

Neutral

As of: June 11, 2014 4:24 PM EDT

## Spelke v. Mukasey

United States Court of Appeals for the District of Columbia Circuit  
March 17, 2008, Filed  
No. 07-5369

**Reporter:** 2008 U.S. App. LEXIS 6643

Robert Andrew Spelke, Appellant v. Michael B. Mukasey, Appellee

**Notice:** PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

**Prior History:** [\*1] 06cv01887.

[Spelke v. Gonzales, 516 F. Supp. 2d 76, 2007 U.S. Dist. LEXIS 71357 \(D.D.C., 2007\)](#)

### Core Terms

summary affirmance, summary judgment, oral argument

### Case Summary

#### Procedural Posture

Plaintiff job applicant appealed the summary judgment entered for defendant United States Attorney General by the United States District Court for the District of Columbia on the applicant's various discrimination claims. The Attorney General moved for summary affirmance.

#### Overview

The applicant did not address the district court's reasons for dismissing the retaliation claim or granting summary judgment for the Attorney General on the disability discrimination claim. The applicant, therefore, had not preserved the issues on appeal. As for the claim of age discrimination, the applicant did not demonstrate that the reason proffered by the government for denying his job application was a pretext for discrimination, or that a reasonable trier of fact could infer discrimination based on the evidence. Finally, the district court acted within its discretion in ruling on the motion to dismiss or for summary judgment without allowing discovery. The applicant did not specify what evidence he hoped to discover or provide any specific reason to doubt the truthfulness of the affidavits submitted by the Attorney General in support of the motion.

#### Outcome

The motion for summary affirmance was granted.

**Counsel:** For Robert Andrew Spelke, Plaintiff - Appellant: Kevin Edwards Byrnes, Wade & Byrnes, PC, Alexandria, VA.

For Michael B. Mukasey, Defendant - Appellee: **Melanie Lisa Glickson**, Allen F. Loucks, U.S. Attorney's Office, (USA) District of Maryland, Baltimore, MD; R. Craig Lawrence, Assistant U.S. Attorney, U.S. Attorney's Office, (USA) Civil Appellate, Washington, DC.

**Judges:** BEFORE: Henderson, Rogers, and Kavanaugh, Circuit Judges.

### Opinion

#### ORDER

Upon consideration of the motion for summary affirmance, the opposition thereto, which includes a motion to issue a briefing schedule and set a date for oral argument, and the reply, it is

**ORDERED** that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See [Taxpayers Watchdog, Inc. v. Stanley, 260 U.S. App. D.C. 334, 819 F.2d 294, 297 \(D.C. Cir. 1987\)](#) (per curiam). Appellant does not address the district court's reasons for dismissing the retaliation claim or granting summary judgment for the appellee on the disability discrimination claim. Appellant, therefore, has not preserved these issues on appeal. See [Terry v. Reno, 322 U.S. App. D.C. 124, 101 F.3d 1412, 1415 \(D.C. Cir. 1996\)](#). As for the claim of age discrimination, appellant [\*2] does not demonstrate that the reason proffered by the government for denying his job application was a pretext for discrimination, or that a reasonable trier of fact could infer discrimination based on the evidence. See [McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-05, 93 S. Ct. 1817, 36 L. Ed. 2d 668 \(1973\)](#); [Hall v. Giant Food, Inc., 336 U.S. App. D.C. 63, 175 F.3d 1074, 1077 \(D. C. Cir. 1999\)](#). Finally, the district court acted within its discretion in ruling on the motion to

dismiss or for summary judgment without allowing discovery. See [Strang v. United States Arms Control and Disarmament Agency, 275 U.S. App. D.C. 37, 864 F.2d 859, 861 \(D.C. Cir. 1989\)](#). Appellant did not specify what evidence he hoped to discover or provide any specific reason to doubt the truthfulness of the affidavits submitted by the appellee in support of the motion. See *id.* It is

**FURTHER ORDERED** that the motion to issue a briefing schedule and set a date for oral argument be dismissed as moot.

Pursuant to [D.C. Circuit Rule 36](#), this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See [Fed. R. App. P.41\(b\)](#); [D.C.Cir. Rule 41](#).

*Per* [\*3] *Curiam*