

APPENDIX

APPENDIX A: Order on Petition for Rehearing En Banc Per Curiam (April 10, 2023)

United States Court of Appeals for the Fifth Circuit

No. 22-20387

ADEKUNLE C. OMOYOSI, *Doctor of PHARMACY,*
Plaintiff—Appellant,
versus

MICHAEL E. DEBAKEY VETERANS AFFAIRS MEDICAL
CENTER; DEPARTMENT OF VETERANS AFFAIRS,
Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:21-CV-427

ON PETITION FOR REHEARING EN BANC

Before STEWART, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because

no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

APPENDIX B: Opinion of United States Court of Appeals for the Fifth Circuit (December 15, 2022)

United States Court of Appeals for the Fifth Circuit

No. 22-20387
Summary Calendar

ADEKUNLE C. OMOYOSI, *Doctor OF PHARMACY,*
Plaintiff—Appellant,

versus

MICHAEL E. DEBAKEY VETERANS AFFAIRS MEDICAL
CENTER; DEPARTMENT OF VETERANS AFFAIRS,
Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:21-CV-427

Before STEWART, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:*

[Adekunle] C. Omoyosi (“Omoyosi”) appeals the summary judgment dismissing his discrimination and retaliation claims. We dismiss

the appeal as untimely. *This opinion is not designated for publication. See 5th Cir. R. 47.5.

Omoyosi applied for clinical pharmacist positions at the Michael E. DeBakey Veterans Affairs Medical Center. He was ineligible for the positions, however, because he lacked an unrestricted pharmacy license. Omoyosi nevertheless claims that he was discriminated against in the hiring process based on race, color, gender, and national origin, and that he was retaliated against for filing an administrative grievance. After unsuccessfully pursuing administrative remedies, Omoyosi filed a federal lawsuit against the medical center and the Department of Veterans Affairs (collectively, “Defendants”), on February 8, 2021. On March 10, 2022, the district court granted summary judgment dismissing Omoyosi’s lawsuit for failure to make prima facie claims of discrimination and retaliation under Title VII. After unsuccessfully seeking reconsideration, Omoyosi filed a notice of appeal on July 27, 2022.

Defendants argue Omoyosi’s appeal must be dismissed as untimely. We agree. Because a United States agency is a party, Omoyosi had 60 days after final judgment to file a notice of appeal. Fed. R. App. P. 4(a)(1)(B). The 60-day clock began running on March 10, 2022, the date of the final judgment, and expired on May 9, 2022. Omoyosi, however, did not notice an appeal until July 27, 2022. It was therefore untimely.¹ After final judgment, Omoyosi did move for reconsideration. But such a motion tolls the appeals clock only if filed within 28 days of the final judgment. Fed. R. App. P. 4(a)(4)(A)(vi). Omoyosi’s motion was not filed until July 14, 2022, more than 28 days after the March 10, 2022 final judgment.

To establish the timeliness of his appeal, Omoyosi states only that he did not timely receive notice of the final judgment from the clerk because his address changed on March 11, 2022—the day after final judgment was entered. This argument is meritless. “Lack of notice of the entry [of final judgment] does not affect the time for appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed, except as allowed by Federal Rule of Appellate Procedure 4(a).” Fed. R. Civ. P. 77(d); see also *Wilson v. Atwood Group*, 725 F.2d 255, 257 (5th Cir. 1984) (en banc). Omoyosi offers no argument why Federal Rule of Appellate Procedure 4(a) excused the untimeliness of his appeal.

APPEAL DISMISSED.

Filed: Lyle W. Cayce

Clerk, U.S., Court of Appeals, 5th Circuit