NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted September 18, 2023*
Decided September 25, 2023

Before

DIANE P. WOOD, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1306

TAMICA J. SMITHSON,
Plaintiff-Appellant,

v.

LLOYD J. AUSTIN III, United States Secretary of Defense,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:21-cv-02193-JRS-MJD

James R. Sweeney II,
Judge.

O R D E R

Tamica Smithson, an African American teacher with the United States Department of Defense, appeals the summary judgment rejecting her claims of discrimination, retaliation, and a hostile work environment under Title VII of the Civil

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and the Rehabilitation Act, 29 U.S.C. § 701 *et seq.* We affirm.

Smithson teaches at the Department of Defense Education Activity, which provides schooling for children of military families. She has several medical conditions, including attention-deficit hyperactivity disorder, intracranial hypertension, and migraines.

As relevant to this appeal, Smithson points to three incidents in which she maintains that coworkers touched her without consent. First, in 2019, a coworker approached her from behind her desk while she was teaching and then leaned a hip against her shoulder. Second, in 2020, another coworker hugged her—an act that she considered to be an assault and harassment. Third, in 2022, a male coworker, while complimenting her on her blouse, touched the fabric at her wrist. Smithson later testified that she believed each of these incidents was motivated by her race and disability, as well as retaliation for grievances and complaints she had filed in the past relating to discrimination and reasonable accommodation.

Smithson also complains of developments that occurred in August 2021, soon after she had been reassigned to teach at the Department's virtual school. Early in the school year, she was removed from her former school's email distribution list, allegedly causing her to miss important communications. Additionally, her government-issued computer at the former school was given to another teacher. And she was not provided with key-fob access to the former school, as had been customary for those teaching virtually during the COVID-19 pandemic. Each of the issues appears to have been resolved within a week or two (even if the key-fob issue was not resolved entirely to Smithson's satisfaction), but Smithson maintains that two of her white, male colleagues assigned to the former school were not subjected to such treatment.

The district court granted the Department's motion for summary judgment, concluding that Smithson had not offered evidence sufficient for a jury to conclude that she had been subjected to objectively severe or pervasive harassment or that the complained-of conduct was attributable to any of her protected characteristics or activities. The court also concluded that Smithson did not adduce sufficient evidence to infer that she had been subjected to an adverse employment action.

We review the district court's summary judgment determination de novo, viewing all facts and reasonable inferences in the light most favorable to Smithson. *See Wince v. CBRE, Inc.*, 66 F.4th 1033, 1040 (7th Cir. 2023).

Smithson first challenges the district court's ruling on her claim of hostile work environment, asserting that she offered sufficient evidence to show that "performance of her job was made more difficult when compared to her colleagues." But to succeed on a claim for discrimination based on a hostile environment, a plaintiff must demonstrate that the harassment was severe or pervasive to a degree that interfered with her work performance, *see Brooks v. Avancez*, 39 F.4th 424, 441 (7th Cir. 2022), and the actions cited by Smithson do not rise to this level.

Smithson next argues that the district court overlooked evidence of disability discrimination and retaliation from fall 2021. She highlights the testimony from her former school principal that she was supposed to remain on the email distribution list after her reassignment to the virtual school. Smithson believes that her disabilities and prior complaints prompted her removal from this list.

But speculation about her colleagues' ill motives is too conclusory to create an issue of material fact. *See Johnson v. Advoc. Health & Hosp. Corp.*, 892 F.3d 887, 899 (7th Cir. 2018). In any case, the cited actions (her removal from the distribution list, the loss of her government-issued computer, and the lack of key-fob access to her former school) do not suggest that she suffered an adverse employment action, which is an element of a discrimination and retaliation claim under Title VII. *See Kinney v. St. Mary's Health, Inc.*, 76 F.4th 635, 648 (7th Cir. 2023) (Title VII retaliation); *Chatman v. Bd. of Ed. of City of Chicago*, 5 F.4th 738, 746 (7th Cir. 2021) (Title VII discrimination). An employment action is adverse only if it materially changes the terms and conditions of employment in a manner that reduces compensation or benefits, inhibits career advancement, or is otherwise "more disruptive than a mere inconvenience or an alteration of job responsibilities." *Alamo v. Bliss*, 864 F.3d 541, 552 (7th Cir. 2017). Smithson has not explained how the actions she identifies were anything more than mere inconveniences. Even if we assume that her ability to perform her job was compromised by the identified actions (coupled with her alleged disabilities), Smithson's evidence does not suggest that the defendants sought to exploit her particular circumstances. *Cf. Washington v. Ill. Dep't of Revenue*, 420 F.3d 658, 662 (7th Cir. 2005) (removing employee from flex-time schedule that she used to care for disabled son was adverse employment action).

AFFIRMED