

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

ANGELA E. NORMAN,)	
Plaintiff,)	
)	Civil Action No. 7:04CV00278
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
CITY OF ROANOKE, VIRGINIA, et al.,)	By: Samuel G. Wilson
)	United States District Judge
Defendants.)	

Plaintiff Angela E. Norman brought this employment discrimination action pursuant to 42 U.S.C. § 2000(c) et seq. (Title VII), 29 U.S.C. § 621 et seq.(ADEA) and 42 U.S.C. § 1981. Defendants Darlene Burcham and Kenneth S. Cronin move to dismiss the claims filed against them in their individual capacities, pursuant to Federal Rule of Civil Procedure 12(b)(6), contending that, unlike § 1981, Fourth Circuit precedent precludes individual liability under Title VII and the ADEA. The court finds that Norman’s Title VII and ADEA claims brought against the individual defendants in this action are barred and grants defendant’s motion to dismiss these claims.

I.

Norman, a 56-year-old black woman, claims that her employer, the City of Roanoke, Virginia (the City) discriminated against her on the basis of her age and race. Norman has named as defendants Burcham, Roanoke City Manager, and Cronin, Director of Human Resources for the City. Cronin was Norman’s immediate supervisor and Norman met with Burcham several times regarding a promotion or reclassification of her position with the City.

Norman has been employed by the City since 1976. She worked in the Human Resources

Department for approximately twenty years. Beginning in 1997, Norman has publicly voiced her concern regarding alleged discrimination by the City in its hiring, promotions, and terminations. In November 2001, Norman applied for the position of Compensation and Benefits Analyst, a job for which she believed she was qualified. The City hired a white 24-year-old female instead. Norman then requested that the City reclassify her current position, as she claimed she was already performing many of the tasks of a Compensation and Benefits Analyst. The City refused this request. In May 2003, the City eliminated Norman's Human Resources position and transferred her to the Risk Management Department. Norman then applied for a newly-created position that she claims involved many of her prior responsibilities, but the city hired a black female, approximately thirty years old.

Norman claims that the City's failure to promote her, refusal to reclassify her position, and failure to hire her for the new position constituted discriminatory treatment in violation of Title VII and the ADEA. Norman further alleges that the adverse employment decisions were in retaliation for her public statements regarding the City's employment practices.

II.

Burcham and Cronin move under Rule 12(b)(6) to dismiss Norman's Title VII and ADEA claims against them, alleging that individual liability is precluded under both Title VII and the ADEA. The court finds that plaintiff's Title VII and ADEA claims against Burcham and Cronin are foreclosed by binding Fourth Circuit precedent.

Individual supervisors can be held liable under 42 U.S.C. § 1981 if they "intentionally cause an employer to infringe upon" the rights secured by that statute. Carson v. Giant Food, Inc., 187 F. Supp. 2d 462, 483 (D. Md. 2002)(quoting Tillman v. Wheaton-Haven Recreation Ass'n, 517 F.2d 1141, 1145 (4th Cir. 1975). In contrast, the Fourth Circuit has held that officers and supervisors are not

liable in their individual capacities for violations of the ADEA. Birkbeck v. Marvel Lighting Corp., 30 F.3d 507, 510-11 (4th Cir. 1994) (holding that “the ADEA limits civil liability to the employer”). After a period of confusion among the district courts, the Fourth Circuit extended the reasoning in Birkbeck to suits arising under Title VII. Lissau v. Southern Food Service, 159 F.3d 177,180-81 (4th Cir. 1998). (noting that “Congress only intended employers to be liable for Title VII violations,” and concluding that “supervisors are not liable in their individual capacities for Title VII violations”).

The Fourth Circuit’s decisions in Birkbeck and Lissau effectively bar Norman’s individual claims against Burcham and Cronin brought pursuant to Title VII and the ADEA.¹ Because Burcham and Cronin cannot be held liable in their individual capacities, this court grants defendants’ motion to dismiss Norman’s Title VII and ADEA claims against them.

III.

For the reasons stated, this court finds that the plaintiff has failed to state a claim under either Title VII or the ADEA as to defendants Burcham and Cronin in their individual capacities. Burcham and Cronin’s motion to dismiss the claims brought against them pursuant to 42 U.S.C. § 2000(c) et seq. and 29 U.S.C. § 621 et seq. is therefore **GRANTED**.

ENTER: This the _____ day of October, 2004.

UNITED STATES DISTRICT JUDGE

¹Burcham and Cronin also argue that Norman is precluded from bringing an action under Title VII or the ADEA against individuals not named as respondents in the EEOC charge. Because the court finds that Burcham and Cronin are not subject to individual liability under those statutes, the court does not need to reach this argument.

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CITY OF ROANOKE, VIRGINIA, et al.,)	By: Samuel G. Wilson
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Defendants.)	

In accordance with the memorandum opinion entered on this day, it is **ORDERED AND ADJUDGED** that defendants Burcham and Cronin’s motion to dismiss the claims brought against them in their individual capacities is **GRANTED** as to plaintiff’s claims brought pursuant to 42 U.S.C. § 2000(c) et seq. and 29 U.S.C. § 621 et seq.

ENTER: This the _____ day of October, 2004.

UNITED STATES DISTRICT JUDGE