

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted August 17, 2021*

Decided August 17, 2021

Before

MICHAEL S. KANNE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 20-3518

ANGELA JONES,
Plaintiff-Appellant,

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

v.

No. 18 C 1213

LOUIS DEJOY, Postmaster General,
Defendant-Appellee.

Thomas M. Durkin,
Judge.

ORDER

Angela Jones appeals from the entry of summary judgment for her employer, the United States Postal Service, on her claims of retaliation and discrimination based on her race (African American) and gender. *See* 42 U.S.C. § 2000e-2. The district court

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

concluded that most of Jones's claims were untimely and that her single timely claim did not involve an adverse employment action. We agree with the district judge's reasoning and affirm.

Jones joined USPS in 2012 as a mail-processing clerk. Over the next five years, she experienced four events she challenges as discriminatory. First, in late 2015, a manager rescinded an offer to make permanent her temporary position as acting supervisor. In Jones's telling, the manager rescinded the offer because a senior decision-maker had disagreed with it. (The manager disputes that he offered Jones the promotion to permanent supervisor; he attests that he was not authorized to do so.) Second, in March 2016, Jones was demoted from acting supervisor to mail-processing clerk. Third, a couple of months later, the USPS Office of Inspector General subjected Jones to a polygraph test after she became a suspect in the agency's investigation into timecard fraud at her branch office. Though she was eventually cleared of any wrongdoing, Jones later filed an Equal Employment Opportunity (EEO) charge based on management's false accusations and refusal to produce the polygraph-examination results. (She voluntarily withdrew the charge when her supervisor promised to turn over the results.) Fourth, in late 2016, Jones's supervisor asked to schedule a "pre-disciplinary interview" with her to follow up on the investigation. Jones refused to participate, and the interview never took place.

In early 2017, Jones requested pre-complaint counseling from the agency's EEO contact center. She asserted that her supervisor sought the pre-disciplinary interview in retaliation for her request to see the polygraph results. Jones conceded that she had missed the 45-day deadline for initiating this complaint of retaliation but argued that the deadline should be tolled because her son had unexpectedly died in the interim.

Soon after, Jones submitted a formal EEO complaint. She asserted that managers at USPS had retaliated and discriminated against her when they (1) withdrew her promotion to permanent supervisor in September 2015; (2) removed her from the acting-supervisor position in March 2016; (3) gave her a polygraph in July 2016; and (4) asked her to participate in a pre-disciplinary interview in September 2016. The agency dismissed Jones's complaint as untimely because she filed it more than 45 days after each event.

Jones then sued USPS under Title VII of the Civil Rights Act of 1964, *see* 42 U.S.C. § 2000e-2. Reprising the allegations from her formal EEO complaint, she asserted that

USPS retaliated and discriminated against her, and subjected her to a hostile work environment, based on her race and gender.

The district judge ultimately granted USPS's motion for summary judgment. The judge concluded first that Jones's claims about the polygraph (July 2016), demotion (March 2016), and rescinded promotion (September 2015) were time-barred and that equitable tolling did not save them. Even assuming that Jones's deadline to complain about the rescinded promotion and demotion could be tolled until July 2016 (when Jones says she first understood the link between these acts and USPS's discriminatory animus), the judge concluded that Jones failed to contact an EEO officer within the requisite 45 days. The judge acknowledged Jones's timely filing of an EEO charge over the polygraph but explained that she withdrew that charge and took no steps to revive it before the 45-day deadline had expired. As for the timely filed claims, the judge concluded that these failed on the merits. With regard to Jones's claim about the pre-disciplinary interview, the judge determined that Jones waived this challenge by not responding to USPS's argument that no adverse action occurred. And regarding her hostile work environment claim, the judge explained that Jones presented no evidence that the challenged actions were based on her race or gender.

On appeal, Jones argues that the district judge erred in concluding that equitable tolling did not save her claims about the rescinded promotion in 2015 and subsequent demotion in 2016. She maintains that the deadline to file an EEO charge about these events should have been tolled until 45 days after her polygraph in July 2016—when she says she realized that the events showed a pattern of discrimination.

The district judge properly concluded that equitable tolling cannot apply to these claims. As the judge explained, even if Jones could not have known until her polygraph in July 2016 that the rescinded promotion or demotion was discriminatory, she failed to raise these concerns with an EEO counselor within 45 days of that discovery. 29 C.F.R. § 1614.105(a)(1); *Green v. Brennan*, 136 S. Ct. 1769, 1775–76 (2016). The EEO charge that Jones filed in August alluded only to the polygraph, and not until 2017 did she address the potentially discriminatory nature of her rescinded promotion and demotion. *See Haynes v. Indiana Univ.*, 902 F.3d 724, 731 (7th Cir. 2018) (tolling implies an extension not of indefinite duration but merely “a length of time within which it would have been reasonable to file a complaint”).

Jones also argues that the judge erred by not applying equitable tolling to the period between August 2016, when she withdrew her EEO charge about the polygraph,

and February 2017, when she filed her final EEO charge. That period should be tolled, she says, because her reason for withdrawing the charge—a supervisor’s promise to turn over her polygraph results—was never fulfilled and, further, she suffered the tragedy of her son’s unexpected death in October 2016.

The district judge was right not to apply equitable tolling to this period. Even if Jones could point to her supervisor’s alleged deception as a “circumstance[] . . . beyond her control” that might warrant tolling, *see* 29 C.F.R. § 1614.105(a)(2), Jones did not explain why she was unable to reinstate her EEO charge within the 45-day filing deadline, which lapsed more than a month before her son’s passing. *See Irwin v. Dep’t of Veterans Aff.*, 498 U.S. 89, 96 (1990) (tolling does not apply “where the claimant failed to exercise due diligence in preserving his legal rights”). Moreover, as the judge noted, Jones never identified her supervisor’s actions as a basis for seeking more time to file an EEO charge about the polygraph.

Jones next challenges the judge’s conclusion that the invitation to participate in a pre-disciplinary interview was not an adverse action. But this argument misapprehends the basis of the judge’s ruling. The judge concluded that Jones waived this challenge by not responding to USPS’s argument questioning the adverse nature of such an interview. In any case, she does not contend—and we cannot see how—an invitation to participate in an optional meeting could qualify as a materially adverse action. *See Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 67–68 (2006).

Finally, Jones contends that the judge ignored her argument that her treatment at USPS cumulatively amounted to a hostile work environment. The judge may not have said much specifically about this argument, but he did conclude that Jones presented no evidence that any of the challenged conduct was based on her race or gender—a prerequisite for a plaintiff to survive summary judgment on a hostile work environment claim. *See Poullard v. McDonald*, 829 F.3d 844, 859 (7th Cir. 2016).

We have considered Jones’s other arguments, and none has merit.

AFFIRMED