

OCT 7 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>EDGARDO LOYOLA,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p>v.</p> <p>PATRICK R. DONAHOE, Postmaster General,*</p> <p style="text-align: center;">Defendant - Appellee.</p>

No. 10-16166

D.C. No. 4:09-cv-00575-PJH

MEMORANDUM**

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, District Judge, Presiding

Submitted September 27, 2011***

Before: SILVERMAN, W. FLETCHER, and MURGUIA, Circuit Judges.

Edgardo Loyola appeals pro se from the district court’s summary judgment in his employment action alleging age and gender discrimination and harassment in

* Patrick R. Donahoe has been substituted for his predecessor, John Potter, as Postmaster General under Fed. R. App. P. 43(c)(2).

** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

*** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

violation of the Age Discrimination in Employment Act (“ADEA”) and Title VII. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Leong v. Potter*, 347 F.3d 1117, 1123-24 (9th Cir. 2003), and we affirm.

The district court properly granted summary judgment on Loyola’s age and gender discrimination claims because Loyola failed to raise a genuine dispute of material fact as to whether he performed his job satisfactorily, or whether the U.S. Postal Service’s legitimate, nondiscriminatory reasons for terminating him were pretextual. *See Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207-08 (9th Cir. 2008) (ADEA); *Leong*, 347 F.3d at 1124 (Title VII).

The district court properly granted summary judgment on Loyola’s harassment claim because Loyola failed to raise a genuine dispute of material fact as to whether the alleged conduct was because of his age or gender, or was sufficiently severe or pervasive to alter the conditions of his employment. *See Vasquez v. County of Los Angeles*, 349 F.3d 634, 642 (9th Cir. 2004).

Loyola’s remaining contentions are unpersuasive.

We do not consider Loyola’s contentions raised for the first time on appeal. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

AFFIRMED.