

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-1937

Julius E. Wright,

Appellant,

v.

Tommy G. Thompson,¹ Secretary of the
Department of Health and Human
Services

Appellees.

*
*
*
* Appeal from the United States
* District Court for the Eastern
* District of Arkansas.
*
* [UNPUBLISHED]
*
*
*

Submitted: February 21, 2003
Filed: March 10, 2003

Before HANSEN, Chief Judge, MELLOY, and SMITH, Circuit Judges.

PER CURIAM.

Julius Wright, an African American, brought this employment-discrimination suit against the Secretary of the Department of Health and Human Services (HHS), alleging that he was denied employment at the Food and Drug Administration's National Center for Toxicological Research (NCTR) because of his race. The district

¹Tommy G. Thompson has been appointed to serve as Secretary of the Department of Health and Human Services, and is substituted as appellee pursuant to Federal Rule of Appellate Procedure 43(c).

court² granted HHS's motion to dismiss or for summary judgment. The court also denied Wright's motion for reconsideration. Wright appeals. Having carefully reviewed the record de novo, we affirm. See 8th Cir. R. 47B.

We agree with the district court that it lacked subject matter jurisdiction over this case because Wright failed to exhaust his administrative remedies: he waited three years to file a discrimination complaint with the FDA's Equal Employment Opportunity Office, see 29 C.F.R. § 1614.105(a)(1) (2002) (employment discrimination complaints against federal agencies must be brought within 45 days of discriminatory personnel action), and we agree with the district court that there was no basis to equitably toll the deadline for filing a complaint, see Shempert v. Harwick Chem. Corp., 151 F.3d 793, 797-98 (8th Cir. 1998) (equitable tolling is inappropriate when plaintiff fails to exercise reasonable diligence), cert. denied, 525 U.S. 1139 (1999).

Even if Wright had filed a timely charge, we would agree with the district court's alternative conclusion that summary judgment was proper because Wright did not produce any admissible evidence establishing that NCTR's legitimate, non-discriminatory reason for not hiring Wright--the Office of Personnel Management, not NCTR, reviewed all of the applications and determined Wright did not qualify for the position--was a pretext for racial discrimination. See Luciano v. Monfort, Inc., 259 F.3d 906, 910 (8th Cir. 2001) (affirming grant of summary judgment where plaintiff offered no probative evidence that reason for termination was pretext for race discrimination).

Accordingly, we affirm.

²The Honorable Susan Webber Wright, Chief Judge, United States District Court for the Eastern District of Arkansas.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.