

FILED

NOV 15 2004

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

LINDA A. COLLINS,
1540 Northgate Road, N.W.,
Washington, D.C. 20012,

Plaintiff,

v.

DONALD E. POWELL, CHAIRMAN,
FEDERAL DEPOSIT
INSURANCE CORPORATION,
550 17th Street, N.W.,
Washington, D.C. 20429-9990,

Defendant.

CASE NUMBER 1:04CV01995

JUDGE: Ellen Segal Huvelle

DECK TYPE: Employment Discrimination

DATE STAMP: 11/15/2004

**JURY
ACTION**

COMPLAINT

(Discrimination, Hostile Work Environment, Retaliation)

Introduction

1. Plaintiff brings this action pursuant to Title VII of the Civil Rights Act of 1964, as amended by 42 U.S.C. Section 2000e *et seq.*, and as further amended by section 102 of the Civil Rights Act of 1991, 42 U.S.C. Section 1981a, and pursuant to the Age Discrimination in Employment Act, as amended, 29 U.S.C. Section 633a to remedy acts of discrimination in employment practices by the Federal Deposit Insurance Corporation (FDIC) against plaintiff because of her race, her age, her gender, and in retaliation for her having engaged in protected civil rights activity.

Jurisdiction

2. This Court has jurisdiction over the subject matter of this civil action pursuant to Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972,

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42 U.S.C. Section 2000e-16(c). This Court also has jurisdiction pursuant to 28 U.S.C. Section 1331 because it presents a question of federal law.

Venue

3. Venue is proper in this judicial district pursuant to 28 U.S.C. 1391 and 42 U.S.C. § 2000e-5(f)(3). Plaintiff's employment records are maintained by the FDIC within the District of Columbia and virtually all of the personnel actions and decisions at issue in this case were made and/or approved in this judicial district.

4. Furthermore, this case is related to *Conanan v. Powell*, Civil Action No. 00-03091-ESH (D.D.C.), a class action suit in this judicial district the settlement of which resolved one of plaintiff's earlier race discrimination claims.

Parties

5. Plaintiff is a 59 year old black female citizen of the United States and a resident of the District of Columbia. She is currently employed, and at all times relevant to this complaint was employed, by the FDIC.

6. Defendant Donald E. Powell is the Chairman of the FDIC, which is a government agency within the Executive Branch of the Government of the United States that has had more than 500 employees in 20 or more calendar weeks during the past year. In short, as its Chairman Mr. Powell is responsible for the personnel actions, omissions and practices within FDIC. He is sued only in his official capacity as head of FDIC.

Statement of Facts

7. Plaintiff timely filed formal discrimination complaints on June 7, 2000, July 2, 2001, October 2, 2001, November 27, 2001, January 18, 2002, and November 3, 2003. On October 14,

2004, Ms. Collins received notification of her right to sue after the FDIC issued a final agency decision dismissing FDICEO Complaint Nos. 000060, 010044, 01055, 020001, 020009. Plaintiff has also exhausted her administrative remedies on her November 3, 2003 formal complaint (FDICEO 03-0035) and on her May 17, 2004 formal complaint (FDICEO 04-0031), as 180 days have now passed since they were filed.

8. Plaintiff has been an employee of the FDIC for almost 10 years and before that she worked for four years from 1991 to 1995 for the Resolution Trust Corporation, the Agency that merged into the FDIC. She came to the FDIC as a Computer Specialist in May 1995. As of December 2003, Ms. Collins had about 20 years of overall experience in the computer security field.

9. Ms. Collins served as an Information Technology Specialist at the FDIC's Division of Information Resources Management (DIRM) as a part of the Information Security Staff from December 1998 through December 15, 2003, a five-year period. Her position, series, and grade were Information Technology Specialist, CG-2210-13.¹ On or around March 1999, she became a Program Manager when was given the functional title of Computer Security Incident Response Team (CSIRT) Coordinator. After she filed her EEO complaints, she was involuntarily reassigned to the Asset Management Project in Technical Infrastructure Management effective December 15, 2003.

10. Ms. Collins received a 2.7 annual performance rating, considered "superior" on the 1 to 3 rating scale, for the period from September 1998 through August 1999 which included her first eight months with the DIRM Information Security Staff. She previously received a Sustained Superior Performance Award while at the FDIC in March 1997, and an "outstanding" performance

¹ For part of this time, Ms. Collins was a CG-334-13 Computer Specialist, an identical position which was superseded at FDIC by the IT Specialist position due to a change in Federal job classification and position titling practice.

rating in 1996.

11. In the Spring of 1999, Bobby Porter (non African American) who was Ms. Collins' second-line supervisor from January 1999 through January 2001 designated Ms. Collins the CSIRT Coordinator. However, on December 17, 1999, he advised Ms. Collins via email that all CSIRT items were to be commented on by Leslie Morgan. Ms. Morgan is a younger, white female who was previously assigned to FDIC's legal office and at the time had no CSIRT experience. Angel Rivera (non African American) who was Ms. Collins' first-line supervisor from December 1998 through January 2002 sent a similar email message to Ms. Collins on December 22, 1999, in which Ms. Morgan was designated Co-Lead with authority over the CSIRT area. Ms. Collins suffered professional humiliation and embarrassment as a result of the new comment procedure and loss of authority to Ms. Morgan. In January 2000, Mr. Rivera continued pressing this procedural burden on Ms. Collins, repeatedly telling her to keep Ms. Morgan informed of work activities and to share her work with Ms. Morgan.

12. Starting in November 1999, Mr. Rivera refused to allow Ms. Collins to work with Russell Davis on Public Key Infrastructure ("PKI") or to attend meetings related to PKI or Smart Card technology. Mr. Rivera later gave Ms. Collins an assignment to write a Smart Card directive. The FDIC's initial Smart Card implementation for the Electronic Travel Voucher Program depended on the interface of Smart Cards with PKI technology.

13. Mr. Porter made an unwarranted accusation of insubordination against Ms. Collins via email on November 19, 1999. When Ms. Collins asked Mr. Porter for an explanation, he failed to respond.

14. In January 2000 and February 2000, Mr. Porter held Ms. Collins to unreasonable

deadlines and relegated her to a "go-fer" role with regard to an assignment to create an FDIC poster. He unnecessarily and repeatedly criticized Ms. Collins for her work on the project.

15. During a January 19, 2000 meeting, Mr. Rivera spoke for the CSIRT team without acknowledging Ms. Collins' presence at the meeting despite her ostensible role as the CSIRT Co-Lead. This intentional snub caused Ms. Collins embarrassment, humiliation, and damage to her professional reputation.

16. On February 4, 2000, Mr. Rivera gave Ms. Collins an assignment to perform monthly Information Security Officer training presentations of 30 to 60 minutes' duration with insufficient time to prepare for her first training session on February 15, 2000 session. By not providing her sufficient time to prepare for the February session, Mr. Rivera demonstrated his desire that she fail in the assignment.

17. Mr. Porter forced Ms. Collins to attend a Y2K project awards ceremony in January 2000. She received no award, even though she performed work on the Y2K project equal to or more extensive than the work done by the award recipients.

18. In January 2000, Mr. Porter and Mr. Rivera deliberately excluded Ms. Collins from meetings at which important information regarding her duties was discussed. Mr. Rivera did not inform her of a January 11, 2000 meeting to discuss "Single Sign On" despite the fact that this potential future configuration of FDIC applications was germane to Ms. Collins' job functions. Ms. Collins only attended the meeting after learning of it from another supervisor. Two days later, Mr. Porter denied her request to attend a "Real Secure" training session, citing a need to meet with her about the CSIRT Poster project; however, Mr. Porter did not meet with her on the day of the training. Mr. Porter and Mr. Rivera consistently excluded Ms. Collins from meetings and denied her access

to information in order to undermine her job performance.

19. Mr. Rivera excluded Ms. Collins from computer virus meetings on numerous occasions, including but not limited to meetings in January 2000 and meetings on February 7 and 8, 2000. At these meetings, important information regarding an area in which she worked was discussed. Mr. Rivera, by deliberate acts, excluded Ms. Collins from meetings related to the core functions of her position affecting her ability to fully perform her duties.

20. Mr. Rivera withheld CSIRT information from Ms. Collins and excluded her from CSIRT meetings starting in January 2001. He did not tell her about the meetings, and then prohibited her from attending when she learned of them.

21. Mr. Rivera sent threatening and harassing email messages to Ms. Collins regarding her status reports starting on or about January 2001. In the messages, Mr. Rivera unreasonably questioned Ms. Collins veracity and implied that Ms. Collins had not been truthful about her reported activities.

22. Ms. Collins was required to attend performance counseling meetings starting on February 23, 2000. Mr. Rivera displayed increasing anger and hostility towards her and established the requirement for the performance counseling meetings.

23. Mr. Rivera falsely accused Ms. Collins of work-place misconduct in a March 26, 2001 Letter of Reprimand. An internal FDIC investigation found no grounds for disciplining Ms. Collins. Mr. Rivera claimed that Susie Able, a white female, who served as Ms. Collins' second-line supervisor in an acting role during much of 2001 was present during one of the alleged incidents he used as grounds to reprimand Plaintiff, but Ms. Able later had no recollection of the event when interviewed by the EEO Investigator concerning the Letter of Reprimand.

24. Ms. Collins was forced by Mr. Rivera to lead a CSIRT tour on June 6, 2001 despite his knowledge of a previously and regularly scheduled CSIRT team meeting she was to lead. This assignment diminished her professional standing and leadership in the eyes of the CSIRT team members.

25. Mr. Rivera sent an email to Ms. Collins on June 12, 2001, directing her to work on a report with instructions differing from those discussed a month earlier. This email was sent despite Mr. Rivera's knowledge that Ms. Collins would be leaving for a vacation only two days later, on June 14, 2001.

26. On various dates between January 2001 and April 2001 and between June 2001 and July 2001, Mr. Rivera placed messages in the public CSIRT electronic mailbox unfairly criticizing Ms. Collins' work, and depicting Ms. Collins in a negative and derogatory manner.

27. Mr. Rivera further impeded Ms. Collins' work starting in April 2001 when he unnecessarily denied her access to sources of information necessary to complete a research project involving Intrusion Detection Systems and Certificate Authority products to which she had been assigned.

28. Starting in July 2001, Mr. Rivera specifically prevented CSIRT contractors from meeting or sharing information with Ms. Collins.

29. In September 2001, Mr. Rivera denied Ms. Collins' request to attend important PKI Certificate Authority training related to the research project he assigned her.

30. During November 2001, Mr. Rivera intentionally excluded Ms. Collins from Windows 2000 training relevant to her CSIRT Coordinator position. He did this by intentionally failing to inform her of the when the training would be held even though she had previously

expressed an interest. Then Mr. Rivera specifically directed her not to attend the meeting. He did this by way of a negative and disparaging note publicly posted on her office door.

31. On September 18, 2001, Mr. Rivera and Ms. Able denied Ms. Collins representation by her attorney and union representative at a "Research Project-Corrective Actions" meeting called by Mr. Rivera. Prior to the meeting, Mr. Rivera refused to explain to Ms. Collins' union representative what "Corrective Actions" meant despite Ms. Collins' fear that punitive actions would be taken against her at the meeting. FDIC security personnel forcibly removed Plaintiff's attorney Susan C. Lee from the meeting room and escorted her immediately from the building - a humiliating event for both Ms. Collins and her attorney.

32. Mr. Rivera admitted to Union President Elizabeth Coll on one occasion that the reason he was treating Ms. Collins adversely was she had filed grievances against him. Ms. Collins had alleged unlawful employment discrimination in the grievances.

33. In early 2000, Ms. Collins applied for the position of Senior Computer Specialist, CG-334-14, which would have been a one-grade promotion for her. She was ranked as one of the best qualified candidates for the position, but on February 7, 2000, she received a formal notice of non-selection. She was not interviewed for the position and never learned of a reason for the non-selection.

34. Mr. Rivera gave Ms. Collins an unreasonably low performance evaluation rating (1.9) on December 1, 2000, for the period September 1999 to August 2000. Mr. Rivera had been unprepared for the mid-year review held on April 10, 2000, and gave no useful information about how he viewed her performance during that period. Mr. Rivera also gave Ms. Collins an unreasonably low performance evaluation rating (2.0) on October 10, 2001 for the period September

2000 to August 2001. He had given a false portrayal of Ms. Collins' performance in the midyear review report dated April 2, 2001. Mr. Rivera never met with Ms. Collins to discuss performance expectations for either rating period at the beginning of those rating periods. He also subsequently failed to give her a performance plan for the following September 2001 to August 2002 rating period.

35. Late in 2001, Ms. Collins applied for an Information Security Manager position, CG-334-14, under Vacancy Announcement Number 2001-HQ-1600. On or about December 3, 2001, Ms. Collins was informed that she was not rated and ranked as best qualified and therefore was not placed on the Roster of Eligibles. Ms. Collins was previously rated and ranked as Best Qualified on numerous occasions for similar positions in DIRM. Ms. Able was a member of the three-person selection committee.

36. On or around August 18, 2003, Ms. Collins was removed from her position as CSIRT Coordinator and was detailed to a position unrelated to her security expertise in the Asset Management Project, an activity slated for elimination by her new supervisor, Marc Ebersberger, a white male. The action was taken after Mr. Ebersberger's outrageous behavior on August 15, 2003, provoked a confrontation with Ms. Collins, during which she covered the ears of a contractor, one of her friends, because of Mr. Ebersberger's harsh and inappropriate tone. Both contractors present during the August 15, 2003 incident maintained that Ms. Collins' alleged actions were not severe, disturbing, or threatening to them. Yet, Mr. Ebersberger punished Ms. Collins for the "incident" where he was the one who had in fact acted in an outrageous, offensive, and provocative manner.

37. On November 7, 2003, based on Mr. Ebersberger's recommendation, Ms. Collins was suspended by Ned Goldberg, a white male, who was Ms. Collins' secondline supervisor (from

January 2002 through December 2003), for five days without pay, with the suspension effective from November 17, 2003 to November 21, 2003. The suspension resulted from the August 15, 2003 "incident" and was disproportionate to the alleged misconduct. This disciplinary action was meant to coincide with and disrupt pending settlement negotiations convened by the Equal Employment Opportunity Commission on Ms. Collins' earlier EEO complaints, and was taken in addition to removing Ms. Collins from her position and putting her on a punitive detail.

38. On December 9, 2003, Michael E. Bartell informed Ms. Collins that she would be permanently reassigned to the Asset Management Project in Technical Infrastructure Management effective on December 15, 2003. The new position is an area outside of Ms. Collins' area of expertise -- computer security -- and, on information and belief, is in any case targeted for elimination by the FDIC.

39. Since Ms. Collins' discriminatory removal from her position and forced reassignment to Asset Management, her position as CSIRT Coordinator (a CG-13 when she held it) has been readvertised as a CG-14 position, and filled by a less qualified white male, who as a contractor was formerly Ms. Collins' subordinate. Ms. Collins applied but was not even interviewed for the position, though she was rated highly qualified. While Ms. Collins held the position, she had repeatedly requested to management that it be upgraded to a CG-14, but her requests were denied or ignored. Only when FDIC decided to place a white employee in the position and Ms. Collins had been transferred to another job in a different area was it upgraded. Ms. Collins properly and timely filed a formal discrimination complaint to challenge these FDIC decisions on May 17, 2004 (FDICEO 04-0031), more than 180 days previous to the filing of the instant civil action.

Statement of Claims

Count I - Hostile Work Environment

40. From 1999 to the present, Defendant has subjected Ms. Collins to a hostile work environment based on her race, sex, age, and in retaliation for her protected EEO activity in violation of Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act.

Count II - Denial of Promotion

41. Based on her race, sex, age, and prior EEO activity, Defendant unlawfully denied Ms. Collins promotion to the position of CG-14 Senior Computer Specialist in early 2000 in violation of Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act.

42. Based on her race, sex, age, and prior EEO activity, Defendant unlawfully denied Ms. Collins promotion to the position of CG-14 Information Security Manager in late 2001 in violation of Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act.

Count III - Discriminatory Performance Appraisals

43. Based on her race, sex, age, and prior EEO activity, Mr. Rivera gave Ms. Collins an unreasonably low performance evaluation rating (1.9) on December 1, 2000, for the period September 1999 to August 2000 in violation of Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act.

44. Based on her race, sex, age, and prior EEO activity, Mr. Rivera also gave Ms. Collins an unreasonably low performance evaluation rating (2.0) on October 10, 2001, for the period September 2000 to August 2001 in violation of Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act.

45. Based on her race, sex, age, and prior EEO activity, Mr. Rivera gave a false portrayal

of Ms. Collins' performance in his mid-year review report dated April 2, 2001, in violation of Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act.

Count IV - Discrimination in Denial of Awards

46. Based on her race, sex, age, and prior EEO Activity, Defendant unlawfully denied Ms. Collins performance awards in violation of Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act.

Count V - Discriminatory Discipline

47. Based on her race, sex, age, and prior EEO activity, Defendant unlawfully discriminated and retaliated against Ms. Collins when it issued a reprimand to her on or about March 26, 2001.

48. Based on her race, sex, age, and prior EEO activity, Defendant unlawfully discriminated and retaliated against Ms. Collins when it suspended her for five days on or about November 17, 2003 to November 21, 2003.

Count VI - Discriminatory Directed Detail and Involuntary Reassignment

49. Based on her race, sex, age, and prior EEO activity, Defendant unlawfully discriminated and retaliated against Ms. Collins when it removed her from her position as CSIRT Coordinator, unlawfully directed her detailed to a position in Asset Management in violation of its own procedures, and subsequently involuntarily reassigned her to Asset Management permanently, a unit under consideration for elimination, in a position outside her area of expertise in computer security.

Prayer for Relief

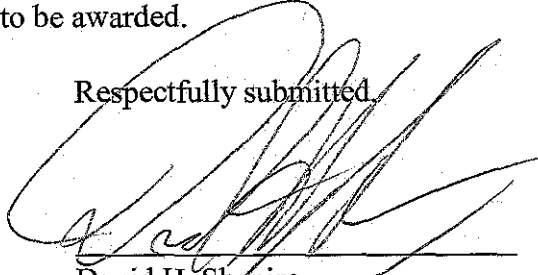
50. As a result of FDIC's unlawful conduct plaintiff has suffered and continues to suffer damage in the form of lost promotional and bonus opportunities, with attendant loss of pay and other losses of benefits associated with promotions, bonuses, and awards for exceptional performance; damage as a result of unjust discipline; damage to her personal reputation; damage to her professional reputation and to her career; and humiliation, physical injury, and mental and emotional pain and anguish as a result of intense and unremitting on-the-job stress. Plaintiff therefore requests the following relief:

- (a) enter judgment in her favor and against defendant on each of the claims contained in this civil action;
- (b) award plaintiff compensatory damages against defendant to the fullest extent allowable under Title VII;
- (c) Nullify all disciplinary actions and promote plaintiff to CG-14 retroactively to the earliest point discrimination is found with back pay and other benefits.
- (d) order defendant to correct all FDIC records, including plaintiff's official personnel folder, to accord with the relief order by the Court and to purge all references in such documents to this civil action and the administrative EEO complaint that proceeded it;
- (e) award plaintiff her costs of this action and the administrative complaint that preceded it, including reasonable attorneys' fees, with interest thereon;
- (e) enjoin defendant from discriminating or retaliating against plaintiff in the future; and
- (f) award such other and further relief as the Court may deem just and appropriate.

Jury Demand

Plaintiff hereby requests a trial by jury in the instant case on all issues of fact and on questioning pertaining to the level of damages to be awarded.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'David H. Shapiro', is written over a horizontal line.

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