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Employment: Female Firefighter Who Was Denied Individualized Protective Gear Survives *Sua Sponte* Dismissal of Discrimination Case

Garayalde- Rijos v. Municipality of Carolina, No. 13-1487 (1st Cir. Mar. 28, 2014)

The First Circuit has reversed a district court's sua sponte dismissal in a discrimination case brought by a woman firefighter. She charged that the municipality failed to provide her with an individually-sized protective fire suit when each male firefighter in her team was outfitted with an individual suit.

In November 2009 the city of Carolina, Puerto Rico, announced it was hiring 8 firefighters. A total of 28 candidates went through physical, academic, and physiological testing. Waleska Garayalde-Rijos, a female, had the highest score. She was interviewed twice, during which she was asked about how she would handle childcare while she worked, with whom she lived, and if her parents lived in Carolina. She would have been the first female firefighter in Carolina. However, she was not hired.

She filed a charge of gender discrimination with the EEOC. The Commission agreed, issuing a letter of determination noting she met all qualifications, yet was denied employment. It pointed out that men with lower test scores were given the position. The city disagreed with the EEOC, but nonetheless hired Garayalde-Rijos a month later.

After being hired, Garayalde-Rijos alleged she was discriminated against and suffered retaliation. She noted that all the other firefighters were fitted for individual "bunker gear" (the fire suit that protects firefighters). In contrast, she was forced to share a male colleague's suit which did not fit her and compromised her safety.

She sued the mayor and city of Carolina for sex discrimination under Title VII and Puerto Rican law in the pre-hiring process, and for discrimination and retaliation claims in the post-hiring period. The mayor filed a motion to dismiss all claims against him, while the city filed a motion to dismiss *only the post-hire* claims. The District Court granted the mayor's motion to dismiss since Garayalde-Rijos never opposed it. It also granted the city's motion to dismiss the post-hire claims under Puerto Rican law since Garayalde-Rijos did not exhaust her administrative avenues, and the Title VII claims because she failed to allege a prima facie case. Finally, the Court, sua sponte, dismissed all her pre-hire claims without notice or explanation. Garayalde-Rijos appealed.

HELD: The First Circuit affirmed the dismissal of all claims against the mayor because Garayalde-Rijos failed to oppose the motion, and the post-hire Title VII claims because of her failure to exhaust administrative remedies. But the Circuit Court reversed the District Court on her pre-hire claims, concluding the District Court erred with its sua sponte dismissal.

DISCUSSION:The Circuit Court noted that sue sponte dismissals are rare, extreme and erroneous unless the party is given notice and opportunity to amend the complaint. The city had not met its burden, which was to establish that, even viewing everything most favorably to Garayalde-Rijos, her claim was meritless. The Court also rejected the city's alternative argument (made only in appeal) that, since Garayalde-Rios was ultimately hired, she could only complain of a delay in hiring, which complaint would not survive on remand. The Court rejected dismissal of the case at the pleading stage because all that was required was a claim plausible on its face. The Court found this threshold easily met given she was the only female to apply, had the highest scores, would have been the first woman ever in the city's fire department--and that less qualified and lower-scoring men were hired before her. The mere fact that she was ultimately hired did not mean she had not been discriminated against – she was denied benefits and pay for an eight-month period.

As for the retaliation claim, the Circuit Court stated bluntly that the District Court was wrong as to the law. Relying on the fact that this case was at the pleading stage, not summary judgment, the Court found the District Court's requirement that Garayalde-Rijos state a prima facie case plainly incorrect. She only had to state a plausible claim, and this she had done. The allegation that she had not been provided with adequate protective gear sufficed to state a claim.

http://media.ca1.uscourts.gov/pdf.opinions/13-1487P-01A.pdf (last accessed May 1, 2014).

Employment: Lawsuit Alleging Retaliatory Firing Due to Request for Hearing Fails to Raise Issue of Public Concern

Morgan v. Covington Township, No. 13-3488 (3d Cir. Apr. 16, 2014).

Where a police officer argued that he was terminated in retaliation for having requested a hearing, the Third Circuit has upheld a lower court determination that the complaint did not raise Constitutionally-cognizable issues of public concern.