

White Waitress in her 50s who quit job Cannot Establish Race or Age Claims

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A Caucasian restaurant waitress who was in her 50s was allegedly subjected to daily comments about her age by an African-American general manager (GM). She claimed that the GM called her name such as “old woman,” “old lady,” and “grandma.”

The GM also encouraged the waitress to transfer to another location, and allegedly went so far as to tell the waitress that the transfer had gone through, even though she had never applied to work at the other location. Based on the belief she was being transferred, the waitress took a three-week vacation for the period of time between the jobs. During that vacation, she received a check in the mail from her employer indicating that her employment had been terminated.

The waitress filed a charge with the U.S. Equal Employment Opportunity Commission, alleging she was fired because of her sex, age and race, and in retaliation for her a prior discrimination claim. The federal district court dismissed her case on summary judgment. The [U.S. Court of Appeals for the Seventh Circuit affirmed](#) the district court ruling. The Court determined that the waitress failed to establish a *prima facie* case because she was did not suffer an adverse employment action and that she voluntarily abandoned her position in the belief that a transfer was impending. Since she did not claim constructive termination, and ultimately left of her own accord, the Court found that she could not maintain her claims.

Employers should remember that even casual, off-the-cuff comments such as those alleged herein, can be actionable under certain circumstances. Accordingly, it is important for employers to advise employees so as to avoid any inferences of discrimination.

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