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United States District Court, E.D. New York.

Ram GAUTAM, Plaintiff,
v.
PRUDENTIAL FINANCIAL, INC., Defendant.

06-CV-3614 (JS)(AKT)
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Signed 09/03/2008

Attorneys and Law Firms

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MEMORANDUM & ORDER

Joanna Seybert, U.S.D.J.

***1** Plaintiff Ram Gautam ("Gautam" or "Plaintiff") commenced this action on July 24, 2006, against Defendant Prudential Financial, Inc. ("Prudential" or "Defendant"). Plaintiff alleges discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (1994) ("Title VII") and the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634 (1991) ("ADEA"). Presently pending before the Court is Defendant's motion for summary judgment. For the reasons explained below, Defendant's motion is GRANTED.

BACKGROUND

The following facts are taken from the Parties' Amended 56.1 Statement, Counter-Statement and the exhibits thereto.

Gautam's Personal Background

Plaintiff was born in Ghaziabad, India, on June 5, 1948. (Def's. Am. R. 56.1 Statement ¶ 1 ("Def's. Stmt.").) Gautam attended high school, college, and graduate school in India, obtaining a Bachelor of Science in physics, chemistry, and mathematics, as well as a Master of Science in physics and a PhD in marketing management. (Id. ¶ 2.) During his time in India, Plaintiff served as a professor of marketing management, statistics, and mathematics at the University of Meerut. (Id. ¶ 3.) In December of 2000, Gautam moved to the United States, residing at all times in Long Island, New York. (Id. ¶ 4.) Following his move to the United States, Plaintiff secured employment at Symbol Technologies in April of 2001, remaining employed there until he was laid off in January of 2004. (Id. ¶¶ 5-6.)

Plaintiff's Recruitment Process At Prudential

Subsequent to the termination of his employment at Symbol Technologies, Plaintiff sought employment from various companies, eventually submitting his resume on the Prudential website for the position of Financial Services Associate ("FSA"). (Id. ¶¶ 9-10.) In approximately March of 2004, Gautam had his initial telephone interview with Prudential. (Id. ¶ 12.) Shortly thereafter, George Condzal ("Condzal"), from Prudential's Melville, New York office, called Plaintiff, briefly interviewed him over the phone, and subsequently invited Plaintiff to the Melville office for further interviews and a written test. (Id. ¶ 13.) Plaintiff complied, and having passed the first written test, was invited back for a second test, the SPQ Gold, and another interview. (Id. ¶ 14.) Plaintiff again complied, and was subsequently told by Condzal that he did well on the SPQ Gold. (Id. ¶ 15.) Gautam was then asked to take the FSP test and participate in another interview. (Id.) Following this round of testing and interviews, Gautam was asked to take a Dixon Simulation Test and participate in yet another interview. (Id. ¶ 16.) After taking the Dixon Simulation Test, Gautam was told that the final stage in the recruiting process would be a breakfast interview with the Managing Director. (Id. ¶ 18.) The entire process, including the four tests, occurred over a two month period, with Gautam repeatedly being told that he was doing well. (Id. ¶¶ 15-18.)

Following the interviews and successful completion of all the written exams, Condzal attempted to contact Plaintiff in order to continue on with the interview process. (Id. ¶ 19.) It is disputed whether Condzal was successful in contacting Plaintiff; Prudential claims that Condzal's attempts were unsuccessful, while Plaintiff states that he spoke to Condzal subsequent to their final meeting. (Id. ¶ 19); Pl's. Am. R. 56.1 Counter-Statement ¶ 19 ("Pl's. Stmt."). Defendant claims that as a result of Condzal's unsuccessful attempts to reach Gautam, Prudential sent Plaintiff a "reluctance letter" on April 20, 2004, explaining that Plaintiff's recruitment

file would be closed since he no longer appeared interested in pursuing the FSA position. (Def's. Stmt. ¶¶ 20-21.) In contrast, Plaintiff alleges that he never received the letter, and saw the letter for the first time during discovery. (Pls.' Stmt. ¶¶ 20-21.)

***2** Plaintiff states that he sent "emails" to Condzal after the interviews, but submits only one-email to the Court, dated March 31, 2004. (Fielding Dec. Ex. 3). Neither party submits evidence of any correspondence by Plaintiff in the three-week period between the March 31, 2004 e-mail and the reluctance letter.

Notwithstanding Plaintiff's denial of having ever received the reluctance letter, it is apparent that on April 21, 2004, Condzal received an e-mail from Plaintiff, wherein Plaintiff states that he was "very disappointed to hear negatively from [Prudential]." (Defs.' Stmt. ¶ 24.) Condzal immediately forwarded Plaintiff's April 21, 2004 e-mail to Managing Director John Spoleti ("Spoleti"), noting that it was from a candidate who had been turned down. (Id. ¶ 25.) The e-mail from Condzal to Spoleti states, "John, this is the recruit I turned down. Let's review on Friday." (Fielding Decl. Ex. 4.) Plaintiff states that there is a dispute as to whether Prudential was still considering hiring Plaintiff at the time that Condzal forwarded the e-mail. (Pls.' Stmt. ¶ 25.) Ultimately, Prudential chose not to hire Plaintiff.

The Alleged Discrimination

Following Prudential's decision not to hire him, Gautam formed his belief that Prudential discriminated against him on the basis of Plaintiff's race, national origin, age, and religion. (Pls.' Stmt. ¶ 26.) Plaintiff developed this belief in part from his experience at one of the earlier interviews, where Condzal allegedly asked Plaintiff about his age, religion, as well as the Indian caste and marriage system. (Id. ¶¶ 27-28; Def's. Stmt. ¶¶ 27-28.) It is unclear exactly when this particular line of questioning occurred; it is clear, however, that Plaintiff was asked to return for further interviews subsequent to the one in which these questions were asked. [1] (Pl's. Stmt. ¶ 28; Def's. Stmt. ¶ 28.) Gautam further states that he only saw young Caucasian men working in the Melville office, but also concedes that he did not meet every employee at that branch and therefore there may have been employees of differing races and ages. (Defs.' Stmt. ¶ 27; Pl's. Stmt. ¶ 27.) While Gautam admits that he does not know the reason why he was not hired, he argues that the alleged inappropriate questioning, combined with his test scores and "extensive experience and qualifications," supports an inference of discriminatory motives in the Defendant's failure to hire him. (Pls.' Stmt. ¶¶ 29-30.)

Events Following The Alleged Discrimination

Plaintiff alleges that at some point subsequent to Prudential's decision not to hire him and before July 2004, Condzal told Plaintiff that his application would remain under consideration for one year. (Id. ¶ 34.) Prudential denies that Condzal made such a comment, and states that Plaintiff's belief is "unsupported." (Def's. Stmt. ¶ 34.)

In 2004 and 2005, Prudential's Melville branch hired nine FSAs, two of which were of Indian descent, and one who was four years older than Plaintiff. (Id. ¶ 31.) Plaintiff emphasizes that he possessed superior educational qualifications and higher Financial Services Selection Test scores than all of the candidates that Prudential hired. (Id. ¶¶ 43, 44, 47-48.)

***3** After Prudential's Melville office closed Plaintiff's file, Plaintiff unsuccessfully sought employment with a Prudential office in Pennsylvania. (Defs.' Stmt. ¶ 35.) There, Gautam interviewed with a Managing Director of Indian Descent, and does not feel that he was discriminated against in the decision not to hire him. (Id.)

Plaintiff filed a charge with the Equal Employment Opportunity Commission ("EEOC") on November 19, 2005, [2] and received his Right to Sue letter on May 6, 2006. Plaintiff subsequently commenced this action on July 24, 2006.

DISCUSSION

I. Standard Of Review On Summary Judgment

"Summary judgment is appropriate where there are no genuine disputes concerning any material facts, and where the moving party is entitled to judgment as a matter of law." Harvis Trien & Beck, P.C. v. Fed. Home Loan Mortgage Corp. (In re Blackwood Assocs., L.P.), 153 F.3d 61, 67 (2d Cir. 1998) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L.Ed. 2d 265 (1986)); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247, 106 S. Ct. 2505, 91 L.Ed. 2d 202 (1986).

"The burden of showing the absence of any genuine dispute as to a material fact rests on the party seeking summary judgment." McLee v. Chrysler Corp., 109 F.3d 130, 134 (2d Cir. 1997); see also Adickes v. S.H. Kress & Co., 398 U.S. 144, 157, 90 S. Ct. 1598, 26 L.Ed. 2d 142 (1970). "In assessing the record to determine whether there is a genuine issue to be tried as to any material fact, the court is required to resolve all ambiguities and draw all permissible factual inferences in favor of the party against whom summary judgment is sought." McLee, 109 F.3d at 134.

"Although the moving party bears the initial burden of establishing that there are no genuine issues of material fact, once such a showing is made, the non-movant must 'set forth specific facts showing that there is a genuine issue for trial.' " Weinstock v. Columbia Univ., 224 F.3d 33, 41 (2d Cir. 2000) (quoting Anderson, 477 U.S. at 256). "Mere conclusory allegations or denials will not suffice." William v. Smith, 781 F.2d 319, 323 (2d Cir. 1986). Similarly, "unsupported allegations do not create a material issue of fact." Weinstock, 224 F.3d at 41 (citing to Goenaga v. March of Dimes Birth Defects Found., 51 F.3d 14, 18 (2d Cir. 1995)).

In deciding a motion for summary judgment in a discrimination case, the court must "carefully scrutinize[ ]" an employer's papers, affidavits and depositions for "circumstantial proof which, if believed, would show discrimination." Gallo v. Prudential Residential Servs., L.P., 22 F.3d 1219, 1224 (2d Cir. 1994). Thus, a court should not grant an employer's motion for summary judgment unless "the evidence of discriminatory intent is so slight that no rational jury could find in plaintiff's favor." Viola v. Philips Medical Sys. of N. Am., 42 F.3d 712, 716 (2d Cir. 1994). Nevertheless, even though the Court must closely examine an employer's evidence in support of their motion for summary judgment, summary judgment remains available in all discrimination cases. See Weinstock, 224 F.3d at 41-42 ("The 'impression that summary judgment is unavailable to defendants in discrimination cases is unsupportable.' " (quoting McLee, 38 F.3d at 68)).

II. Title VII And ADEA Limitation Periods

***4** A mandatory prerequisite to seeking federal relief under Title VII or the ADEA is the timely filing of a discrimination charge with the EEOC. See Paneccasio v. Unisource Worldwide, Inc., No. 06-CV-3950, 2008 U.S. App. LEXIS 15400, at *26 (2d Cir. July 7, 2008); Legnani v. Alitalia Linee Aeree Italiane, S.P.A., 274 F.3d 683, 686 (2d Cir. 2001). The discrimination charge must be filed within 300 days of the alleged discriminatory action. 42 U.S.C. § 2000e-5(e)(1); 42 U.S.C. § 12117.

This timeliness requirement is similar to a statute of limitations, and as such, can be tolled through waiver, estoppel, equity, or a continuing violation. See Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393, 102 S. Ct. 1127, 71 L.Ed. 2d 234 (1982). When a plaintiff files in an untimely manner, and does not establish a tolling exception, a claim for discrimination cannot be maintained. See Zerilli-Edenglass v. New York City Transit Auth., 333 F.3d 74, 76 (2d Cir. 2003).

As evidenced from Plaintiff's April 21, 2004 e-mail to Condzal, Plaintiff learned that Defendant declined to hire him on or about April 21, 2004. Gautam filed his discrimination charge with the EEOC either on November 19, 2005 or in December 2005, well over 300 days from the date that Plaintiff heard that Defendant would not hire him.

Nevertheless, Plaintiff alleges he was told that his application would remain under consideration for one year following Prudential's decision not to hire him.[3] Since it is unclear whether Condzal actually told Plaintiff that Defendant would consider Plaintiff's application for one year, the Court will draw the reasonable inference in Plaintiff's favor. If Plaintiff's application was to remain under consideration for one year, the last discriminatory act arguably occurred on April 21, 2005, when Plaintiff's application was no longer in consideration. Plaintiff's claim, even if filed on the later December 2005 date, was still within 300 days of April 21, 2005, making his claim timely.

III. Claims Of Discrimination Under Title VII And ADEA

Plaintiff claims that he was discriminated against on the basis of his race, national origin, color, religion, and age, in violation of Title VII and the ADEA. Title VII and ADEA claims are analyzed under the same standard, the McDonnell Douglas burden-shifting paradigm. See Woodman v.

WWOR-TV, Inc., 411 F.3d 69, 76 (2d Cir. N.Y. 2005) (holding that McDonnell Douglas burden-shifting framework applies to ADEA claims as well as race discrimination claims under Title VII).

Under McDonnell Douglas, the plaintiff has the initial burden to establish a prima facie case of discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed. 2d 668 (1973). "[T]o establish a prima facie case of discriminatory "failure to hire" under Title VII, [Plaintiff] must establish that: '(1) that [he] is a member of a protected class, (2) that [he] applied for and was qualified for a job for which the employer was seeking applicants, (3) that despite these qualifications, the employer rejected [him] and (4) that, after this rejection, the job remained open and the employer continued to seek applicants having [his] qualifications.' " Marshall-Screen v. I.R.S., No. 01-CV-0811, 2002 WL 264999, at *9 (E.D.N.Y. Feb. 26, 2002) (quoting Fisher v. Vassar College, 70 F.3d 1420, 1433 (2d Cir. 1995)).

***5** Meeting this burden gives rise to a rebuttable presumption of unlawful discrimination. See McPherson, 457 F.3d at 215. Next, the defendant is given the opportunity to establish a legitimate, non-discriminatory reason for the allegedly discriminatory action. See McDonnell Douglas, 411 U.S. at 802. Once a non-discriminatory reason has been established, the burden shifts back to the plaintiff to prove that the reason set forth by the defendant is simply pretext for discrimination. See McPherson, 457 F.3d at 215.

Prudential has conceded, for the purposes of this motion, that Gautam can establish a prima facie case of discrimination, the first step under the McDonnell Douglas analysis. (Def's. Mem. 6.) The Court, therefore, will not examine that aspect of Plaintiff's claims.

A. Legitimate Non-Discriminatory Reason

Since it is conceded for the purposes of this motion that Plaintiff can establish a prima facie case of discrimination, the burden shifts to Prudential to articulate a legitimate, nondiscriminatory reason for their failure to hire Plaintiff. See Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 257, 101 S. Ct. 1089, 67 L.Ed. 2d 207 (1981). To rebut the presumption of discrimination in favor of the plaintiff, the "employer need only produce admissible evidence which would allow the trier of fact rationally to conclude that the employment decision had not been motivated by discriminatory animus." Id.

Here, the Court finds that Defendant has articulated a legitimate, non-discriminatory reason for their decision not to hire Plaintiff, namely, his unresponsiveness when Condzal attempted to contact him. (Defs.' Stmt. ¶ 19.) Specifically, the April 20, 2004 letter allegedly sent to Gautam reflects Prudential's belief that Plaintiff was "reluctant to pursue this opportunity further." (Id. ¶¶ 20-21.) To support their belief, Prudential has produced a copy of the reluctance letter sent to Gautam, as well as an affidavit from Condzal explaining that he "was unable to reach Mr. Gautam." (Fielding Decl. Ex. 6; Aff. of George Condzal ¶ 9.)

The Court finds Prudential has stated a legitimate, non-discriminatory reason for not hiring Gautam. See Brennan v. Metropolitan Opera Ass'n, Inc., No. 95-CV-2926, 1998 WL 193204, at *7, 10 (S.D.N.Y. Apr. 22, 1998) (finding that a plaintiff's "lack of interest" and "ambivalen[ce]" towards a new position is a non-discriminatory reason for not rehiring her). Although Plaintiff indicates that he never received the reluctance letter, that does not disturb the Court's finding that Defendant nonetheless had a subjective belief, however erroneous, that Plaintiff was uninterested in the position. An "employer need not prove by a preponderance of the evidence that its actions were motivated by the proffered non-discriminatory reason." Khan v. Costco Wholesale, Inc., No. 99-CV-3944, 2001 U.S. Dist. LEXIS 21797, at *22 (E.D.N.Y. Dec. 13, 2001) (citing Fisher v. Vassar College, 114 F.3d 1332, 1335 (2d Cir. 1997)). Here, Condzal's affidavit stating that Defendant believed that Plaintiff was uninterested in the position is sufficient to create a legitimate, non-discriminatory reason for Defendant's failure to hire Plaintiff.

B. Pretext

Because Prudential established a non-discriminatory reason for their action - Gautam's unresponsiveness - the presumption of discrimination "drops from the picture." Weinstock, 224 F.3d at 42. The burden shifts back to Plaintiff, who must produce "sufficient evidence to support a rational finding that the legitimate, non-discriminatory reasons proffered by [Defendant] were false, and that more likely than not [discrimination] was the real reason for the [employment action]." Id. (internal quotation marks and citation omitted). Evidence which simply contradicts

Defendant's articulated reason is not enough. See James v. New York Racing Ass'n, 223 F.3d 149, 154 (2d Cir. 2000). The evidence must be sufficient to both negate Defendant's reason, proving it to be false, and to establish "that discrimination was the real reason" behind the negative employment action. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 515, 113 S. Ct. 2742, 125 L.Ed. 2d 407 (1993).

***6** In order to show that Prudential's reason is merely pretext for discrimination, Gautam falls back on his educational credentials and experience, inferring that he must have been discriminated against because he was highly qualified for the position. (Pls.' Stmt. ¶¶ 29-30.) Gautam also claims that in light of his April 21, 2004 e-mail containing "additional application materials" and showing his continued interest in the FSA position, Prudential could not have formed a "good faith belief" that he was no longer interested in the position. (Pls.' Br. 10.) Lastly, Plaintiff points to the alleged questioning regarding his age, religion, and the Indian caste system. (Pls.' Stmt. ¶¶ 27-28.) The Court finds that none of these explanations establishes that Prudential's proffered reason is pretext for discrimination.

1. Plaintiff's Qualifications

First, Prudential does not dispute that Plaintiff was better qualified and possessed higher test scores than the other applicants it hired during 2004 and 2005. Nevertheless, even if this were in dispute, the fact that Plaintiff was better qualified than other candidates does not undermine Prudential's explanation that their decision not to hire Plaintiff was based on his unresponsiveness. As aptly stated by our Court of Appeals:

> In our diverse workplace, virtually any decision in which one employment applicant is chosen from a pool of qualified candidates will support a slew of prima facie cases of discrimination. The rejected candidates are likely to be older, or to differ in race, religion, sex, and national origin from the chosen candidate. Each of these differences will support a prima facie case of discrimination, even though a review of the full circumstances may conclusively show that illegal discrimination played no part whatever in the selection.
>
> Fisher v. Vassar Coll., 114 F.3d 1332, 1337 (2d Cir. 1997).

Plaintiff's argument that he was more qualified than the persons actually hired is insufficient to establish pretext. To establish pretext, "[P]laintiff's credentials would have to be so superior to the credentials of the person selected for the job that no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the plaintiff for the job in question." Byrnie v. Town of Cromwell Bd. of Educ., 243 F.3d 93, 103 (2d Cir. 2001). Plaintiff has failed to meet this burden. Plaintiff submits the resumes of four applicants hired by Defendant: Parastoo Banisaeid ("Banisaeid"), Nick Stemas, Johnson Meloottu, and Mark Stein ("Stein"). (Fielding Ex. 7). Although Plaintiff scored higher on the FSST test, Plaintiff's overall credentials are not so much more superior that no reasonable person could have chosen the other candidates over Plaintiff. For example, Stein had experience working as an account executive with a brokerage firm, and already had licenses from the National Association of Securities Dealers, qualifications that Prudential might have found helpful for a FSA position. Although Plaintiff makes much of the fact that Banisaied failed the "experience" portion of the FSST test, Banisaied, a female of Asian descent, was fluent in three languages, scored high on the SPQ Gold and Dixson exams, and represented herself as having access to clients with high net-worths. (Fielding, Ex. 6). Defendant may have been interested in Banisaied's diversity and her ability to bring in profitable new accounts. These candidates were also qualified for the FSA position, notwithstanding their lower FSST scores. As the Second Circuit has made clear, district courts "must respect the employer's unfettered discretion to choose among qualified candidates." Byrnie, 243 F.3d at 103 (internal quotations and citations omitted).

2. Plaintiff's E-mail To Condzal

Similarly, Plaintiff's contention that Prudential could not have formed a good faith belief that he was no longer interested in the FSA position in light of his April 21, 2004 e-mail is not evidence of pretext. Prudential allegedly notified Plaintiff

of their decision to close his file on April 20, 2004. (Defs.' Stmt. ¶ 21.) Although Plaintiff claims that he never received Prudential's reluctance letter, it is apparent from Plaintiff's April 21, 2004 e-mail that he had "hear[d] negatively" from Prudential. (Id. ¶ 24.) At the least, this indicates that Plaintiff was aware, prior to Plaintiff's April 21, 2004 e-mail to Condzal, that Prudential was considering not to hire him. Since Plaintiff sent his e-mail after he heard negatively from Prudential, Plaintiff's e-mail is not proof of pretext; the April 21 e-mail does not undermine Prudential's argument that Prudential honestly believed, at the time they made the decision not to hire Plaintiff, that Plaintiff was no longer interested in the FSA position. See Smith v. United Parcel Serv., No. 03-CV-4646, 2006 U.S. Dist. LEXIS 25104, at *13 (N.D. Cal. Mar. 22, 2006) (explaining that a plaintiff must show that the defendant "did not honestly believe" the proffered explanation for the negative employment action at the time the decision was made).

***7** Plaintiff has not presented any evidence to overcome Defendant's statement that Condzal or John Spoleti honestly believed, at the time they made their decision not to hire Plaintiff, that Plaintiff lacked interest in the position. "When a decision to hire, promote, or grant tenure to one person rather than another is reasonably attributable to honest even though partially subjective evaluation ..., no inference of discrimination can be drawn." Lieberman v. Gant, 630 F.2d 60, 67 (2d Cir. 1980).

Plaintiff introduces no further evidence to support his contention that he was still interested in the FSA position, aside from an e-mail dated March 31, 2004, thanking Condzal for an interview. However, it is possible that Prudential formed their belief as to Plaintiff's disinterest because they had not heard from Plaintiff in the three weeks between the March 21, 2004 letter, and the date of the reluctance letter. As such, it could hardly be said that Plaintiff has cast any doubt on Prudential's belief that he was no longer interested in the FSA position, let alone show that Defendant's decision was pretext for discrimination.

3. Inappropriate Questioning

Lastly, Condzal's alleged questioning regarding Plaintiff's age, religion, and the Indian caste system, even if true, does not demonstrate discrimination. "Statements and questions acknowledging plaintiff's national origin and background do not support an inference of discriminatory animus." Chudnovsky v. Prudential Sec., Inc., No. 98-CV-7753, 2000 WL 1576876, at *8 (S.D.N.Y. Oct. 23, 2000); see also Jalal v. Columbia Univ., 4 F. Supp. 2d 224, 236 (S.D.N.Y. 1998) ("Statements that merely acknowledge a person's membership in a Title VII-protected class ... fail to demonstrate bias."); Fesce v. Guardsman Elevator Co., No. 96-CV-6793, 1998 WL 142350, at *9 (S.D.N.Y. Mar. 26, 1998) (stating that defendant's question regarding plaintiff's national origin "is simply a question, not a statement of belief or opinion, and is therefore not indicative of a discriminatory animus."). Even statements that are clearly racist, ageist, and religiously inappropriate are not discriminatory when they are stray remarks not connected to the adverse employment decision. See Fesce, 1998 WL 142350 at *9 (holding that a blatantly racist statement "certainly supports an inference of racism, but does not, as a matter of law, establish the existence of a material issue of fact warranting the denial of a motion for summary judgment.").

Here, there is no evidence to suggest that Condzal's questions reflected any discriminatory animus. The alleged questions do not appear to be even remotely racist, ageist, or religiously inappropriate. Furthermore, the questions occurred in only one of the earlier interviews, and after the interview wherein the questions took place, Condzal invited Plaintiff back for at least two more interviews.

Other than the stray questions regarding Plaintiff's age, religion, and the Indian caste and marriage system, made during only one of Plaintiff's interviews, Plaintiff has failed to present the Court with any evidence indicating that Defendant failed to hire Plaintiff because of his race, national origin, or age. Even if Gautam took personal offense to the questions and saw them as discriminatory, a "plaintiff's subjectively held beliefs regarding allegedly discriminatory comments are not sufficient to support an inference of discrimination." Adia v. MTA Long Island R.R., No. 02-CV-6140, 2006 U.S. Dist. LEXIS 51045, at *18 (E.D.N.Y. July 26, 2006).

***8** Even more telling, though, is that of the nine FSA's Prudential hired during 2004 and 2005, two were of Indian descent, and one was four years older than Plaintiff. Notably, courts have consistently granted summary judgment in discrimination cases where the plaintiff was replaced with or not hired over someone in the same protected class. See Ganthier v. N. Shore-Long Island Jewish Health Sys., 345 F. Supp. 2d 271, 274-76 (E.D.N.Y. 2004) (no evidence of discrimination in failing to hire a black female

plaintiff when another black female was hired); Patino v. Rucker, No. 93-CV-5929, 1996 WL 137481, at *3 (S.D.N.Y. Mar. 27, 1996) (granting summary judgment where Hispanic male was replaced with another Hispanic male); Scott v. Fed. Reserve Bank of New York, 704 F. Supp. 441, 449 (S.D.N.Y. 1989) (granting summary judgment where plaintiff, a black male, was replaced with another black male). Prudential's decision to hire two applicants of Indian descent, as well as one applicant of Middle Eastern descent and one Latino applicant, indicates that Prudential was actually very tolerant towards employees of different ethnic backgrounds. Likewise, Prudential's hiring of an applicant four-years older than Plaintiff weighs against Plaintiff's theory that he was not hired because of his age.

Because Plaintiff fails to meet his burden to show that Defendant's proffered reason for not hiring Plaintiff is pretext for discrimination, the Court must GRANT Defendant's motion for summary judgment.

CONCLUSION

For the foregoing reasons, Defendant's motion for summary judgment is GRANTED. The Clerk of the Court is directed to mark this matter closed.

SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2008 WL 11417411

Footnotes

1 In his deposition, Plaintiff states that he had these conversations with Condzal only once, in either the second or third interview. (Pls.' Dep. Tr. at 105.) Since Plaintiff went through at least five interviews with Condzal, he returned for two or three interviews with Condzal following the conversation about his age, religion, and the Indian caste and marriage system. (Defs.' Stmt. ¶ 28.)

2 Although Plaintiff's Complaint states that he filed his charge with the EEOC on November 19, 2005, his Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment states that Plaintiff filed the charge in December of 2005. Defendant also states that the charge was filed in December of 2005. See Pl's Comp. ¶ 10, Def.'s Memorandum of Law in Support of Summary Judgement, pg. 5. However, for the purposes of this motion, it is irrelevant whether Plaintiff filed his charge on November 19, 2005, or in December of 2005, as both dates are within 300 days after April 20, 2005, the date upon which Defendant allegedly ceased to hold Plaintiff's application on file.

3 Specifically, Gautam testified he was told by Condzal that he “will keep [Gautam's] resume for one year at least and [Plaintiff would] be hearing something from him.” (Fielding Decl. Ex. 1 at 75.)