

**IN THE COURT OF APPEALS OF IOWA**

No. 8-081 / 07-0932

Filed July 30, 2008

**LARRY MANNING,**  
Plaintiff-Appellant,

**vs.**

**WELLS FARGO FINANCIAL, INC.,**  
**WELLS FARGO HOME MORTGAGE, INC.,**  
a Division of **WELLS FARGO BANK, N.A.,**  
and **WELLS FARGO & CO.,**  
Defendants-Appellees.

---

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal,  
Judge.

Larry Manning appeals from the district court order granting summary  
judgment in favor of the defendants on his age discrimination claim. **AFFIRMED.**

Michael J. Carroll of Babich, Goldman, Cashatt & Renzo, P.C., Des  
Moines, for appellant.

Michael A. Giudicessi and Angela Morales of Faegre & Benson, L.L.P.,  
Des Moines, for appellees.

Considered by Sackett, C.J., Mahan, and Eisenhauer, JJ.

**EISENHAUER, J.**

The plaintiff, Larry Manning, appeals from the district court order granting summary judgment in favor of the defendants on his age discrimination claim. He contends summary judgment is not appropriate because there is a genuine issue of material fact in dispute as to whether the defendants' proffered reasons for its adverse employment action are pretextual. We affirm.

***I. Background Facts and Proceedings.*** Manning was employed as Vice President of Compliance Services for Wells Fargo in the spring of 2004 when the company underwent a reorganization of the Compliance Services Department. This restructuring merged the department with the Enterprise Risk Management Group. As part of this restructuring, Manning was invited to apply for the position of Senior Vice President of Compliance Services, classified as a Compliance Manager 4. Following an interview process, Manning was a finalist for the position along with a younger candidate who was selected for the position. Manning was then offered a new Compliance Manager 3 position, which would allow him to retain his status as a vice president and officer in the company, as well as the same base compensation with bonus opportunity. When Manning did not accept the position, it was considered a voluntary termination of his employment.

On April 29, 2005, Manning filed a petition alleging he had been discriminated against because of his age, naming Wells Fargo and several of its executives as defendants. On February 9, 2007, the defendants filed a motion for summary judgment. Manning dismissed his claims against the individual defendants.

On March 27, 2007, the district court entered summary judgment in favor of Wells Fargo, finding the undisputed facts failed to establish Manning had suffered an adverse employment action as well as any pretextual reason for such action. Following a motion pursuant to Iowa Rule of Civil Procedure 1.904, the court amended its ruling to conclude there was a genuine issue of material fact as to whether an adverse employment action had occurred with respect to Wells Fargo's failure to hire or promote Manning to the Senior Vice President of Compliance Services position. However, the court found Manning still had failed to prove a pretextual reason for Wells Fargo's failure to hire or promote him and confirmed its grant of summary judgment.

**II. Scope and Standard of Review.** We review rulings on motions for summary judgment for errors at law. *Sain v. Cedar Rapids Cmty. Sch. Dist.*, 626 N.W.2d 115, 121 (Iowa 2001). The record before the district court is reviewed to determine whether a genuine issue of material fact existed and whether the district court correctly applied the law. *Id.* We review the facts in the light most favorable to the party resisting the motion. *McIlravy v. North River Ins. Co.*, 653 N.W.2d 323, 328 (Iowa 2002). The resisting party has the burden of showing a material issue of fact is in dispute. *Id.*

**III. Analysis.** Summary judgment is properly granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3). A factual issue is material only if the dispute is over facts that might affect the outcome of the suit, given the applicable law. *Lewis v. State ex rel. Miler*, 646 N.W.2d 121, 124 (Iowa Ct. App.

2002). The party moving for summary judgment has the burden of proving the facts are undisputed. *Id.*

In ruling on a motion for summary judgment, the court must view the facts in the light most favorable to the resisting party. *Id.* Furthermore, every legitimate inference that can be reasonably deduced from the evidence should be afforded the resisting party. *Id.* An inference is legitimate if it is “rational, reasonable, and otherwise permissible under the governing substantive law.” *Id.* (citing *Butler v. Hoover Nature Trail, Inc.*, 530 N.W.2d 85, 88 (Iowa Ct. App. 1994)). An inference is not legitimate if it is based upon speculation or conjecture. *Id.* If reasonable minds may differ on the resolution of an issue, a genuine issue of material fact exists. *Id.*

In order to prove age discrimination, Manning must first establish a prima facie case of discrimination: that he was a member of a protected class (over forty years of age), performed his work satisfactorily, and had adverse action taken against him. *See Vaughn v. Must, Inc.*, 542 N.W.2d 533, 538 (Iowa 1996). Wells Fargo must then articulate a legitimate nondiscriminatory reason for the action. *Id.* Although the defendant need not establish this by a preponderance of the evidence, it must clearly set forth some legitimate nondiscriminatory basis for its action. *Id.* If Wells Fargo satisfies its burden of asserting a legitimate explanation, the burden then shifts to Manning to prove the asserted reason is merely pretext and that the discriminatory motive played a substantial part in the actions taken. *See id.* Case law supports the proposition that summary judgment should be seldom granted in employment discrimination cases. *See e.g., Hindman v. Transkrit Corp.*, 145 F.3d 986, 990 (8th Cir. 1998); *Chock v.*

*Northwest Airlines Inc.*, 113 F.3d 861, 863 (8th Cir. 1997); *Hardin v. Hussmann Corp.*, 45 F.3d 262, 264 (8th Cir. 1995); *Crawford v. Runyon*, 37 F.3d 1338, 1341 (8th Cir. 1994).

Without direct evidence of age as a factor in the hiring process, Manning relies on inferences a jury might draw from statements made by officials during the hiring process. Manning suggests many facts give rise to an inference that Wells Fargo's reason for hiring another candidate was pretextual including: (1) he was asked to apply for his own position, (2) in interviewing, he was asked how long he planned to work for the company, (3) after the interview process was completed, he was informed of his options for retirement, and (4) he was told he was "a young guy with a lot of runway ahead of him." We address each in turn.

Manning claims the position he interviewed for was the same position that he already held. Upon reviewing the record before us, we conclude the positions were different. Although the positions carried the same title, a review of the job descriptions for each position illustrates the focus of each position differed. The new position emphasized preventative measures to ensure compliance with governmental regulations, including auditing and testing. It would oversee the compliance departments of Wells Fargo Financial and Wells Fargo Home Mortgage, whereas Manning's previous job had only involved Wells Fargo Financial.

During his interview, Manning was asked how long he planned to work for the company. He claims this infers an age-related motive for not recommending him for the new position. However, the human resources team member who

asked the question ultimately recommended Manning for the position. The question does not raise a reasonable inference of any discriminatory motive.

After another candidate was chosen for the position Manning applied for, Manning was told retirement was an option. At the time the comment was made, Manning had been offered a different position with a commensurate salary. However, he voiced his disappointment in not being selected for the position he had applied for. We cannot construe this incident to reasonably infer any underlying bias against Manning in failing to hire him for the position he desired.

Finally, after Manning was passed over for the position, another interviewer told him he was “a young guy with a lot of runway ahead of [him].” The reasonable inference that can be taken from this statement is Manning was welcome to stay at the company many more years, not that he was being passed over for a position or forced out of the company on account of his age.

Viewing the evidence in the light most favorable to Manning, all the isolated statements and incidents he cites to, when taken together, fail to raise a reasonable inference that Wells Fargo’s reason for not hiring Manning for the position was a pretext for age discrimination. We agree with the trial court’s determination that this is one of those rare employment discrimination cases ripe for summary disposition. Accordingly, we affirm.

**AFFIRMED.**