

Four-Month Gap Between Protected Activity and Lay-Off Defeats Retaliation Claim

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Practice Area: Labor and Employment

In *Awok Ani-Deng v. Jeffboat LLC*, the District Court for the Southern District of Indiana dismissed a retaliation complaint brought by a Sudanese welder against her former employer. In its decision, the court cited the 4-month period between the plaintiff's protected activity and her demotion as a basis for finding that the plaintiff could not support her retaliation claim.

The Prior Protected Activity

In February 2011, the plaintiff filed a sex and national origin discrimination claim against Jeffboat with the EEOC. The plaintiff received a right-to-sue notice, but did not file suit.

The Adverse Action

In June 2011, the plaintiff was reclassified from Welder 1 Class to Welder 3 after she accumulated 14 workplace incidents requiring administration of first aid. The collective bargaining agreement ("CBA") to which the plaintiff was subject permitted Jeffboat to demote the plaintiff based out of concern for her safety and wellbeing. Due to the increase in frequency and severity of the plaintiff's first aid incidents, Jeffboat reclassified the plaintiff from a Welder 1 Class to Welder 3 Class position, which would remove the type of welding which led to several of the plaintiff's first aid incidents. As a result, the plaintiff's hourly rate was reduced. However, she received the same hourly rate as the male employees in the Welder 3 Class.

In October 2011, the plaintiff was laid off as a part of a company-wide reduction in force ("RIF"). The RIF was conducted according to a seniority system agreed to in the CBA. Because the RIF was temporary, the plaintiff was subject to recall based on seniority. When the plaintiff first became eligible for recall, Jeffboat sent a certified letter to the plaintiff's last known address. Jeffboat also attempted to contact the plaintiff multiple times by phone to alert her to her recall. After receiving no response, Jeffboat then contacted the plaintiff's husband, also a Jeffboat employee. Plaintiff failed to contact Jeffboat or physically report to work by the close of business on January 30, 2012, the deadline to provide her notice of intent to return to work. Plaintiff's husband left a voicemail message after close of business on January 30, 2012. However, the plaintiff was no longer eligible for recall under the terms of the CBA at this point.

Plaintiff Sues Claiming Title VII Retaliation

In her lawsuit, the plaintiff claimed that Jeffboat retaliated against her for her February 2011 EEOC charge when the company reclassified her from Welder 1 Class to Welder 3 Class in June 2011. The court first noted that plaintiff must prove that: (1) she engaged in statutorily protected activity; (2) she suffered a materially adverse employment action; and (3) there was a causal relation between the two.

The parties did not dispute that the plaintiff engaged in a protected activity when she filed her February 2011 EEOC charge. The parties also did not dispute that the plaintiff suffered an adverse employment action when she was demoted. The only remaining dispute was as to whether there was a causal relationship between the February 2011 EEOC charge and the demotion in June 2011.

Four Months Was Too Long

After disregarding many of the plaintiff's actual assertions as conclusory and unsupported, the court focused on the timing between the plaintiff's EEOC filing and the reclassification as a Welder 3 Class. The court found that, absent any sufficient evidence of retaliatory intent, the four-month gap was insufficient to create a causal connection between the plaintiff's protected activity and her demotion. The court stated that "although a four-month interval between protected activity and an adverse job action does not necessarily preclude a retaliation claim, the Seventh Circuit has routinely held that even a two-month gap is too significant to support a claim of retaliation, absent other evidence of retaliatory intent." The court also noted that the Seventh Circuit has found six- and seven-week gaps sufficient to defeat a causal connection. As a result, the court granted Jeffboat's summary judgment motion and dismissed the plaintiff's remaining claims.

When evaluating retaliation claims, employers should make note of the time period between an adverse job action and the protected act. Although the *Awok Ani-Deng* court found that a four-month gap was sufficient to overcome the inference of retaliation, the Seventh Circuit also has found gaps as short as six weeks to be sufficient, depending on the surrounding circumstances.

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