

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-13775
Non-Argument Calendar

D.C. Docket No. 1:17-cv-00302-CG-N

SHARON WESLEY,

Plaintiff - Appellant,

versus

AUSTAL USA, LLC,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Alabama

(June 28, 2019)

Before WILSON, JILL PRYOR and HULL, Circuit Judges.

PER CURIAM:

Sharon Wesley appeals following the district court's grant of defendant Austal USA, LLC's motion for summary judgment in her lawsuit alleging race and sex discrimination under 42 U.S.C. § 2000e-2(a) ("Title VII") and 42 U.S.C. § 1981, based on the company's failure to promote her. Wesley argues that she successfully discredited Austal's proffered reasons for denying her the promotion such that a jury could have concluded that the company intentionally discriminated against her on the basis of her race and sex.¹ After careful review, we affirm.

I. BACKGROUND

A. Factual History

Austal is a contractor, designer, and manufacturer of combat ships for the U.S. Navy. To demonstrate its ships' performance and ability to meet design specifications, Austal conducts specialized and complex industry tests and sea trials. Austal's Director of Tests and Activation, Steve Williamson, explained that "tests" is a term of art referring to the formalized process for ensuring that the company has met its contractual requirements as to the installation and operation of the ships' systems and equipment. To carry out such tests, Austal employs

¹ In her complaint, Wesley also alleged that Austal engaged in a pattern and practice of discrimination. The district court did not treat this as a separate claim, however. Because Wesley does not challenge that treatment on appeal, any issue arising out of it has been abandoned. *Denney v. City of Albany*, 247 F.3d 1172, 1182 (11th Cir. 2001).

Tests and Activation Specialists who perform testing duties on a range of systems and equipment. Specialists were classified as level I, II, III, or Senior.

Wesley, a black woman, was hired by Austal in 2011 as an electrical apprentice. She became a Specialist I for the Tests and Activation crew in spring 2014 and graduated from the apprentice program the following year. As a Specialist I, she first worked in the laundry room ensuring that the electrical components of the ship's washers and dryers were hooked up correctly, after which she had to "sell it to the government." Doc. 42-4 at 3.² She explained that "selling" a system to the government meant testing it for a government representative to prove that it worked. Wesley also worked in the ship's galley where she hooked up kitchen appliances, then tested and sold them. Other systems she worked on included pneumatics and push buttons for certain equipment. According to Wesley, although it was not part of her duties, she assisted other Tests and Activation crew throughout the ship when they needed help.

Wesley's coworker, William Cannon, testified in his declaration that he performed mechanical work in Tests and Activation, and Wesley assisted him by performing Specialist II-level electrical work. Cannon testified that Brown and other supervisors intentionally overlooked Wesley's performance. Wesley's

² Citations in the form "Doc. #" refer to numbered entries on the district court's docket.

supervisors when she was a Specialist I were Conrad Harris, Jarrod Stubbs, and Scott Brown. She also had previously worked in electrical with Stubbs.

There was only one other black female Specialist in Tests and Activation, Ashlon Smith. Wesley asserted that management always paired her with Smith, and they worked together almost every day and performed the same duties, even after Smith was promoted to Specialist II. After they finished their tasks, they would ask other employees if they needed help because they wanted to learn new systems. Smith said in her declaration that Wesley's supervisors, including Brown and Harris, had full knowledge of the duties they performed together.

Smith said she believed that "many decisions" in Tests and Activation were motivated by sex or race, although she provided no examples other than her being paired with Wesley. Doc. 50-1 at 2. She contended that there was no other reason for management to pair her with Wesley every day. Cannon testified that Wesley and Smith were paired together "because of the simple fact that they were [b]lack females and no one wanted to work with them unless they had no one else to turn to." Doc. 50-2 at 2. He elaborated that "this type of behavior was encourage[d] or allowed by management." *Id.* Wesley testified that Brown "appeared to dislike the favorable statements" made by her supervisors about her work product, and would ignore any compliments that they gave her. Doc. 48-1 at 3.

Brown stated in a declaration that, in April 2015, he was given authority to select employees for multiple Specialist II positions, so he posted a notice of the job openings. The posting indicated, in relevant part, that the qualifications, knowledge, and experience for the job included: (1) two to four solid years' Tests and Activation experience in a shipyard environment; or (2) test training equivalent to two years' technical trade school, military technical school, and/or Navy, Coast Guard, or Merchant Mariner experience.

Wesley, along with 26 other Specialist I employees, responded to the posting. The resume Wesley submitted with her application indicated that she had worked for one year as a Tests and Activation Specialist I and served three years as an electrical apprentice. The resume specified no additional testing experience, however. Wesley was considered minimally qualified for the position and was moved forward for consideration along with 23 other applicants. Ultimately, Austal selected 20 applicants for the Specialist II positions, including 14 white men, 3 black men, 1 black woman, and 2 Hispanic men. By June or July 2015, Wesley learned that she was not among the selected applicants. The other two who were not selected were Hispanic men.

According to Brown, he had full authority to make selection decisions to fill the Specialist II positions. The key factor he considered was a "demonstrated readiness to 'own' a system." Doc. 42-3 at 2. He explained that a Specialist I

worked under close supervision to perform routine tasks, whereas a Specialist II worked under limited supervision to perform moderately complex tasks. A Specialist II was assigned “ownership” of a system, meaning he or she had primary responsibility for seeing the system’s testing through to completion. *Id.* Brown was looking to promote a Specialist I who had already been acting as a “system owner” and had at least two years of “prior testing experience in a shipyard environment.” *Id.* at 3. He stated that he gave no consideration to how long an applicant had worked with Austal, or what their prior work history or experience involved, because “[m]otivation and self-drive were key factors in determining the applicants that got selected.” *Id.* He said that he conferred with Stubbs and Harris to determine who they “genuinely believed were the most qualified applicants by virtue of having demonstrated a readiness to own a system,” based on the supervisors’ collective experience and daily observations of the current Specialist I employees. *Id.* at 4.

Despite Wesley’s application showing only one year of previous testing experience, Brown considered her for a Specialist II position. He decided, though, that she was not among the most qualified because she had not demonstrated her readiness to own a system. He believed that she had not been “proactive in initiating testing activity to take ownership of” the systems she worked on, nor did she “look ahead of the schedule and plan tasks according to the work that was

lying ahead, rather she simply *waited* to be assigned testing tasks to complete.” *Id.* at 5 (emphasis in original). This was not “consistent with the expectations of a Specialist I striving to advance to a Specialist II.” *Id.* at 5.

Wesley contended that she “owned” several systems as a Specialist I, including damage control, the galley and laundry room, and pneumatics. Wesley’s coworkers, Smith and Cannon, agreed that Wesley had ownership over several systems. Stubbs testified, however, that Wesley was not among the best-qualified candidates because she had not demonstrated her readiness to own a system. Stubbs added that he was the Senior Specialist with testing oversight of the ship that Wesley worked on, and he confirmed Brown’s assessment that she was not proactive in taking on new tasks. He viewed Wesley as productive when assigned tasks and helpful in areas that were “within her comfort zone,” but he did not believe she was someone who “sought growth within the department by volunteering or requesting stretch assignments beyond [her] Specialist I job description.” Doc. 42-5 at 3. He also noted that Wesley demonstrated only a “*limited* ability to read and interpret” relevant diagrams, schematics, and procedures, “as well as only *cursory* knowledge” of relevant equipment. *Id.* (emphasis in original).

Wesley testified in her deposition that she believed the promotion decision was based on race “[b]ecause the white males [who had] not been there for two

years all got promoted,” but she did not. Doc. 42-4 at 6. She contended that she had the necessary qualifications and had been a Specialist I longer than some of the white men, who had only been on the Tests and Activation team for six months. She noted that some had never worked for a shipyard before, one was only 21 years old, many did not have electrical experience, and most did not have the industrial degree she had earned. When asked specifically what evidence she had to support her claim that her race and sex were factors in denying her the promotion, however, she admitted she had none.

One of the candidates selected for the Specialist II position was Josh Adair, a white man who had a background in fire safety and damage control testing. Brown said that he selected Adair because he demonstrated ownership of several systems; demonstrated a greater knowledge than Wesley on a range of equipment, procedures, and skills; and displayed a greater ability to perform as a Specialist II. Harris, the Senior Specialist who had testing oversight of Adair’s vessel, recommended him for the promotion because he had demonstrated that he was ready to advance.³

³ During her deposition, Wesley also discussed a man named Jeffrey Weninegar who was promoted to Specialist II, but she conceded that he had been with Austal for a long time and she was not challenging his promotion.

According to Brown, he met with Wesley and told her that she was a good Specialist I but that her resume failed to demonstrate the requisite testing experience or that she “desired system ownership.” Doc. 42-3 at 6.⁴ He said he valued her as a member of the Tests and Activation team and believed she had the potential to excel. Afterward, Wesley submitted an updated resume indicating that she had performed cable insulation resistance tests as an electrical apprentice.⁵ Brown explained that, even with the additional testing experience shown in her updated resume, she still failed to demonstrate readiness to own a system.

Austal determined later in 2015 that it needed to fill additional Specialist II positions. Wesley applied for the new promotion in December 2015. Prior to her application, however, in November 2015, Brown wrote an email to Harris, Stubbs, and others stating, “I have been working on developing the rational[e] and justification for getting [four white men]⁶ a Level II promotion. . . . Of course, [let’s] keep this between us.” Doc. 50-5 at 1. Brown included in the email a chart with names of employees being considered for the position, including Wesley. *Id.*

⁴ Wesley denies that this meeting took place.

⁵ Wesley asserts in her brief on appeal that the resume and application she originally submitted listed all of her qualifications. She does not, however, challenge the authenticity of the copy of her resume submitted with Austal’s motion for summary judgment, nor does she dispute that she submitted an amended resume that described her testing experience in greater detail. In any event, we assume that Wesley’s original resume was sufficient to demonstrate to Austal that she met the basic requirements for the Specialist II promotion.

⁶ The email thread did not specify the employees’ race, but Wesley asserted in her declaration that they were white men.

at 1-2.⁷ The chart indicated that Wesley was assigned as lead to the galley and laundry systems. The chart also noted that she had not yet performed Level II work, but she was “on the right path to being ready to achieve Level II.” *Id.* at 1. According to the chart, she met the experience requirements for a Level II promotion.

After Wesley applied for the second round of Specialist II promotions, Brown emailed Human Resources (“HR”) to confirm that Wesley’s qualifications met the requirements for the promotion. An HR representative replied that she did not believe Wesley was qualified and recommended that Austal not interview her for the position.

Shortly after declining to promote Wesley a second time, in January 2016 Brown emailed Stubbs seeking feedback on a draft letter in which he explained his interactions with Wesley and his reasons for not promoting her. He wrote in the draft letter that he had been “encouraging and providing the opportunity and support” for her to be promoted to Specialist II, but she had not yet acted independently to own systems. Doc. 50-7 at 1. He concluded that she was not

⁷ Austal asserts on appeal that the email was in reference to the second round of promotions and was not a *post hoc* justification for decisions made during the first round of promotions. Neither the record nor the parties make clear, however, why the email discussing Wesley’s qualifications was written before she applied for the second round.

ready to be a Specialist II and noted that he was beginning to have questions about her ability to perform as a Specialist I.

B. Procedural History

Wesley filed a charge of discrimination with the Equal Employment Opportunity Commission in August 2015 and received notice of her right to sue in March 2017. She then filed the present complaint, proceeding *pro se*, alleging discrimination on the basis of her race and sex, in violation of Title VII and 42 U.S.C. § 1981, when she was denied the promotion to Specialist II during the first round of promotions in 2015.⁸ Wesley later obtained counsel.

Following discovery, Austal moved for summary judgment. The company argued that Wesley could not establish a *prima facie* case of race and sex discrimination because she could not prove that she was qualified for the promotion. Next, it argued that, even if she could establish a *prima facie* case, she could not show that Austal's stated legitimate, nondiscriminatory reason for not promoting her, a lack of readiness to own an electrical system, was pretextual.

The district court granted Austal's motion for summary judgment. First, applying the burden-shifting test set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973), the court concluded that Wesley had established a *prima*

⁸ Wesley did not refer in her complaint to the rejection of her December 2015 application for the second round of Specialist II positions.

facie case of discrimination because she had demonstrated that she had the minimum qualifications for a Specialist II promotion, yet the positions were filled by others outside her protected class. Nevertheless, the district court found that Austal had proffered legitimate, non-discriminatory reasons for not promoting Wesley, and she had failed to show that they were pretextual.

The court determined that Wesley had failed to demonstrate in her initial resume that she met the minimum qualifications for the position and, even after she had updated the resume, Brown still believed that she was not ready to take ownership of systems. The court ruled that Wesley had not shown those reasons to be pretext for discrimination because she failed to include work experience on her initial resume that qualified her for the promotion, and her supervisor, Stubbs, did not believe that she was ready to own a system. The court added that, even if she actually was qualified and ready to own systems, Wesley had presented no evidence to show that the real reason for not promoting her was discriminatory. The court noted that the purported disparities between Wesley and the promoted employees were not so stark that a reasonable person would not have chosen them over her.

Following the grant of summary judgment, Wesley appealed.

II. STANDARD OF REVIEW

We review a grant of summary judgment *de novo*, viewing all facts in the record in the light most favorable to the nonmovant and drawing all inferences in her favor. *Frederick v. Sprint/United Mgmt. Co.*, 246 F.3d 1305, 1311 (11th Cir. 2001). To overcome a motion for summary judgment, however, the nonmovant must present more than a scintilla of evidence supporting her position. *Brooks v. Cty. Comm'n of Jefferson Cty., Ala.*, 446 F.3d 1160, 1162 (11th Cir. 2006).

III. DISCUSSION

Title VII prohibits employers from discriminating against employees because of their race or sex. *See* 42 U.S.C. § 2000e-2(a)(1). Under 42 U.S.C. § 1981, employers may not discriminate against employees on the basis of their race. Claims of race discrimination under § 1981 are analyzed in the same manner as those brought under Title VII. *See Turnes v. AmSouth Bank, NA*, 36 F.3d 1057, 1060 (11th Cir. 1994).

Where, as here, an employee bases her discrimination claim on circumstantial evidence, we generally apply the *McDonnell Douglas* burden-shifting framework. *McCann v. Tillman*, 526 F.3d 1370, 1373 (11th Cir. 2008). Under this framework, the employee may first establish a *prima facie* case for disparate treatment by showing that: “(1) she is a member of a protected class; (2) she was subjected to [an] adverse employment action; (3) her employer treated similarly situated . . . employees more favorably; and (4) she was qualified to do

the job.” *Id.* If the employee establishes a *prima facie* case, the burden shifts to the employer to provide a legitimate, nondiscriminatory reason for its action. *Id.* If the employer does so, the employee must then show that the employer’s stated reasons were pretexts for unlawful discrimination. *Id.*

It is undisputed that Wesley is a member of a protected class and that the failure to promote her was an adverse employment action. We will also assume, *arguendo*, that Wesley met her burden of showing that Austal treated similarly situated employees more favorably than her, and that she was qualified to do the work of a Specialist II. Thus, the burden shifted to Austal to provide a legitimate, nondiscriminatory reason for its action, which it has done. *See id.*

The company explained that not only did Wesley fail to list all of her relevant testing experience on her initial application, but she had not demonstrated to Brown and the other supervisors that she was ready to take ownership of a system. Brown stated that Wesley was not proactive in carrying out tasks, and he was looking to promote Specialist I employees who were already taking on assignments beyond their job description. The burden therefore shifted back to Wesley to show that those stated reasons were pretexts for discrimination. *See id.*

To establish pretext, the plaintiff must show that: (1) the reason offered was false and (2) discrimination was the real reason for the employer’s actions. *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 515 (1993). A plaintiff must meet

the employer's proffered reason head-on and rebut it; the plaintiff cannot succeed by merely disputing the wisdom of the employer's reason. *Chapman v. AI Transp.*, 229 F.3d 1012, 1030 (11th Cir. 2000) (*en banc*). Even when the plaintiff puts forward evidence contradicting the defendant's proffered reasons, and a reasonable factfinder could reject those reasons, she must also present evidence that the real reason was discriminatory. *Flowers v. Troup Cty., Ga., Sch. Dist.*, 803 F.3d 1327, 1339 (11th Cir. 2015). Even if evidence suggests that a proffered reason is a "pretext of *something*," summary judgment is appropriate if the plaintiff's evidence does not support an inference that the reason was a pretext for racial discrimination. *Id.* at 1337-38 (holding that, although evidence suggested that the defendant "had it in" for the plaintiff "from the beginning," it did not show that his termination was "*discrimination on the basis of his race.*") (emphasis in original).

In a qualifications dispute, it is not enough for the plaintiff merely to show that she was better qualified than the person who received the position she sought. *Springer v. Convergys Customer Mgmt. Grp. Inc.*, 509 F.3d 1344, 1349 (11th Cir. 2007). Instead, the plaintiff "must show that the disparities between the successful applicant's and her own qualifications were of such weight and significance that no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the plaintiff." *Brooks*, 446 F.3d at 1163 (internal quotation marks omitted).

We conclude that Wesley has failed to present evidence showing that Austal's proffered reasons for not promoting her were pretexts for discrimination on the basis of her race or sex. She emphasizes on appeal that the proffered reasons were false, and we agree that she has presented some evidence in support of that contention. Wesley and her coworkers, Smith and Cannon, provided declarations stating that she was taking on Specialist II-level work and taking ownership of systems, and Smith testified that Brown was aware of that fact. Wesley's evidence further suggested that Stubbs and Harris, with whom Brown conferred before making his decision, would have been aware of the work that Wesley performed with Smith because they supervised her.⁹ Wesley updated her resume to specifically include her relevant testing experience, and Brown's emails from November 2015 show that management was aware that Wesley had the experience required for a Specialist II promotion. In the December 2015 emails, however, Austal management disputed whether she was even minimally qualified for a Specialist II position.

This evidence is not enough to survive summary judgment, though. At best, it raises an issue of fact whether Brown and the other supervisors were lying about their reasons for not promoting Wesley—not that the real reason was

⁹ Harris testified that he did not oversee the ship on which Wesley worked at the time the promotion decisions were made, so he did not provide any input regarding her application.

discriminatory. *See Flowers*, 803 F.3d at 1339. Wesley attempts to make this showing by pointing to Cannon’s testimony that she and Smith, the only other black woman on the Tests and Activation team, were always paired together on projects because their white male coworkers did not want to work with them, and “management” encouraged or allowed this behavior. Smith’s declaration also supported Cannon’s testimony. If this is true, Austal’s conduct in pairing Wesley and Smith together because their coworkers did not want to work with black women is reprehensible. Nonetheless, the evidence that Austal paired them together on work assignments—even if for discriminatory reasons—is not probative of why Wesley was not promoted. This evidence might support an inference that the work area was hostile to black women and that unnamed Austal supervisors tolerated, and even furthered, discriminatory conduct in carrying out Tests and Activation tasks. However, the evidence does not show that Brown, Stubbs, or Harris—the only decision makers specifically identified in this case—personally engaged in or tolerated such discriminatory conduct or harbored any animus toward Wesley based on her race or sex. We also note that Smith, the black woman with whom Wesley was paired, was herself promoted to Specialist II.

The only other evidence of Austal’s rationale for not promoting Wesley, beyond the supervisors’ declarations, was Brown’s emails. The emails show that he continued to push for the promotion of white male employees even after Wesley

updated her resume. The emails, however, do not suggest that those candidates' race or sex was the reason Brown preferred them over Wesley.¹⁰ And the fact that Brown later sought input from HR regarding Wesley's qualifications for a Specialist II promotion revealed no racial animus. Further, Brown's draft letter to Stubbs detailing his reasons for not promoting Wesley contained nothing that could be construed as evidence of race or sex discrimination.

To the extent Wesley relies on comparators as evidence of discriminatory intent, and assuming *arguendo* that she was more qualified than them, she still failed to demonstrate that the disparities between her qualifications and theirs were so great that no reasonable person could have chosen them over her. *See Brooks*, 446 F.3d at 1163. We therefore conclude that summary judgment in favor of Austal was appropriate.

IV. CONCLUSION

Because Wesley has failed to show that the district court erred, the grant of summary judgment is affirmed.

AFFIRMED.

¹⁰ We recognize that the parties have disputed the round of promotions for which the four men who were the subject Brown's November 2015 email were being considered. Even assuming that the email reflects a *post hoc* rationalization for certain promotions made in the first round—and we are not certain that it does—the email still would serve only to undermine Austal's stated reasons, not to establish discriminatory intent.