

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**March 14, 2006**

**Elisabeth A. Shumaker**  
**Clerk of Court**

BILL M. WAYMAN,

Plaintiff-Appellant,

v.

A Z AUTOMOTIVE  
CORPORATION,

Defendant-Appellee.

No. 05-3315

(D.C. No. 04-CV-2347-JWL)

(D. Kan.)

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**ORDER AND JUDGMENT\***

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Before **HENRY, McKAY, and EBEL**, Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Appellant filed suit against Appellee A Z Automotive Corporation and alleged that A Z failed to promote him and terminated his employment on the basis of his age in violation of the Age Discrimination in Employment Act

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

(ADEA), 29 U.S.C. § 621 *et seq.* Appellee filed a motion for summary judgment, which the district court granted.

Appellant claimed that Appellee failed to promote him to a team leader position, instead promoting another employee who, Appellant alleged, “was having a sexual relationship with an employee in defendant’s human resources department and that particular employee influenced the relevant decisionmakers . . . .” Memorandum & Order, 4 (D. Kan. July 27, 2005). The district court stated that “plaintiff has expressly conceded that defendant had a hidden motive that is nondiscriminatory” and consequently granted summary judgment on that claim. *Id.* at 4-6.

Appellant failed to meet his burden of proof for his claim that he was discharged based on his age. He did not offer any evidence to counter Appellee’s proffered reason for his discharge. Having failed to make any showing that Appellant’s reason for discharging him was pretextual, the district court also granted Appellee summary judgment on the wrongful discharge claim. *Id.* at 6-9.

We have carefully reviewed the briefs of Appellant and Appellee, the district court’s disposition, and the record on appeal. We have conducted a de novo review of the district court’s grant of summary judgment, and for substantially the same reasons set forth by the district court in its Memorandum & Order of July 27, 2005, we **AFFIRM** the district court’s dismissal of Appellant’s

complaint.

Entered for the Court

Monroe G. McKay  
Circuit Judge