



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

[REDACTED]
Dominica V.,¹
Complainant,

v.

North Carolina General Assembly,
Respondent.

Appeal No. 2021004234

Docket Number 17-EEOC-0002

EEOC Charge No. 433-2011-03293

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the March 1, 2021, decision of an Administrative Law Judge (ALJ) finding no discrimination regarding Complainant's equal employment opportunity (EEO) complaint brought pursuant to the Government Employee Rights Act (GERA), 42 U.S.C. § 2000e-16c. See EEOC Regulation 29 C.F.R. § 1603.101 et seq. For the reasons set forth in this decision, we AFFIRM the ALJ's decision finding no discrimination.

ISSUE PRESENTED

Whether there is substantial evidence in the record to support the ALJ's determination that Complainant did not establish that she was asked to resign or face termination because of her race (Black) and sex (female).

BACKGROUND

In 2009, Complainant became the Director of the North Carolina General Assembly (NCGA) Fiscal Research Division. The Fiscal Research Division is part of the nonpartisan Legislative Services Office. The parties stipulated that the employees of the Legislative Services Office are at-will employees who serve at the pleasure of the Legislative Services Office and may be terminated with or without notice at any time, for any non-discriminatory reason or for no reason at all.

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

In November 2010, after the election, new legislative leadership was established, consisting of S1 becoming Speaker of the House, and S2 becoming the President Pro Tempore of the Senate. Complainant testified that S1 invited her and her staff to the House floor to be introduced. Complainant accepted the invitation to speak on the floor and individually introduced the forty members of her division and explained what they did. To Complainant's knowledge, this was the first time something like that had happened during her 13 years in her position. A couple of days later, S1, Complainant testified, paid a visit to her division and was very complimentary of the staff. S2 also paid a visit a few weeks later.

After the change of leadership, Complainant sought out meetings with both S1 and S2 to inquire about performance expectations regarding her position. She maintains that the new leadership never informed her of their expectations for her as Director; therefore, she continued to perform her duties as she had under the prior leadership. In 2011, the state was facing a severe budget shortfall. The House was responsible for drafting a balanced budget which, according to state law, was due by June 30th. S1 maintained that, because of the time constraints, various lawmakers and staff from both chambers began holding pre-conference meetings to work on the budget. Complainant's job description did not require her to attend these pre-conference meetings, and prior legislative leadership did not expect her to attend budget meetings. S1, however, expected Complainant to attend and fully participate in pre-conference meetings, as well as other budget meetings, but he did not convey this expectation to her.

On the occasions when Complainant did attend the pre-conference meetings, she did not speak up or offer ideas to the group. S1 stated that, when he sat in on these pre-conference meetings that Complainant attended, Complainant was not engaged or participating. S1 identified individuals from Complainant's division who were engaged: E1 (Caucasian, male), E2 (Black, female), and E3 (Native American, female). These individuals, he stated, stood out "in terms of their willingness to be assertive with the members." When asked about Complainant's participation in pre-conference meetings, S1 stated:

I've seen [Complainant] before. I assume that she participated in some of these meetings. But not in the way that was distinctive. It only took a couple of meetings to see who the key contributors were.

Hearing Transcript (HT) Vol. IV at p. 57.

E1, E2, E3, according to S1, "were giving the members what they needed to make policy decisions." Id.

S1 was asked about Complainant's testimony that the role the Director plays in budget development is very minimal. S1 disagreed, stating:

No, I don't think so. They need to be actively engaged so that you're getting the most out of your organization. The leader of the organization (*sic*) and this is my

management philosophy. It may have been different from the past. Your job is to engage at an intense level to get the very most out of everybody in your organization. You lead by example. You lead by going into a room, being smart on your subject matter, asserting your opinions, and setting the example for other people to do the thing. Members are so dependent upon the expertise of these staff, if we have to wait until we ask the right question, then that becomes problematic.

HT Vol. IV at p. 162.

S1 acknowledged that he did not talk to Complainant about his concerns regarding her lack of participation in the pre-conference meetings because she was not one of his direct reports and he was not directly engaged with her. When asked whether he could have told Complainant that he wanted her to be more engaged in the pre-conference meetings, S1 stated, “I suppose I could. But I actually expect when you’re leading a fairly prominent organization for that to be a natural characteristic.” HT Vol. IV at p. 97.

Upon assuming his position, S1 appointed R1 (Caucasian, male), a member of the House, as the senior House Appropriations Chair, and the official who is responsible for facilitating the appropriations process. R1 attended many of the pre-conference meetings. He relied on the former, and now retired, Director of Fiscal Research, C1 (Caucasian, male), who returned as a volunteer advisor for the budgeting process because of their long history working together. Ultimately, S1 thought that Complainant’s lack of participation in the budget process, as well as R1’s reliance on C1, instead of her, reflected poorly on Complainant’s leadership skills.

In addition to S1’s budgetary priorities, new legislation was proposed requiring voters to present identification to cast a ballot (Voter ID). S1 assigned his General Counsel, A1 (Caucasian, male), to work with legislators on the Voter ID bill. A House member, R2 (Caucasian, male), one of the Voter ID legislative sponsors, requested that Complainant’s Division prepare a memorandum on the cost of a Voter ID bill. E4 (Black, female), Fiscal Analyst, initially drafted the Voter ID fiscal memorandum. Complainant provided E4 with suggestions and guidance for possible revisions, but never personally worked on the memorandum.

Complainant became aware that the legislation sponsors and A1 were unhappy with the cost estimates set out in the fiscal memorandum. A1 also took issue with E4’s decision to contact the State Board of Elections to inquire about the cost of sending out notifications to all registered voters.

E4 resigned from the Fiscal Research Division in February 2011 and E5 (Caucasian, male) replaced her as the fiscal analyst responsible for the memorandum. In early March, E5 updated the Voter ID fiscal memorandum according to instructions from A1 using data from Georgia’s voter identification measure. He did not contact any North Carolina state agencies for information. Complainant was aware that R2, A1, and E5 continued to have discussions about revisions to the fiscal memorandum, but she did not work directly on E5’s updates. E5 did, however, inform her

of A1's instructions, and she offered suggestions on ways he could lower certain costs or present information differently.

Complainant became concerned that partisan policy staff, i.e., A1, were instructing her independent, nonpartisan staff, i.e., E4 and E5, on how to conduct an analysis. Therefore, she emailed her supervisor, the Legislative Services Officer (the LSO), on March 15, 2011, and asked him to broker a meeting with the chiefs of staff from the House and Senate. Complainant's email expressed her displeasure and her desire to discuss the difference in the roles of fiscal staff and policy staff, the integrity of her division and its independence from policy staff, issues concerning confidentiality, requests for fiscal notes, the salary freeze, and the age of her division's computers with the chiefs of staff.

A1 saw Complainant's email and thought that several aspects were inappropriate. He called it the "get out of my shop" email. On March 17, 2011, A1 and D1, who was S1's chief of staff, met with S1 to discuss Complainant's employment in light of concerns about her leadership. During the meeting, they discussed Complainant's email and the perceived problems with the Fiscal Research Division, including the Voter ID fiscal memorandum. S1 disagreed with Complainant's email, because he believed some of A1's concerns about the Voter ID fiscal analysis were legitimate.

S1 thought Complainant should have attempted to build relationships with the new legislative leadership and engage with them in a productive, less adversarial manner. S1 decided to terminate Complainant's employment as Director and told D1 and A1 to obtain approval from S2.

After being informed about S1's decision to terminate Complainant, S2 consulted his chief of staff, D2; his General Counsel, A2; and the three Senate appropriations chairs. He decided that he would defer to S1's decision to seek Complainant's resignation. On March 17, 2011, A1, D1, and D2 informed the LSO that S1 and S2 wanted Complainant to resign. The next day, Complainant was told that House leadership wanted her immediate resignation due to unspecified trust or confidence issues.

Complainant met with S1 on March 21 and 23, 2011, but was not able to arrange a meeting with S2. During their March 21 meeting, S1 told Complainant that he had no trust issues with her but wanted someone with a different outlook and experience in the position. He also referred to the Republican caucus' desire to address the "Democratic stamp," meaning staff hired under the prior leadership. During her exit interview on March 23, S1 reiterated the previous reasons as well as adding that he would have liked to see Complainant speak up more in pre-conference budget meetings. He also offered to have his staff help her look for a job at the North Carolina School of Government and a state foundation, but she was ultimately unable to obtain a position at either organization.

On April 8, 2011, Complainant formally resigned her position. The legislative leadership then appointed C1 to serve as Interim Director of Fiscal Research. C2, also a white male, became Acting

Director of the Fiscal Research Division in August 2011, and his appointment became permanent in July 2012. The record indicates that no other staff divisions were restructured and none of the other Division Directors were forced to resign, though all had been appointed by the prior, Democratic leadership.

On August 10, 2016, Complainant filed a motion with the EEOC to process a charge of race and sex discrimination under GERA. On July 11, 2017, the EEOC assigned Complainant's GERA charge to the ALJ for adjudication. After multiple days of hearings, both parties filed closing briefs and reply briefs, and the record closed on December 30, 2019. Complainant advanced four arguments to establish that discrimination played a role in her removal. First, Complainant argued that the timing of her dismissal was related to the Voter ID analysis, which she believed raised an inference that it was at least part of the reason for her forced resignation. Second, she maintained that the reasons S1 initially gave for seeking her resignation were very different from the explanations given during the EEOC investigation, and that these shifting and contradictory explanations are evidence of discrimination. Third, she maintained that S1 held actual bias against Blacks and females. Finally, she provided opinions from people with whom she worked at NCGA, including C1 and the LSO, who disagreed with the decision to remove her.

On March 1, 2021, the ALJ issued a decision finding no discrimination. Initially, the ALJ found that Complainant met the jurisdictional and substantive requirements of an employee exempted from Title VII and covered by GERA.² He then found that Complainant established a prima facie case of discrimination based on race and sex. However, the ALJ concluded that Respondent provided legitimate, nondiscriminatory reasons for its actions, and Complainant did not establish that those reasons were pretext. Specifically, the ALJ found that the weight of the evidence ultimately did not establish that bias against her as a Black female played any role in the decision to remove her.

According to the ALJ, he carefully examined S1's testimony and the evidence related to his decision-making process and found no indication of a racially-discriminatory motive. Even assuming for the sake of argument that other staff members or lawmakers were biased, the ALJ did not find those biases formed the basis for S1's decision. S1, the ALJ found, was already unimpressed by Complainant's leadership skills when he began receiving information from his trusted advisors that she was not acting as a "team player" and that there were potential issues with her division's work product. The ALJ found that S1 did not feel he had time to conduct an independent investigation of those reports, and instead made a quick decision to replace her. The ALJ further found that budgetary pressures, and S1's view that Complainant was not sufficiently engaged in the process, were the primary motivators for her dismissal. To the extent that any issues concerning the Voter ID memorandum played a role in S1's decision, the ALJ found that it was more likely related to the impression created by her email about staff interference in the drafting of the memorandum rather than to the legislators' discomfort with having a Black female overseeing the Voter ID fiscal analysis. The instant appeal followed.

² Respondent did not dispute coverage in this case.

STANDARD OF REVIEW

Pursuant to 29 C.F.R. § 1603.301, any party may appeal the decision of an ALJ rendered under 29 C.F.R. § 1603.217. The appeal must set forth arguments or evidence that tend to establish that the ALJ's decision: (1) is not supported by substantial evidence; (2) contains an erroneous interpretation of law, regulation, or material fact, or misapplication of established policy; (3) contains a prejudicial error of procedure; or (4) involves a substantial question of law or policy. 29 C.F.R. § 1603.303(c)(1)-(4). The Commission defines substantial evidence as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. Nat'l Labor Relations Bd., 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). Conclusions of law are subject to a *de novo* standard of review, whether or not a hearing was held.

ANALYSIS AND FINDINGS

The GERA, 42 U.S.C. § 2000e-16a et seq., provides for the application of rights, protections and remedies to previously exempt employees of elected state and local officials under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 et seq. GERA provides, in pertinent part, that all personnel actions affecting covered employees shall be made free from discrimination based on: "(1) race, color, religion, sex, or national origin, within the meaning of section 2000e-16 of Title 42; (2) age, within the meaning of section 633a of Title 29; or (3) disability, within the meaning of section 791 of Title 29 and sections 12112 to 12114 of Title 42." 42 U.S.C.A. § 2000e-16b.

The law extends coverage to any individual chosen or appointed by a person elected to public office in any State or political subdivision of any State by the qualified voters thereof: (a) to be a member of the elected official's personal staff; (b) to serve the elected official on the policymaking level; or (c) to serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. 42 U.S.C. § 2000e-16c(a); 29 C.F.R. § 1603.101; see Robert F. Clarke v. Florida Public Service Commission, EEOC Appeal No. 1120050001 (Jan. 5, 2007) (finding that a charge did not fall within GERA's jurisdiction because the position at issue was not on the personal and/or policymaking staff of an elected official). Complaints may be made against persons, government entities, or political subdivisions. 29 C.F.R. § 1603.102(c)(2).

We find that Complainant has not shown that the ALJ's decision is not supported by substantial evidence; contains an erroneous interpretation of law, regulation, or material fact, or misapplication of established policy; contains a prejudicial error of procedure; or involves a substantial question of law or policy. With respect to whether or not the decision is supported by substantial evidence in the record, we note that Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VI.C (Aug. 5, 2015) provides that, on appeal to the Commission, the burden is squarely on the party challenging the decision to demonstrate that the factual determinations are not supported by substantial evidence. See *id.* In

this case, this means that Complainant has the burden of pointing out where and why the ALJ's findings are not supported by substantial evidence.

Complainant's first contention

With respect to Complainant's assertion that S1 and others assumed that she opposed the Voter ID bill because she is Black, even though she never expressed any opinion whatsoever about the bill, either publicly or privately, the ALJ found S1 to be credible when he asserted that the Voter ID bill was not the reason he sought Complainant's resignation, and that he was not overly concerned about the bill's cost, which was projected to be in the \$3 to 4 million range out of a total state budget of approximately \$20 billion. The Commission has long held that credibility determinations based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradict the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See EEOC MD-110, Chapter 9, at § VI.B. (Aug. 5, 2015).

We find that the record supports the ALJ's determination that although Complainant's email to the LSO was prompted by her belief that partisan staff were improperly interfering with the Division's work, there is nothing to show that the reaction to her email was the result of animus toward her as a Black female. To the extent that S1 took the email or A1's reaction to it into account in deciding to call for her resignation, the record supports the ALJ's determination that it seems to have only lent support to his view that she was not the right person to lead the Division.

Complainant's second contention

Complainant also asserted that S1 provided multiple reasons for her termination, i.e., her interactions with the Republican caucus, the need to restructure and replace staff associated with the "Democratic stamp," and the need for someone with more experience and a different mindset to work on the budget. Among other things, Complainant stated that, during their March 21, 2011, meeting, S1 told her that he based his decision on recommendations from his staff, which stemmed from their interactions with the House Republican caucus. Complainant noted, however, the EEOC investigator's notes from a Fact-finding Conference on April 26, 2013, during which S1 told the investigator that R1 did not have confidence in Complainant, but Complainant noted that R1 gave deposition testimony contradicting S1's statements. R1 stated that he sought C1's help with the budget because of their long history working together, not because he lacked confidence in Complainant. Furthermore, although S1 told her in the March 23, 2011, exit interview that Republican leadership was conducting a restructure throughout the Legislative Services Office, implying her dismissal was part of a larger institutional push to replace certain employees, no such restructuring ever occurred. She was the only Black Director, the only female Director, and the only Division Director who lost her job during this time.

The ALJ found that S1 adequately addressed these issues during his testimony. He believed R1 asking C1 to return as a volunteer advisor indicated a broken relationship between R1 and

Complainant. S1 did not know whether R1 truly felt this way; it was an assumption on S1's part, and R1's deposition indicated that he was incorrect. Even if S1 acted on a mistaken belief or error that R1 had lost faith or trust in Complainant, a finding of discrimination cannot be made so long as in taking the action, S1 was not motivated by discriminatory animus. The Commission has long held that the pretext analysis is not concerned with whether actions are unfair or erroneous, but whether the actions are motivated by discriminatory animus. Gregg B. v. Dep't of the Army, EEOC Appeal No. 0120151783 (June 7, 2017). Complainant demonstrated no such finding here.³

The ALJ also noted S1's testimony that it was impossible for him to confirm or deny whether he told Complainant about plans to restructure the Legislative Services Office during her exit interview, but that discussions about broad changes were, in fact, occurring. These changes included a reduction of about one quarter of the standing legislative committees, revisions to personnel policies to eliminate pay disparities among legislative assistants, and changes to bill-drafting policies. The record indicates that these changes never came to fruition, however. Also, some members of the caucus advocated bringing in new leadership across the Legislative Services Office, but S1 believed this would be counterproductive to the budgeting process.

C1 testified that he was aware of the push to terminate some employees hired by prior leadership, but felt it was designed "to command the attention and the respect of the staff [by firing] some people to demonstrate your authority." HT Vol. II at p. 259. He thought the idea originated with another legislative leader, not in S1's Office. Id. He recalled a meeting approximately a month before Complainant's forced resignation, where A1, D1, and another policy advisor asked him for the names of three people who could be fired, apparently believing it was a "[g]ood thing in terms of getting the full attention and loyalty of the staff, fiscal and other staff." HT Vol II at pgs. 260 – 261. C1 stated that he did not provide any names, hoping they would realize this was a bad idea and not follow through. Id. Further, C1 believed the backlash after Complainant's resignation led to them dropping the idea. Id.

Complainant also took issue with S1's assertion that he wanted a director with a different mindset and experience. She argued that she had comparable budget experience to C1, having worked extensively on the budget during her time as a fiscal analyst, and that S1 had little contact with

³ S1's Chief of Staff, D1, testified, however, that with respect to R1:

[I] would stop [R1] from time to time when we'd pass in the hallway, and say how far are you along on this? You know, I am just pushing, pushing, pushing, because that is what we needed to do. How far along are we on the budget. When are we going to get these numbers or that number or whatever? And [R1] would say something to the effect, this is not word for word, this is just my general recollection. But he would say something to the effect of waiting on Fiscal or got to do something about Fiscal, that sort of thing.

her, and therefore, could not have formed a valid opinion about her abilities.

The ALJ noted S1's statements to the EEOC investigator that C1 had different chemistry from Complainant, as well as her failure to participate enough in committee meetings, which the ALJ found to be "entirely" consistent with S1's testimony at the hearing. The ALJ noted Complainant's testimony where she described her own demeanor as "reserved," "unassuming," and "quiet," and that C1 was more vocal, and outgoing.

Complainant's third contention

With respect to Complainant's contention that S1 was biased against her as a Black female, and did not feel comfortable having her in a position of power on the NCGA's central staff, the ALJ, noting that this argument mainly derived from S1's support for the Voter ID legislation, found that Complainant did not point to any specific incidents S1 was involved in, or comments he made to her or others, to show he harbored discriminatory feelings toward Black people, women, or Black women in particular. The ALJ stated:

I find [S1's] testimony about his motivations credible. The record establishes he wanted assertive people who made a lasting impression on him to hold leadership positions on the central staff. Complainant, unaware of these expectations, continued to perform as she had in the past. While there was evidently a misunderstanding between Complainant and [S1] about the parameters of her role, it does not appear to be in any way related to her race and/or sex. [S1] had a legitimate -- if not necessarily fair or fully-informed-reason for being dissatisfied with Complainant's performance and his interactions with other legislators, primarily [R1] fed into his perceptions.

ALJ Decision at p. 43.

Complainant's fourth contention

Finally, Complainant maintained that the testimony from S1 and his staff was less credible than the testimony she and her witnesses provided. The ALJ found, after reviewing all the testimony, however, that none of the Complainant's witnesses rebutted Respondent's explanations, and therefore their testimony did not constitute evidence of discrimination. Specifically, Complainant's witnesses for the most part opined that she was treated unfairly but none directly attributed discrimination based on race or sex to her being forced to resign. E5, for example, thought that her unwanted resignation involved a time-and-attendance concern. He stated that he had no reason to believe she was asked to resign because of either race or sex. E3 testified that the team of analysts assigned to the House Budget Development team were more involved in the budgeting process than S1 maintained and were well-regarded by the legislators. However, although she was "shocked" by the announcement that Complainant was resigning, she did not hear anything that led her to believe it was based on her race or sex.

C1 considered Complainant to be highly qualified for the job and saw her training and demeanor as great assets in the position. He stated that he was unaware of any complaints or problems with Complainant or her department when he returned as a volunteer working on the budget and was “horrificed” at the “reckless decision” to remove her, which he believed would have a chilling effect on the analysts given that he felt this decision was related to the fiscal analysis for the Voter ID bill. During the hearing, C1, when asked, stated that he did not believe Complainant was fired because she was Black, stating: “I think she was fired because of the fiscal note.” However, he also stated that he felt that had she been a white analyst or a white director, “who made that -- wrote that, written that note, they would not have been fired.”⁴

The ALJ found that C1’s testimony showed that he generally held the view that Complainant was fired as a direct result of dissatisfaction with the fiscal analysis of the Voter ID legislation. As indicated, C1’s testimony did not ascribe to the idea that Complainant had been targeted for dismissal because of her race and sex, nor did it supply any reason to doubt S1’s testimony. C1 did state a belief that Complainant was not given the same latitude in running her division or granted an opportunity to redeem herself by House leadership (or their staff) that a White male would have been provided. However, as the ALJ noted, C1 could not point to any specific facts or other evidence that supported this belief, instead referring to an overall impression or general knowledge. If C1 had identified such evidence, it could have supported a claim of disparate treatment. In the context of the entire record, however, C1’s general impression is insufficient to show that the ALJ’s findings were not supported by substantial evidence.

The LSO stated that he had never heard anything from S1, S2, A1, D1, or D2 that gave him reason to believe race and/or sex played a part in the decision. He felt that D1 and A1 were the initiators of the decision but did not know whether they were motivated by race and/or sex. He did indicate, however, that *if* he believed the resignation request had a discriminatory motive, he would not have volunteered to inform Complainant about it. The ALJ found that the LSO was the “main proponent” of the idea that “trust issues” played a role in Complainant’s dismissal, noting that A1 and D1 told him about either a loss of trust or a loss of confidence when they came to see him on or after March 17, 2011. He assumed this was related to the Voter ID issue and thought they were upset that Complainant had contacted the Board of Elections to get information about the Voter ID bill.

Ultimately, the ALJ found that the testimony from staff members who worked at the NCGA at the time was insufficient to establish pretext. While they each clearly had an opinion about the events leading up to Complainant’s resignation, no one could provide any viable reason to doubt the Respondent’s legitimate explanation for the employment action. We agree with the ALJ’s determination.

⁴ HT Vol. II at 268.

CONCLUSION

Based on a review of the record, we find substantial evidence in the record to support the ALJ's determination that Complainant did not establish that she was asked to resign or face termination because of her race and/or sex (female). Accordingly, we AFFIRM the ALJ's decision.

STATEMENT OF PARTIES' RIGHT TO FILE A PETITION FOR REVIEW

Any party to a complaint who is aggrieved by a final decision under 29 C.F.R. § 1603.304 may obtain a review of such final decision under chapter 158 of title 28 of the United States Code by filing a petition for review with a United States Court of Appeals within 60 days of the date of this final decision. See 29 C.F.R. § 1603.306. Such petition for review should be filed in the judicial circuit in which the petitioner resides, or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.

FOR THE COMMISSION:

/s/Raymond Windmiller

Raymond Windmiller
Executive Officer
Executive Secretariat

August 2, 2024

Date