

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-4491

FRED SMITH,

Appellant

v.

UNIVERSITY OF PENNSYLVANIA

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 05-cv-00525)
District Judge: Honorable Eduardo C. Robreno

Submitted Under Third Circuit LAR 34.1(a)
September 27, 2007

Before: AMBRO, JORDAN and ROTH, Circuit Judges

(Opinion filed October 26, 2007)

OPINION

AMBRO, Circuit Judge

Appellant Fred Smith (“Smith”) brought an action for employment discrimination in the Eastern District of Pennsylvania. He appeals the order of the District Court

granting summary judgment in favor of the University of Pennsylvania.

Smith started working for the University in 1992. In 1995, he filed an employment discrimination charge against it with the Equal Employment Opportunity Commission. The resulting lawsuit ended in a settlement. Smith was out of work due to a work-related injury from approximately the end of May 1995 to the middle of September 2003.¹ His action to gain workers' compensation benefits was settled in March 2003.

Smith received medical clearance to return to work in September 2003. The University informed him at that time that he could not return to his former position because the place of his former employment, the Faculty Club, had been closed in 1999. In response to the inquiry of a City of Philadelphia Councilman whose aid Smith had solicited, the University stated that Smith was welcome to reapply for any position for which he was qualified.

In May 2004, Smith filed with the EEOC another employment discrimination charge against the University in which he alleged that he had been denied reinstatement improperly. After the EEOC issued a right-to-sue letter, Smith filed the suit now before us asserting two claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* – (1) racial discrimination, and (2) retaliation for engaging in a protected activity. In November 2005, Smith moved to compel discovery and the University moved

¹The parties dispute whether Smith remained an employee of the University during this period. This dispute is not material to the issues presented by this appeal.

for summary judgment. The District Court granted the motion to compel in part and denied the motion for summary judgment without prejudice.

The University again sought summary judgment in January 2006. Smith filed two motions to compel discovery in that month and moved for a continuance under Fed. R. Civ. P. 56(f). The District Court granted Smith's motion and ordered the University to produce a limited set of materials subject to a confidentiality agreement between the parties. In April 2006, Smith filed a second motion to continue. The District Court denied that motion in June 2006 and entered summary judgment in favor of the University on September 18, 2006. Smith timely appeals.²

Smith argues that the District Court erred in denying his second continuance motion because he was entitled to further discovery about similarly situated employees. He fails, however, to explain how the extensive discovery he had already received by the time the District Court denied that motion was inadequate. The District Court observed:

[P]laintiff has received the following information: (1) plaintiff's personnel file, worker's compensation file and litigation file in defendant's possession; (2) a list, including the race, address and telephone number, of employees who worked at the Faculty Club and who now work at the Inn at Penn; (3) the identity of one employee who worked at the Faculty Club, filed a worker's compensation claim and is now employed by the Inn at Penn; (4) a list of employees who filed worker's compensation claims during the last five years; (5) a list of current employees of defendant; (6) a

²We have jurisdiction under 28 U.S.C. § 1291. We review the denial of Smith's second motion for a continuance under Rule 56(f) for abuse of discretion. *St. Surin v. Virgin Islands Daily News, Inc.*, 21 F.3d 1309, 1313 (3d Cir. 1994). Our review of the order granting summary judgment is plenary.

verification that all employees of the Faculty Club were terminated as of August 13, 1999 and that none of those employees were hired by defendant; (7) the docket/case action number of each EEOC and PHRA complaint filed by non-professional employees against defendant from January 1, 2000 to the present; (8) the identity of the EEOC and PHRC complaints that resulted in court action; (9) the agreement between the University of Pennsylvania and the Hilton Hotels Corporation, which now operates the Faculty Club; and (10) the agreement between the Faculty Club and the Inn at Penn.

Order Den. Second Mot. for Continuance 10-11, Case No. 05-CV-00525 (E.D. Pa. June 22, 2006). Nothing in Smith's second motion for a continuance or his briefing in this case explains why this information was so inadequate as to merit a continuance or how the District Court erred in its detailed consideration of each of Smith's outstanding discovery requests. *See id.* at 12-16.

Moreover, as the District Court noted, the additional information requested by Smith would not have precluded entry of summary judgment in favor of the University. *See id.* at 12. Smith's second motion for a continuance and appellate briefing fail to explain how the requested discovery would have addressed the lack of evidence of causation that the District Court concluded was fatal to the retaliation claim or the lack of evidence of pretext that was one basis for the District Court's grant of summary judgment on the race discrimination claim. Accordingly, the District Court did not abuse its discretion in denying Smith a further continuance.

Smith does not appeal the entry of summary judgment on a basis other than the denial of the motion for a continuance. Accordingly we affirm the entry of summary judgment in favor of the University.