1997 WL 35215
United States District Court, E.D. Louisiana.

UNITED STATES of America
v.
The PARISH of ORLEANS CRIMINAL SHERIFF (in his official capacity) and the Parish of Orleans Criminal Sheriff's Office

Civ.A. No. 90-4930. | Jan. 27, 1997.

Opinion

ORDER AND REASONS

CHASEZ, United States Magistrate Judge:

***1** On October 11, 1996 the parties filed a Joint Motion for Conditional Entry of Consent Decree. That decree provided for awards of individual relief to three hundred forty-three persons. On October 15, 1996, the court granted the parties' Joint Motion and conditionally entered the proposed consent decree subject to fairness hearings. Those fairness hearings have now been accomplished and the court herewith overrules the objections made herein and enters the consent decree as suggested by the parties.

The individual relief awards provided for in the Consent Decree are based on the United States' recommendations. Individuals who believed that they were affected by the Sheriff's Office policies which were alleged to have been discriminatory in nature and who wished to be considered for individual relief were to file timely claims according to deadlines established by the court. The procedure utilized for notifying potential claimants is set forth in the Government's response to the objections filed by claimants. The Government then screened each applicant who sought relief herein.

Seventy-five claimants not recommended for relief have filed objections to the United States' determination that they are not entitled to individual relief. Generally, these objections fall into one or more of five categories: (1) claimants disqualified because their claims were not timely filed; (2) claimants who are former deputy sheriffs who did not claim that their hiring was delayed based on their sex, but who alleged that they were denied a promotion, transfer and/or training based on their sex; (3) claimants disqualified because they did not achieve a passing score on the written examination; (4) claimants disqualified because the Sheriff's records indicate that they did not take the written examination or otherwise did not complete the deputy sheriff application process; and, (5) claimants who did not apply for a full-time deputy sheriff position, or who otherwise were determined to be ineligible for relief.

In category one, i.e., those not filing claims in a timely fashion, are Janet J. Benn, Linda M. Lee, and Rozetta Millner. Only Linda Lee appeared for the fairness hearing and her testimony confirmed that, in fact, she had filed a claim outside of the deadlines established by the court. Benn is currently employed by the Housing Authority for the City of New Orleans and is not interested in a deputy sheriff's position at the current time.

In category two, i.e., former deputy sheriffs who claimed they were denied promotions, transfer and/or training based upon sex, two individuals appeared for the fairness hearings.

Myrtle Kennedy, the first claimant falling into this category, testified that she was employed in the Sheriff's office from May, 1981 until June, 1986 in the Sheriff's Conchetta work release facility. She testified that she remained at first level pay the entire time she was employed in the Sheriff's office but further testified that she was not complaining because she was not promoted to corporal.

***2** Barbara Tapp, the second individual falling into category two, testified that she was employed by the Sheriff's office from April, 1981 to January, 1991. She was a deputy level two when she left and had been an acting supervisor from 1986 - 1991. Tapp never formally applied for promotion and acknowledged that there were few promotions while she was employed by

the Sheriff.

As the court understands it, the Government did not recommend anyone for relief in this category because during the whole time period when the alleged questionable employment practices were on-going, there were few promotions throughout the system. The Government, therefore, acknowledged the difficulty in proving this aspect of the case for purposes of obtaining relief for the claimants.

In category three, i.e., those individuals who were not hired because they failed to pass the written examination, fourteen individuals appeared and testified. The minimum written test score generally required for male deputies was 90. Generally, a female with a score lower than this was not recommended for relief. However, some females with a score lower than 90 were recommended for relief by the Government if a male applicant with a score less than 90 was hired within 30 days of the date the female was tested. None of applicants who objected or who testified fell within the exception to the rule set forth above. The test scores for each of these individuals is listed on page nine of the Government's response to the claimants objections and all fell below 90 in test results.

Falling into this category who appeared and gave testimony are Bridget Baker Mason, Donna Jean Bell, Anita Marie Bowers, Doris Brooks Taylor, Elnora Calender, Michele L. Doughty, Susan A. Broussard Johnson, Lenita L. Jones, Gloria J. Phillips, Deborah Mitchell, Cheryl Scott, Yolanda M. Scott, Cynthia Thomas, and Terrelle D. Wilson. Many of these ladies testified that they were never told by Sheriff's personnel that they had failed the test at a time contemporaneous with their taking it. Be that as it may, as the Government has noted, this has nothing to do with whether or not their test scores were at an appropriate level.

Category four includes those objectors who did not take the written examination required of those applying for Deputy Sheriff's positions. Falling into this category who appeared before the undersigned and gave testimony in support of their objections are Deloris Anderson, Gail Andrews Davis Dent, Willietta Brown, Claudia Ann Harvey, Shirleen A. Johnson, Eulah M. Martin, Andrea L. Mills, Andrea P. Moore, Debra Morgan, Letitia C. Rufus, and Jervetta S. Walker.

The Sheriff's personnel had advised the Government that, if files indicate an application date but no test score or test date, the claimant in all probability did not take the written examination. The Government did not contend in this litigation that female applicants were disproportionately prevented from taking the written examination. Indeed, the Sheriff hired women for different positions at all relevant times. The thrust of this litigation had always addressed the Sheriff's policy not to hire women to guard male inmates on residential tiers.

***3** Sheriff's records, therefore, indicated to the Government that a large number of female applicants for deputy sheriff took the written examination between 1980 and 1992. There are a variety of reasons why an applicant might not have taken the written examination. For example, the applicant may not have been scheduled because she did not meet the minimum requirements for the position, because she listed some disqualifying factor on the application or because she simply did not report to take the test.

As to the claimants falling into this category, the Sheriff's records provided to the Government contain no record of a written score or test date for the individuals listed hereinabove. Of the individuals who testified, none came to court with documentation corroborative of the fact that they, in fact, took the test. Some, indeed, admitted that they did not. Based upon the difficulty in proving claims for individuals falling into this group, the court has no problem with excluding them from relief as suggested by the Government.

Category five consists of those not felt to be qualified for the job of deputy sheriff. For example, Cheryl Perkins was not recommended for relief because, in response to inquiry made on the Government's claim form, Ms. Perkins stated that she was not willing to work any or all shifts. Shannon Washington was not recommended because Sheriff's records indicate she failed the interview process. Desmarie Hill's application form indicated that she applied for a job in the medical department as an LPN rather than as a deputy sheriff.

Also included in category five and not recommended for relief for miscellaneous reasons are the following:

Brenda Ann Burton, Michelle Claborne, Valencia M. Davis, Loretta Engeron, Lois Stovall, and Susan White. Ms. Burton was eliminated because of a work record which the Government considered as poor. Records reflected that Burton had been terminated from two jobs and asked to resign from a third. It was believed the Sheriff could have asserted a valid reason for failing to hire her. Michelle Claborne, likewise, had a poor work history in that she was terminated from a job for assaulting a co-worker. Valencia Davis failed application screening by the defendant. Davis received a medical discharge from the

military and records indicate the defendant disqualified applicants with military service if they did not have an honorable discharge. Loretta Engeron was eliminated because of inconsistencies as to her educational background, her work history, and her prior use of illegal drugs while a juvenile. As Ms. Stovall was represented by counsel who appeared on her behalf, the court ruled on her objections on the record and she will not be further discussed herein. Lastly, Susan White was disqualified because of her prior work history which included a termination from one job for misconduct prior to making application with defendant.

The court finds that there was a rational basis for the Government's decision to exclude each of the above claimants from the pool of those obtaining relief. Whether any of these ladies could have prevailed had they filed on their own behalf with the E.E.O.C. in a timely fashion is not the issue which the court now considers. Rather, it is whether the criteria established for including people in the class for relief have an objective, rational basis. The court finds that this is, in fact, the case.

***4** In addition, the court received objections from two intervenors, Deborah Petty and Vanessa Payton George. The record reflects that both Petty and George were former deputy sheriffs. Each claimed that she had been denied opportunities for promotions and assignments based upon her sex. No one falling into these categories was recommended for relief as had been earlier noted.

As to those who filed written objections but who did not appear and give testimony at the fairness hearing, the court dismisses their claims for failure to prosecute. Pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, a Court may, in its discretion, dismiss an action based on the failure of the plaintiff to prosecute her case or comply with an order of the Court. *Lopez v. Aransas County Independent School District,* 570 F. 2d 541 (5th Cir. 1978). In applying the sanction of dismissal, the courts have traditionally considered the extent to which the plaintiff, rather than her counsel, is responsible for the delay or the failure to comply with the court's order. *Silas v. Sears, Roebuck & Co.,* 586 F. 2d 382, 385 (5th Cir. 1978); *Ramsay v. Bailey,* 531 F. 2d 706 (5th Cir. 1976), *cert. denied,* 429 U.S. 1107, 97 S.Ct. 1139 (1977). As plaintiffs are proceeding *pro se* at this stage of the proceedings, it is appropriate that the Court consider their actions alone is considering dismissal of their objections.

The court has attempted to prosecute claimant's objections herein. However, the court does not wish to take these objections at face value, as experience has taught the undersigned that facts stated in letters are not always a complete picture of what has occurred. The format of the fairness hearing was to give the claimant, the Government, and the defendant an opportunity to particularize the claimant's situation so that a determination could be made as to whether someone should be excluded. As to claimants who failed to appear, this process was thwarted and the claim will therefore be dismissed.

Lastly, the court considered the objections of the following individuals who took issue with the fact that the amount of relief which they would be receiving was too small. These individuals are Florence Hayes, Mittie Louviere, Barbara Jean Phillips, and Vernita Price. In summary, the amount to be received by each has been discounted in recognition of the fact that the Sheriff may have had legitimate defenses to the claims of all of these women. Since this is a settlement, no one can be expected to receive 100% recovery and, in fact, this has not occurred here. One other individual, Dorothy Hamlin, objected to non-monetary aspects of the settlement. The court dismisses Hamlin's objection as frivolous.

There were other individuals designated for relief who filed objections thereto. However, as they did not appear to testify at the fairness hearing, their objection will likewise be dismissed for failure to prosecute.

The court's review of a proposed consent decree in a case such as this is limited to determining whether the agreement, taken as a whole, is fair, reasonable, and adequate to address the concerns which gave rise to this litigation. It is not for the court to re-craft the decree or determine with hindsight whether it might have been done differently. Rather, the court examines the document to assure that it is not the product of fraud or collusion. *Officers for Justice v. Civil Service Comm's of the City and Co. of San Francisco,* 688 F. 2d 615 (9th Cir. 1982), *cert. denied sub nom., Byrd v. Civil Service Comm'n* 459 U.S. 1217, 103 S.Ct. 1219 (1983).

***5** In this case, the undersigned must comment that this has been a particularly contentious litigation throughout. It has been well and thoroughly litigated on both sides. Neither side has given the other any quarter throughout these proceedings. The agreement on the consent decree follows the tenor of other dealings between the parties. It has been strictly at arms length.

The court has focused on the categories of individuals designated for relief and agrees with the criteria which the Government has suggested. Whether an individual claimant might be adversely effected, in terms of falling outside one of these categories, is of no concern to the court. Indeed, had these claimants chosen to pursue their individual claims with the E.E.O.C. in a timely fashion, they might have litigated their concerns independent of the Government's decision. Not having

done so, they should have no complaint to make now.

The Government has stated for the record the basis upon which individuals were recommended for relief. The court sees nothing to indicate that these criteria were inappropriate. Individuals objecting to the entry of a final settlement in a Title VII case brought by the United States have "a heavy burden of demonstrating that the decree is unreasonable." *Williams v. Vukovich,* 720 F. 2d 909, 921 (6th Cir. 1983). Courts generally defer to consensual agreements reached by the Attorney General in Title VII pattern or practice suits. *United States v. City of Miami,* 614 F. 2d 1322, 1332-33 (5th Cir.), *modified per curiam,* 664 F. 2d 435 (5th Cir. 1980). Indeed, settlement agreements negotiated by an agency of the federal government in an employment discrimination suit carry "the presumption of validity that is overcome only if the decree contains provisions which are unreasonable, illegal, unconstitutional, or against public policy." *United States v. City of Alexandria,* 614 F. 2d 1358, 1362 (5th Cir. 1980).

Here the thrust of the objections received by the court are anecdotal in nature. No one has examined the criteria used by the Government, per se, and indicated in any fashion that same are inadequate. And, indeed, the court does not believe that they are.

For the foregoing reasons, the court overrules each of the objections filed in this case. The proposed consent decree will now be entered as the final judgment of this court.

Parallel Citations

73 Fair Empl.Prac.Cas. (BNA) 492