, a worksheet was circulated, entitled

¹ All of plaintiff’s claims except the Title VII claim were dismissed by the August 20, 2001 ruling granting defendant’s motion to dismiss.

² The date of plaintiff’s resignation letter. Plaintiff argues he was constructively discharged on this date.

“Worksheet and Intent Sheet for Housing Staff Planning,” that allowed employees to indicate their preference for a next assignment. Plaintiff selected a higher-level position designated a potential “Westside Administrator III” position but did not indicate an interest in the open assistant housing director positions. The funding for the Westside Administrator III position was rejected and replaced by a conference coordinator position,³ for which plaintiff did not apply.

Three other assistant housing directors received the same form same assignment intent sheet, one of whom resigned from a position at Newberry Hall leaving a vacancy. Plaintiff was designated to fill the vacant position but refused. Plaintiff was offered a second assignment at Litchfield Hall and again refused. Plaintiff was assigned to Pinney Hall, a new facility, and was provided a sheet detailing the administrative duties of the position.

By letter dated May 6, 1999, plaintiff complained to university president of “systemic impediments to promotion and affirmative employment processes being contravened.” On March 2, 1999, defendant created the position of director of pre-collegiate and access services, a promotion which required a master’s degree and five years of experience with specialized counseling. Plaintiff was one of the two applicants within defendant’s organization, but was notified that the position would be offered generally and was notified by letter dated May 24, 1999 that his application had been forwarded to the external search committee for consideration. By letter dated June 18, 1999, plaintiff

³ As with a number of other positions, plaintiff disputes the significance of the fact but not the fact itself, arguing that he was discouraged from applying by Wallace. Plaintiff did not apply for open positions as assistant director of housing in the summer of 1993, nor for assistant director for operations in the summer of 1994 or January 1998. When asked why he did not apply for the director for operations position, plaintiff indicated he was interested in a one-on-one counseling position. Plaintiff was a licensed counselor, and ultimately took a counseling position in North Carolina after leaving defendant’s employ.

was informed that “[a]lthough the Search Committee found your background and skills to be impressive, after careful consideration of all the factors and candidates, you were not chosen for the applicant pool.”

As for plaintiff’s professional development with defendant’s organization, he first met with Barbara Barnwell, an African-American female, director of affirmative action from 1995-1998, and director of equity and multicultural affairs from 1998-2001, in 1995. Plaintiff discussed his career aspirations with Barnwell, James Roach, university president since 1992, John Jakoblaski, human resources director, and Connie Wilds, dean of student affairs. Although the collective bargaining agreement required that a mentor be assigned to employees from minority groups, plaintiff was not assigned a mentor. Plaintiff was provided with professional development funds to attend twelve separate seminars and was never denied a request for professional development funds. The university president also assisted plaintiff in efforts to enter a fellowship program at Harvard University.

II. DISCUSSION⁴

Defendant argues that plaintiff has failed to establish a prima facie case of discrimination and failed to establish that defendant’s justifications for its actions are pretextual. Plaintiff responds that he has adduced sufficient evidence to establish a genuine issue of material fact as to both.

A. Standard

A party moving for summary judgment must establish that there are no genuine issues of

⁴ Plaintiff may not argue that which is not sufficiently alleged in his complaint. A fair reading of plaintiff’s complaint does not reveal a retaliation claim and thus will not be addressed in the present ruling. Plaintiff does sufficiently allege discrimination on the basis of age and race in failure to promote and constructive discharge theories.

material fact in dispute and that it is entitled to judgment as a matter of law. FED. R. CIV. P. 56 (c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). In determining whether a genuine issue has been raised, all ambiguities are resolved and all reasonable inferences are drawn against the moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962); *Quinn v. Syracuse Model Neighborhood Corp.*, 613 F.2d 438, 445 (2d Cir. 1980). Summary judgment is proper when reasonable minds could not differ as to the import of evidence. *Bryant v. Maffucci*, 923 F.2d 979, 982 (2d Cir. 1991). Determinations as to the weight to accord evidence or credibility assessments of witnesses are improper on a motion for summary judgment as such are within the sole province of the jury. *Hayes v. N.Y. City Dep't of Corr.*, 84 F.3d 614, 619 (2d Cir. 1996).

In order to establish a prima facie case of employment discrimination pursuant to Title VII, a plaintiff must show (1) membership in a protected class; (2) adequate performance in a position or qualification for a potential promotion; (3) adverse action taken against plaintiff, and (4) the adverse action occurred under circumstances giving rise to a reasonable inference of discrimination. *See Weinstock v. Columbia Univ.*, 224 F.3d 33, 42 (2d Cir. 2000). The burden on plaintiff to establish a prima facie case is minimal.

After plaintiff establishes a prima facie case, the burden shifts to defendant to provide a legitimate reason for acting as it did. *See id.* Once such a reason is provided, the burden returns to plaintiff to establish by preponderance of the evidence that such reason was in fact a pretext for discrimination. *See id.*

B. Adverse Employment Action

Plaintiff alleges two separate theories for adverse employment actions in the form of constructive discharge and denial of promotions. Although the allegations of denial of promotions satisfy the requirement that plaintiff be the subject of an employment action, plaintiff has provided insufficient evidence to establish that he was constructively discharged.

A constructive discharge results when an employer deliberately makes working conditions so intolerable that an employee is forced into an involuntary resignation. *See Stetson v. NYNEX Serv. Co.*, 995 F.2d 355, 360 (2d Cir. 1993). Working conditions are sufficiently intolerable when they are so difficult or unpleasant that any reasonable person under the same circumstances would have felt compelled to resign. *Chertkova v. Conn. Gen. Life Ins. Co.*, 92 F.3d 81, 89 (2d Cir. 1996). Mere dissatisfaction with assignments, or a perception that the employee is being unfairly criticized, or exposure to difficult or unpleasant conditions does not rise to the level of a constructive discharge. *See Stetson*, 995 F.2d at 360; *Spence v. Maryland Cas. Co.*, 995 F.2d 1147, 1156 (2d Cir. 1993).

Plaintiff alleges a number of circumstances in support of his constructive discharge claim, including the length of time in his particular assignment, that the particular assignment was “hard/difficult,” that his resignation was requested if he opted not to accept another residence hall placement, that he was given a form that detailed tasks over and above that which others in his position were expected to perform, that the Westside position sought by him did not “materialize,” that he was in the residence hall director position longer than any other director without promotion, that he was pressured in staff meetings to state his intention of returning as a residence director for another year, and that he was frustrated by the possibility of losing his continuing appointment as residence director. *See Pl.’s Aff.* at 4-5. These claims may be classified as (1) a failure to promote, (2) defendant’s

imposing additional responsibilities and (3) repeated questions as to plaintiff's intention of returning.

The above claims in no way establish that plaintiff was constructively discharged. Plaintiff states that his employment could not be terminated yet he somehow was "frustrated" by the possibility of termination. A reasonable person would not consider this cause to resign. Notwithstanding defendant's allegation to the contrary that its requests as to plaintiff's intentions were attempts to fill assignments for the upcoming year, its requests, even if tailored to force plaintiff out of his position, were not of such frequency that a reasonable person would have felt compelled to resign under the circumstances. It is not clear how the act of asking an employee's intentions of remaining with an organization, even if so done under fervent hope that the employer will choose to leave the organization, could constitute a constructive discharge absent substantial repetition of the request.

In the present case, plaintiff does not appear to have responded to his supervisor's question as to his assignment preference the following year. Plaintiff's continuing appointment notwithstanding, the fact that he may have had a position would not appear to preclude questions as to assignments, certainly in light of the fact that the building in which he was working would be unavailable the next year. His failure to respond to such questions would not unreasonably lead to questions of intentions of returning. Finally the additional responsibilities in the form of "goals and objectives" for a newly opened residence hall do not appear so onerous that a reasonable person would resign, nor does plaintiff appear to argue that it is the nature of the tasking rather than the fact such tasking was created.

These acts, either individually or in the aggregate, cannot be said to evince a deliberate effort by defendant or its agents to engage in conduct with "the purpose or effect of unreasonably interfering with . . . [plaintiff's] work performance or creating an intimidating, hostile or offensive working

environment.” *Johnson v. Nordstrom, Inc.*, 260 F.3d 727, 735 (7th Cir. 2001). The fact that defendant’s actions may have made plaintiff’s work less enjoyable, or put plaintiff in a position to believe that he would not be promoted from his position, *see Caslin v. General Electric Company*, 696 F.2d 45 (6th Cir.1982), would not establish an objectively intolerable work environment. Plaintiff therefore has not provided sufficient evidence to establish that his voluntary resignation was in fact a constructive discharge.

C. Causal Elements of Employment Discrimination Claim

The arguments of defendant and plaintiff manifest a misapprehension as to the evidence required to establish a prima facie case, specifically proof that an adverse employment action occur under circumstances giving rise to a reasonable inference of discrimination. It is plaintiff’s burden, albeit a *de minimis* one, *see Cronin v. Aetna Life Ins. Co.*, 46 F.3d 196, 203-04 (2d Cir. 1995), to produce sufficient evidence transforming the alleged adverse employment action into a discriminatory act. Such a connection may be made by evidence that the adverse action resulted in the hiring or promotion of one not in the protected class, *see Meiri v. Dacon*, 759 F.2d 989, 996 (2d Cir. 1985), or remarks suggesting animus toward the protected class in close proximity to the adverse action, *see Chertkova v. Conn. Gen. Life Ins. Co.*, 92 F.3d 81, 91 (2d Cir. 1996), or by statistical evidence indicating a tendency to engage in such adverse actions when members of the protected class are involved, *see Fisher v. Vassar Coll.*, 70 F.3d 1420, 1450 (2d Cir. 1995). These examples are in no way exhaustive but illustrate that the fourth element of the prima facie case bears independent significance and is not somehow presumed through proof of the first three elements. Plaintiff’s membership in a protected class does not, in and of itself, establish an inference of discrimination

following an adverse employment decision unless the latter is predicated on consideration of the former.

With this said, other than plaintiff's suggestion that he was replaced by two members outside the protective class after his constructive discharge, which as discussed above was not established, there is nothing to indicate that plaintiff was singled out and denied promotions because of his race or age. Plaintiff does not deny that defendant afforded him a significant number of training opportunities and never denied him a request for training funds. Even if plaintiff's position is that such actions were in fact window dressing for discrimination, and that he did not apply for a number of other positions because he was discouraged from applying by his supervisor, he has provided no substantive evidence that promotions for which he was denied are in any way tied to his status as an African-American over the age of forty.⁵ The lack of direct evidence is not cured by evidence of defendant's equal opportunity program or generic complaints of discrimination absent some connection to circumstances peculiar to plaintiff, specifically denial of promotions based on improper considerations of age or race.⁶

Even if the evidence adduced were deemed substantial enough to justify granting plaintiff an inference of discrimination, which it is not, plaintiff has not established defendant's stated reasons for denying him a promotion, such as funding for a particular position or the selection of better qualified

⁵ It is not apparent how defendant's failure to assign a permanent mentor to plaintiff for equal opportunity issues pursuant to the collective bargaining agreement implicates more than a violation of the same.

⁶ The same is true of plaintiff's evidence in the form of the letter denying his application for the position of Pre-Collegiate Admissions Director. Even if defendant was indicating, following two letters stating that his resume was forwarded to an external search committee, that he was not considered, or "selected for the applicant pool" rather than "selected [from] the applicant pool," such action in no way indicates race or age-based discrimination. The conduct may indicate discrimination against him personally but in no way implicates discrimination against him *because of* his age or race.

applicants, are in fact a pretext. Plaintiff must establish pretext by a preponderance of the evidence and may not rely on the inference of discrimination to survive summary judgment. *See Brennan v. Metropolitan Opera Ass'n, Inc.*, 192 F.3d 310, 317 (2d Cir. 1999). The evidence described above cannot support plaintiff's argument that defendant's reasons for denying promotions were pretextual, and no reasonable jury could find to the contrary. The invocation of statistical data that indicate the occurrence of discrete incidents of general discrimination, as compared to discrimination in hirings or promotions, in an organization will not suffice to establish that plaintiff was denied a promotion on account of his race or age by that organization. Nor will the stated goals of equal opportunity programs in the form of remedying the "underutilization" of minority groups be read as sufficient to infer that an underutilization of those sharing plaintiff's characteristics was caused by discriminatory practices in hiring or promotions. Plaintiff therefore has not established that defendant's stated reasons for denying plaintiff promotions were pretextual.

V. CONCLUSION

Defendant's motion for summary judgment (Doc. No. 113) is granted. The Clerk shall close the file.

SO ORDERED.

Dated at New Haven, Connecticut, December ____, 2002.

Peter C. Dorsey
United States District Judge