

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 1131

JANICE DICKERSON

VERSUS

LOUISIANA DEPARTMENT
OF ENVIRONMENTAL QUALITY

BRK
TMH

Judgment Rendered: February 10, 2012.

* * * * *

On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. C557596

The Honorable Kay Bates, Judge Presiding

* * * * *

Lashanda M. Robinson
Baker, La.
and
Victor J. Woods, Jr.
Addis, La.

Attorneys for Plaintiff/Appellant,
Janice Dickerson

Michael M. Duran, Sr.
New Orleans, La.

Attorney for Defendant/Appellee,
Louisiana Department of
Environmental Quality

* * * * *

BEFORE: CARTER, C.J., PARRO AND HIGGINBOTHAM, JJ.

Parro, J., concurs.

CARTER, C. J.

In this employment discrimination suit, the plaintiff, Janice Dickerson, appeals a summary judgment granted March 18, 2011, in favor of the defendant, the Louisiana Department of Environmental Quality (“LDEQ”), dismissing the plaintiff’s claims with prejudice. The issue on appeal is whether the LDEQ presented adequate evidence to show that the plaintiff cannot meet her burden of establishing a *prima facie* case of age discrimination. Alternatively, LDEQ argues, the plaintiff cannot show that the protected trait, herein age, “actually motivated the employer’s decision” and was “a determinative influence on the outcome,” as required by law. *See LaBove v. Raftery*, 00-1394 (La. 11/28/01), 802 So. 2d 566, 574.

Our *de novo* review of the evidence reveals that LDEQ met its burden on the motion for summary judgment. The plaintiff describes being “promoted” to the position of Executive Manager II and then “demoted” back to the position of Environmental Project Specialist. However, LDEQ submitted personnel records to show that plaintiff performed the job of Executive Manager II as a “detail to special duty.” Civil Service Rule 1.13.1 defines “Detail to Special Duty” as “the *temporary assignment* of an employee to perform the duties and responsibilities of a position other than the one to which he is regularly assigned, without prejudice to his rights in and to his regular position.” (Emphasis added.) Civil Service Rule 23.12 further provides:

- (a) An appointing authority may assign an employee to a different position in the same department for up to one month without changing the employee’s classification or pay. After one month, the appointing authority shall detail or otherwise place the employee in the position in accordance with Civil Service Rules or return the

employee to his or her regular position. Upon detail, pay shall be fixed in accordance with Civil Service Rule 6.11.

- (b) No detail shall exceed one year without the Director's prior approval. Written justification for all details for more than one month shall be kept by the agency. Justification shall be submitted with all details requiring the Director's approval. This rule is subject to Rules 17.20(b) 4 and 17.25 concerning layoff related details.
- (c) The Director may issue policy standards for use of details to special duty.
- (d) *An appointing authority may end a detail at any time.*
- (e) The Director may, at any time, cancel a detail to special duty and/or withdraw an agency's authority to detail employees for longer than one month. (Emphasis added.)

The detail was for a finite period of time and was repeatedly approved for extensions until LDEQ ended the detail in 2005. The documentary evidence submitted by LDEQ shows the lack of factual support for an essential element of the plaintiff's claim of age discrimination, namely, that she was subjected to adverse employment action. *See Anthony v. Potter*, ___ F. Supp. 3d ___, 2011 WL 2531258 (M.D. La. June 24, 2011); *Guidry v. Glazer's Distributors of Louisiana, Inc.*, 10-218 (La. App. 3 Cir. 11/3/10), 49 So. 3d 586, 590.

The ultimate burden of proving by a preponderance of the evidence that the employer intentionally discriminated against the employee on the basis of age remains with the employee at all times. *See LaBove*, 802 So. 2d at 574. An employee's subjective belief of discrimination cannot be the basis of judicial relief. *Montgomery v. C & C Self Enterprises, Inc.*, 10-705 (La. App. 3 Cir. 3/30/11), 62 So. 3d 279, 287, *writ denied*, 11-0873 (La. 6/3/11), 63 So. 3d 1016. To prevail, the employee must show that the protected trait, herein age, "actually motivated the employer's decision" and

was “a determinative influence on the outcome.” *LaBove*, 802 So. 2d at 574. After *de novo* review, we agree with the trial court that “there is no evidence that would suggest that the plaintiff was removed from her detail for any other reason than the superior qualifications of her replacement.”

In her last assignment of error, the plaintiff contends that her petition asserted a retaliation claim, which was not dismissed by a December 2007 judgment of the trial court sustaining exceptions filed by LDEQ and “dismissing with prejudice all of [the plaintiff’s] claims not raised in her Charge of Discrimination of August 2005.” The trial court’s oral reasons for the December 2007 judgment clarify that the Charge of Discrimination is that filed by the plaintiff with the United States Equal Employment Opportunity Commission. The pre-printed Charge of Discrimination requires that the circumstances of alleged discrimination be indicated by marking various boxes. On the plaintiff’s form, the boxes for “race” and “age” are marked, but “retaliation” is blank. Considering this, we find that any retaliation claim asserted in the plaintiff’s petition was dismissed by the December 2007 judgment of the trial court.

For the foregoing reasons, we affirm the trial court’s judgment in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.1B. Costs of this appeal are assessed to the plaintiff, Janice Dickerson.

AFFIRMED.