

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

**FILED**  
NOV 03 2015  
  
CLERK

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. )  
)  
)  
THE SOUTH DAKOTA )  
DEPARTMENT OF SOCIAL )  
SERVICES, )  
)  
Defendant. )  
)

Civil Action No. 15-5079

**COMPLAINT**

Plaintiff, United States of America (“United States”), alleges:

1. This action is brought on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”).

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over the action under 42 U.S.C. §§ 2000e-5(f) and 2000e-6(a), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in the Western Division of the United States District Court for the District of South Dakota, pursuant to 28 U.S.C. § 1391, because defendant South Dakota Department of Social Services (“DSS”) maintains a place of

business in this judicial district and a substantial part of the events giving rise to this action took place in this judicial district.

**PARTIES & CHARGE OF DISCRIMINATION**

4. Defendant DSS is a governmental agency created pursuant to the laws of the State of South Dakota.

5. DSS is a person within the meaning of 42 U.S.C. § 2000e(a), and an employer within the meaning of 42 U.S.C. § 2000e(b).

6. DSS has offices throughout South Dakota, including an office on the Pine Ridge Native American Reservation, which primarily serves Native Americans living on the reservation. DSS's Pine Ridge Office offers assistance to these South Dakotans in the following areas: Adult Services and Aging; Supplemental Nutrition Assistance; Medical Eligibility; Children and Families; Long-Term Care; Medicare Savings; and Temporary Assistance for Needy Families.

7. DSS has designated certain jobs on its workforce as "Specialist." Those jobs include the following three positions: Employment Specialist, Economic Assistance Benefits Specialist, and Adult Services and Aging Specialist. There are 23 Specialist positions in DSS's Pine Ridge Office.

8. Upon information and belief, Specialist positions are among the higher-paying positions at DSS.

9. In October 2010, Cedric Goodman (“Goodman”), a Native American, applied for the Employment Specialist position with DSS at its Pine Ridge Office. On or about December 12, 2010, he was not selected for the vacancy.

10. Upon receiving notice of his non-selection, Goodman filed a timely charge of discrimination (EEOC Charge No. 440-2012-00129) with the Equal Employment Opportunity Commission (“EEOC”), in which he alleged, among other things, that DSS discriminated against him because of his race (Native American) when he was not selected for an Employment Specialist position.

11. In his charge of discrimination, Goodman further alleged that DSS has a policy of hiring white applicants in the higher-paying Specialist positions, such as Employment Specialist, while only hiring Native-American applicants for lower paying positions.

12. Pursuant to Section 706 of Title VII, 42 U.S.C. § 2000e-5, the EEOC investigated the charge of discrimination and found reasonable cause to believe that a Title VII violation had occurred with respect to Goodman.

13. The EEOC further found reasonable cause to believe that DSS had violated Title VII with respect to a class of Native American applicants who had been discriminated against and denied hire for employment with the defendant.

14. The EEOC attempted unsuccessfully to achieve a voluntary resolution of the charge through conciliation, and subsequently referred the charge to the United

States Department of Justice.

15. All conditions precedent to the filing of this Complaint have been performed or have occurred.

### **STATEMENT OF FACTS**

16. Upon information and belief, from January 1, 2010 to January 31, 2012, DSS posted 18 Specialist positions. Although approximately forty percent of the applications it received were from Native Americans, DSS ultimately hired 11 (92%) white candidates and one (8%) Native American candidate. DSS closed the other six vacancies without making a selection. In some cases, DSS passed over a well-qualified Native American candidate in favor of a white applicant with lesser qualifications. In others, DSS closed vacancy announcements rather than select a well-qualified Native American candidate.

17. In September/October 2010, DSS posted a vacancy announcement for an Employment Specialist at its Pine Ridge Office.

18. According to the employer's vacancy announcement, an Employment Specialist with DSS works with individuals who receive benefits based on economic need to reduce barriers to employment, and assists individuals in locating employment opportunities.

19. Among the employer's preferred qualifications for the vacant Employment Specialist position were: a bachelor's degree in any of a number of various fields

of study; knowledge of social, cultural, economic, psychological and emotional factors influencing behavior and attitudes; and knowledge of the inner workings of social programs and Native American culture.

20. The hiring official for the Employment Specialist position was Employment Specialist Supervisor Keith Kearns (“Kearns”). Kearns indicated to the EEOC that the criteria he used in evaluating candidates for the job were analytical skills, effective communication skills, knowledge of Native American culture, work experience in a similar capacity, and a bachelor’s degree.

21. In October 2010, Goodman applied for the Employment Specialist position with DSS.

22. At the time of his application, Goodman met all of the objective qualifications for the Employment Specialist position at Pine Ridge. Goodman has bachelor’s degrees in Human Services and Business Administration and has completed approximately 30 credit hours towards a master’s degree.

23. Goodman also has five years of experience as a social worker, three-and-a-half years of experience as a supervisory social worker with the Bureau of Indian Affairs, and four years of experience as an Employment Specialist with the South Dakota Job Seeker Services.

24. DSS interviewed six applicants for the position, including Goodman. Five of those interviewed were Native Americans.

25. Many of these other Native American applicants were also well qualified for the Employment Specialist position.

26. After interviewing Goodman and the other Native Americans for the position, DSS decided to hire no one for the Employment Specialist position and cancelled its requisition for the Employment Specialist position on December 12, 2010.

27. The next day, December 13, 2010, DSS continued to seek applicants for the Employment Specialist position by opening another vacancy announcement for an Employment Specialist at Pine Ridge.

28. As with the October 2010 job posting for an Employment Specialist, Kearns was the hiring official for the Employment Specialist vacancy at Pine Ridge that was announced in December 2010.

29. Kearns selected a white applicant for the position of Employment Specialist at Pine Ridge. At the time of her selection, the white applicant was a 2010 college graduate with limited work experience mostly centered in a retail and office environment. She had no work experience that met the employer's preferred qualifications.

30. Upon information and belief, qualified Native American applicants have been rejected by DSS for other jobs as Specialist based upon their race.

## **COUNT I**

### **(DSS Discriminated against Goodman and Similarly-Situated Applicants)**

31. DSS discriminated against Goodman in violation of Title VII, 42 U.S.C. § 2000e-3(a), by failing to select him as an Employment Specialist pursuant to the October 2010 vacancy announcement.

32. DSS discriminated against Goodman and similarly-situated Native Americans in violation of Title VII, 42 U.S.C. § 2000e-3(a), among other ways, by:

- a. cancelling vacancy announcements for Specialist positions at its Pine Ridge Office rather than hiring well-qualified Native American applicants; and
- b. using subjective and arbitrary hiring practices to reject qualified Native American job applicants from a series of Specialist positions in the Pine Ridge Office in favor of less qualified non-native applicants.

## **COUNT II**

### **(DSS Engaged in a Pattern or Practice of Disparate Treatment)**

33. The acts, policies and practices of DSS described above constitute a pattern or practice of intentional resistance to the full enjoyment of the rights of Native American applicants to equal employment opportunities without discrimination based on race. Under both Sections 706 and 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f) and § 2000e-6(a), the United

States has authority to bring a civil action requesting relief.

34. DSS engaged in a pattern or practice of discrimination against Native American applicants in violation of Title VII, 42 U.S.C. § 2000e-3(a), among other ways, by:

- a. cancelling vacancy announcements for Specialist positions at its Pine Ridge Office rather than hiring well-qualified Native American applicants; and
- b. using subjective and arbitrary hiring practices to reject qualified Native American job applicants from a series of Specialist positions in the Pine Ridge Office in favor of less qualified non-native applicants.

**PRAYER FOR RELIEF**

WHEREFORE, the United States prays that this Court grant the following relief:

- A. Enjoin DSS from further discriminating against Goodman and other similarly-situated Native American applicants in hiring for its Specialist positions;
- B. Require DSS to adopt a selection process that complies with Title VII;
- C. Place Goodman in the next available Employment Specialist position at DSS's Pine Ridge Office;
- D. Award backpay and all other appropriate monetary relief to Goodman and other similarly-situated Native American applicants in an amount to be

determined at trial to make them whole for the loss they suffered as a result of the discriminatory conduct alleged in this Complaint;

- E. Award compensatory damages to Goodman and other similarly-situated Native American applicants for mental and/or physical injuries caused by DSS's discriminatory conduct, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a;
- F. Award Goodman and other similarly-situated Native American applicants any prejudgment interest on the amount of lost wages and benefits determined to be due;
- G. Order DSS to institute policies, practices, and procedures to ensure a non-discriminatory workplace, including but not limited to implementing appropriate applicant screening and interviewing policies to ensure equal employment opportunity for all applicants, and providing adequate training to all employees and officials regarding discrimination;
- H. The United States prays for such additional relief as justice may require, together with its costs and disbursements in this action.

Date: November 2, 2015

Respectfully submitted,

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