IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DEWAYNE WALKER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:15-CV-4436-RWS
TURNER BROADCASTING SYSTEM, et al.,	:	
	:	
Defendants.	:	

ORDER

This matter is before the Court on the Report and Recommendation of Magistrate Judge Catherine M. Salinas [Doc. No. 122].

In reviewing a Report and Recommendation, the district court "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). "Parties filing objections to a magistrate's report and recommendation must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court." United States v. Schultz, 565 F.3d 1353, 1361 (11th Cir. 2009) (quoting Marsden v. Moore, 847 F.2d 1536, 1548 (11th Cir. 1988)) (internal quotation marks omitted). Absent objection, the

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district judge "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate [judge]," 28 U.S.C. § 636(b)(1), and "need only satisfy itself that there is no clear error on the face of the record" in order to accept the recommendation. Fed. R. Civ. P. 72, advisory committee note, 1983 Addition, Subdivision (b). In accordance with 28 U.S.C. § 636(b)(1) and Rule 72 of the Federal Rules of Civil Procedure, the Court has conducted a *de novo* review of those portions of the R&R to which Plaintiff objects and has reviewed the remainder of the R&R for plain error. See United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983).

Plaintiff objects to the portions of the Report and Recommendation relating to his racially discriminatory failure-to-promote claims, but he does not object to the findings regarding his retaliation claims. The Court has reviewed the portions of the Report and Recommendation relating to Plaintiff's retaliation claims for plain error and has found none.

The Court will now review Plaintiff's objections relating to his racial discrimination claims *de novo*. To establish a prima facie case of racially discriminatory failure-to-promote under Title VII or Section 1981, a plaintiff must establish that: "(1) he belongs to a racial minority; (2) he was qualified for and

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applied for a position that the employer was trying to fill; (3) he was denied the position; and (4) a non-member of the protected class was hired." Williams v. Waste Mgmt., Inc., 411 F. App'x 226, 228 (11th Cir. 2011); Brown v. Ala. Dep't of Transp., 597 F.3d 1160, 1174 (11th Cir. 2010) (applying same standard in Title VII failure-to-promote context). If a plaintiff makes the requisite prima facie showing, the burden of production shifts to the employer to articulate a legitimate, non-discriminatory reason for its actions. See Rojas v. Florida, 285 F.3d 1339, 1342 (11th Cir. 2002) (citation omitted). If the employer "articulat[es] one or more reasons, then the presumption of discrimination is rebutted, and the burden of production shifts to the plaintiff to offer evidence that the alleged reason of the employer is a pretext for illegal discrimination." Wilson v. B/E Aerospace, Inc., 376 F.3d 1079, 1087 (11th Cir. 2004).

Here, as to the seven positions that were not open for applications, Plaintiff has not demonstrated that Defendants were seeking applicants to fill positions for which he was qualified. As a result, Defendants are entitled to summary judgment on the failure-to-promote claims relating to these seven positions.

As to the New York Account Director position, Defendants conceded for the purposes of summary judgment that Plaintiff could establish a prima facie case

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of racial discrimination. Defendants then met their burden of articulating a legitimate, non-discriminatory reason for selecting Mr. Krill over Plaintiff. Plaintiff attempted to establish pretext by arguing that he was "substantially better" than Mr. Krill, but given the undisputed evidence of Mr. Krill's qualifications for the position, Plaintiff's evidence is insufficient to defeat Defendants' Motion for Summary Judgment.

Finally, as to the 2015 Account Director position, Plaintiff concedes that he did not apply for this position. He has not argued that it would have been futile for him to apply. As a result, Defendants are entitled to summary judgment on this failure-to-promote claim.

For the reasons stated above, Plaintiff's objections are OVERRULED, and the Court hereby approves and adopts the Report and Recommendation [Doc. No. 122] as the opinion and order of this Court. Defendants' Motion for Summary Judgment [Doc. No. 82] is GRANTED. The Clerk is DIRECTED to enter judgment and close this action.

SO ORDERED, this 5th day of February, 2018.

RICHARD W. STORY
United States District Judge

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