

9/2/25

No. 25-397

IN THE
Supreme Court of the United States

DELTON YORK,
Petitioner,
v.

CHARLES EZELL,
DIRECTOR OF THE U.S. OFFICE OF
PERSONNEL MANAGEMENT,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Petitioner *Pro Se*

I. Question Presented

Assuming the petitioner established a *prima facie* case of employment discrimination, if the respondent offers evidence of a neutral reason for its refusal to promote, should the court give controlling weight that reason despite the petitioner's evidence disputing that reason, including evidence of racial animus related to the decisional process, to ultimately determine that there is no dispute of material fact and thereupon affirm a grant of summary judgment under Federal Rule of Civil Procedure 56(c)?

II. Related Proceedings

Delton York

v.

Charles Ezell, Acting Director,
Office of Personnel Management,
Agency.

EEO Case No.

Petition No. 2024005201

Request No. 2021004857

Agency No. 201 5013

US District Court Case No.

5:22-CV-00451-XR

US Court of Appeals Case No. 24-50770

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IV. Petition for Writ of Certiorari

Delton York, a GS-12 level Human Resource Specialist formerly employed by the United States Department of Personnel Management (“O.P.M.” or “Agency”), respectfully petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

V. Opinions Below

The United States District Court for the Western District of Texas San Antonio Division granted the respondent’s Motion for Summary Judgment (“MSJ”) on July 30, 2024, attached hereto at Appendix (“App”) 1-15.

The United States Court of Appeals for the Fifth Circuit affirmed the district court’s decision on June 4, 2025, attached hereto at App. 16-26.

VI. Jurisdiction

Mr. York invokes this court’s jurisdiction under 28 United States Code § 1254, having timely filed this petition for a writ of certiorari within ninety days of the date of the U.S. Court of Appeals final judgment.

VII. Constitutional Provisions Involved

Summary Judgment is a dispositive process that dismisses only those cases involving the absence of a genuine dispute of material fact resulting in a preclusion from recovery as a matter of law. Because it is a dispositive process, an onerous burden is

imposed on a party seeking summary judgment under Rule 56(c) of the Federal Rules of Civil Procedure, which states, in pertinent part:

(1) A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record...; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

VIII. Statement of the Case

This case involves a claim of employment discrimination against O.P.M. based on the agency's refusal to promote. App. 31-33.

In Fiscal Year 2014 ("FY-14"), the petitioner was denied a request for a non-competitive career-ladder promotion to the GS-13 level of the position despite having two acting managers opine that he was qualified for the promotion. App. 45-46, 90-104.

At the time of the promotion denial, O.P.M. decision maker, Jason Parman ("Parman") represented under oath that the denial was based solely on the opinions of the acting managers, the latter of whom were alleged to have unanimously

opined that the petitioner was not qualified for the promotion. App. 53. That representation, however, was patently false. The record shows that Parman did not ask any acting manager about the petitioner's promotion readiness in FY-14, and that no mention of the petitioner's alleged lack of promotion readiness appeared in the petitioner's annual performance appraisal where it should have been recorded. App. 38, 40, 53-54, 90-104.

Written documentation of the petitioner's alleged poor job performance did not appear in his employee file until well after an Equal Employment Opportunity ("E.E.O.") discrimination complaint had been filed. App. 105-106.

In its decision, the U.S. Court of Appeals assumed *arguendo* that petitioner established a *prima facie* case of employment discrimination under Title VII and the ADA. Therefore, for purposes of this petition, it will be assumed that the petitioner: (i) was a member of a protected class based on race, (ii) was qualified for the promotion to the GS-13 level of the position, (iii) experienced adverse employment action based on the agency's refusal to promote, and (iv) experienced similarly situated non-class members receiving preferential treatment.

The Court of Appeals nevertheless affirmed the district court's decision to grant summary judgment after determining that the petitioner did not satisfy his "ultimate burden" of showing that the respondent's neutral reason for not promoting him was a mask for discrimination. App. 25-26.

IX. Reasons for Granting the Writ

A. To avoid lower courts from undermining the purpose and intent of Fed. R. Civ. P., Rule 56, by improperly weighing the quality or sufficiency of the disputed evidence under Summary Judgment.

Because decision-maker Parman did not personally review the quality of petitioner's work in reaching his decision, the agency's initial refusal to promote was based on the untrue allegation that the acting managers unanimously opined that petitioner was not promotion-ready. App. 52-55.

Nevertheless, to overcome the petitioner's *arguendo prima facie* case, the Court of Appeal relied on a different justification: the subsequent allegation by a lone and novice acting manager, Laura Knowles ("Knowles"), citing the petitioner's alleged poor job performance as a neutral non-discriminatory reason for the agency's refusal to promote. While Knowles testified about the petitioner's difficulty managing administrative tasks and her frequent need to follow up with him to seek clarification on items, two far more experienced acting managers, Rachelle Booth ("Booth") and Morris Blakely ("Blakely") opined that in FY-14, the quality of petitioner work was equal to or exceeded similarly situated GS-13 level HR Specialists in the unit and that he was qualified for a promotion. App. 46-48, 90-104.

Instead of allowing the trier of fact to resolve the factual dispute as to the quality of the petitioner's

job performance, the Court of Appeals improperly evaluated the quality of the respondent's evidence from Knowles before giving it controlling weight.

B. To avoid lower courts from reviewing a decision on summary judgment without considering all the evidence produced by the responding party

The Court of Appeals accepted the respondent's evidence in the form of a statement by non-decision-maker Knowles as to the poor quality of petitioner's work, yet it completely dismissed the petitioner's evidence of statements made by other non-decision makers in support of his promotion readiness. In its decision, the court held that:

As it is uncontested that the acting supervisors were not the final decision-makers regarding York's promotion readiness, the opinions of Blakely and Booth on that subject are inconsequential.

App. 25.

In order to avoid outcomes in which the lower courts may arbitrarily dismiss or otherwise not consider evidence that creates a factual dispute under Fed. R. Civ. P. 56, it is respectfully requested that a writ issue to clarify this concern.

C. To avoid lower courts from mischaracterizing evidence of racial animus as being based solely on the petitioner's subjective belief to avoid finding that a dispute of genuine fact exists

In order to determine that there was no evidence of racial animus, the Court of Appeal mischaracterized the evidence petitioner produced from Booth pointing to Parman's racial animus in the decisional process. According to Booth, Parman made a statement that he recruits and promotes individuals exclusively from his alma mater, Missouri State University, because they are just like him. From FY-10 to FY-14, all the individuals hired and promoted from Missouri State University were Caucasian. This caused Booth to understand that Parman was only interested in hiring and promoting Caucasians. App. 25, 54, 90-104.

Although Parman attempted to rehabilitate this statement in his deposition testimony by suggesting that he recruited and promoted from other institutions (App. 25), that testimony only created a factual dispute as to the exact words Booth perceived; it did not however completely dispose of Booth's recollection of Parman's statement. Instead of treating the matter as a factual dispute, the Court of Appeals improperly weighed Parman's deposition testimony on rehabilitation giving it controlling weight.

In further support of its complete dismissal of the petitioner's evidence of Parman's racial animus,

the Court of Appeal cited the case of *Roberson v. Alltel Information Services*, 373 F.3d 647, 654 (5th Cir. 2004) finding that:

...the employee's subjective belief about the supervisor's race-or-age-based animus was insufficient to create an inference of...discriminatory intent.

The *Roberson* case, however, is inapposite and its holding is not controlling because the facts of this case are so very much distinguished. In the *Roberson* case, there was no evidence that the decision-maker made an independent statement from which a trier of fact could infer racial animus; thus, in that case, the court held that the petitioner's opinion alone was insufficient to establish racial animus. This case is remarkably different. Here, Parman, the actual decision-maker, made an independent statement that Booth and others, not merely the petitioner, opined that racial animus was involved in the decisional process.

Based on the foregoing, the Court of Appeals erred by completely dismissing evidence showing that a factual dispute exists as to Parman's racial animus as a motive for his refusal to promote.

D. To avoid lower courts from failing to consider the record as a whole in its *de novo* review on summary judgment

The entire record should be considered to determine whether there is a dispute of material fact in deciding a motion for summary judgment.

Knowles' Inexperience

The record as a whole shows that Knowles, had been placed on a temporary 120-day acting manager assignment by Parman from May-July 2014. Prior to that temporary assignment, Knowles worked in the agency's succession planning unit and had no actual work experience performing the organizational design and position classification duties that petitioner was performing at the time of her performance evaluation. Moreover, the record as a whole shows that the negative criteria cited by Knowles pointing to the petitioner's alleged poor job performance, was based entirely on third-party unsworn statements, that did not appear in the record, and that did not appear in the petitioner's mid-year or annual performance appraisal as is required by O.P.M. policy and procedure. App. 105-106.

A trier of fact could determine that Knowles' sole dissenting opinion of petitioner's lack of promotion-readiness, was not based on her own knowledge, skills and abilities as an HR Specialist, did not appear in the petitioner's annual performance appraisal, and therefore was not worthy of any weight, let alone controlling weight.

Parman's Bias

Petitioner produced evidence of Parman's effort to persuade all acting managers to give false testimony under oath that Parman solicited their feedback of petitioner's promotion-readiness in FY-14, and to further give false testimony under oath that all acting managers opined that Mr. York was not promotion-ready at any time during FY-14. Petitioner also produced evidence that Parman offered false testimony under oath in the form of a spreadsheet that knowingly contained a false representation of fact about the petitioner's lack of promotion-readiness. Petitioner also produced evidence that Parman knowingly produced excerpts from an inapposite NTEU Collective Bargaining Agreement to justify his refusal to promote the petitioner. App. 82-89, 90-104.

Based on the foregoing items of evidence, a trier of fact should be allowed to determine whether the otherwise neutral reason offered by Parman for his refusal to promote was pretextual, credible, or worthy of any weight at all.

Two Most Experienced Specialists

Petitioner also produced evidence that the two most senior and experienced acting managers, Blakely and Booth each opined that petitioner was performing at the GS-13 level in FY-14 and was qualified for a promotion. Based on these items of evidence, a trier of fact could determine that the otherwise neutral reason offered by Parman and

Knowles for the refusal to promote were pretextual and not worthy of any weight.

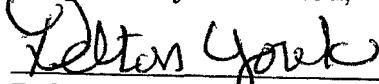
X. Conclusion

The purpose of trial court is to serve as the trier of fact. There is a strong public policy favoring the resolution of disputes by the trier of fact. Summary judgment, on the other hand, is a drastic measure that deprives parties of the benefit of that strong public policy.

In this case, petitioner has demonstrated that there is a genuine dispute as to whether the objectively neutral reason offered by the respondent to not promote is a pretext for discrimination. For the foregoing reasons, Mr. York respectfully requests that this Court issue a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fifth Circuit.

Dated this 1st day of September 2025.

Respectfully submitted,



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