

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 08-11448

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT FEB 18, 2009 THOMAS K. KAHN CLERK

D. C. Docket No. 06-01047-CV-CAP-1

LEWIS MASTERS,

Plaintiff-Appellant,

versus

THE CITY OF EAST POINT,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(February 18, 2009)

Before BIRCH, HULL and FAY, Circuit Judges.

PER CURIAM:

Appellant Lewis Masters is a former sergeant in the East Point Fire Department (“EPFD”). He is white. In May 2006, he filed a Title VII complaint against EPFD, alleging a discriminatory failure to promote. He alleged that East Point hired Rosemary Cloud, a black woman, as fire chief, and that as soon as she was hired, Cloud began favoring black firefighters over white firefighters by advancing less experienced and less qualified black firefighters over their white counterparts and implementing and manipulating the promotional processes so that black firefighters would achieve advancement.

Masters alleged that he tested for the lieutenant’s position but was not promoted, while less experienced, less qualified black candidates were promoted. He received the 19th best score out of 20 applicants on the written test portion of the lieutenant promotion process, and only the top 14 scores advanced to the interview portion of the process as had been indicated pre-testing.

EPFD moved for summary judgment. The Magistrate Judge issued a Report & Recommendation that found that Masters had not presented direct evidence of discrimination, had established a prima facie case for discriminatory failure to promote, and that Masters had raised a jury issue as to pretext. On review, the district court found that Masters failed to establish two of the prongs of his prima facie case.

The district court concluded that Masters had not shown he was qualified for the lieutenant promotion because of his 19th-place written test score. The district court also concluded that Masters had failed to show that equally or less qualified individuals were promoted because all of the black employees who were promoted to lieutenant had gotten a top-14 test score and were therefore not similarly situated. Masters appeals.

After a careful review of the record, the briefs of the parties and hearing oral argument, we find no reversible error. Accordingly, we AFFIRM.