

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**March 4, 2014**

**FOR THE TENTH CIRCUIT**

**Elisabeth A. Shumaker**  
**Clerk of Court**

BECKY L. COATS,  
  
Plaintiff-Appellant,

v.

STATE OF UTAH, DEPARTMENT OF  
WORKFORCE SERVICES,  
  
Defendant-Appellee.

No. 13-4078  
(D.C. No. 2:11-CV-00755-DB)  
(D. Utah)

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**ORDER AND JUDGMENT\***

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Before **GORSUCH, McKAY**, and **ANDERSON**, Circuit Judges.

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Becky Coats works for the Utah Department of Workforce Services as an unemployment insurance eligibility specialist, but she’s long hoped for another job. In fact, since 2000 she’s applied for no fewer than 40 other positions within the Department, only to be turned down each time. She alleges that’s not because there have been better available applicants but because of age discrimination, and she

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\* After examining the briefs and appellate record, this panel has determined unanimously to grant the parties’ request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

charges the Department with violating the federal Age Discrimination in Employment Act. On the recommendation of a magistrate judge, however, the district court dismissed Ms. Coats's complaint for lack of subject matter jurisdiction, noting that the Department had never waived and Congress had never abrogated its Eleventh Amendment immunity from suit. Ms. Coats appeals this disposition, but we can find no fault with it. The magistrate judge's report and recommendation carefully analyzed the relevant authorities and addressed Ms. Coats's arguments and we affirm for substantially the reasons offered there. As to Ms. Coats' argument she was entitled to discovery under Fed. R. Civ. P. 56(d), we note that rule pertains to summary judgment proceedings. This case was not decided on summary judgment but at the motion to dismiss stage. Ms. Coats' contention that the district court abused its discretion in denying her Rule 56(d) motion is therefore without merit.

Affirmed.

Entered for the Court

Neil M. Gorsuch  
Circuit Judge