THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the U.S. District Court for the District of Oregon

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Employment

A former supermarket department manager filed an action claiming disability discrimination based upon his AIDS/HIV status. Plaintiff alleged disparate treatment and failure to reasonably accommodate his disability under both state and federal laws. Plaintiff's doctor had recommended a "structured" 5-day work week. Defendant asked the doctor for clarification and received no further response. Plaintiff thereafter applied for leave under the FMLA and spent the next 6 months on leave. Defendant then treated plaintiff's leave as a voluntary resignation and notified plaintiff that he could re-apply. Plaintiff never sought re-employment and by November of that year, plaintiff's doctor certified that plaintiff was no longer able to work at all.

Judge Ann Aiken granted a defense motion for summary judgment finding no connection between any of the employer's actions and disability discrimination. The court found no evidence to suggest that plaintiff's final merit-based salary increase was diminished due to his illness-related absences. The court also assumed, without deciding, that plaintiff could state a claim for hostile work environment based upon his disability and found no evidence of severe or pervasive conduct sufficient to sustain such a claim. The court expressly rejected the plaintiff's attempt to impose liability based upon his supervisor's questions about his general health and questions about his frequent absences. The court further noted that walk-through observations of plaintiff's department, consistent with company protocol, were not evidence of discriminatory intent. Further, comments about the poor condition of plaintiff's department were not actionable even if they did result in plaintiff's emotional distress.

Finally, the court rejected plaintiff's wrongful discharge claim finding that the employer owed no duty to provide plaintiff with an indefinite leave of absence. Vawser v. Fred Meyer, CV 99-1208-AA (Nov., 2000).
Plaintiff's Counsel:
Daniel Snyder
Defense Counsel:
Jonathan Harnish

7 Judge Marsh granted defendant's motion for summary judgment in an action alleging violations of Title VII, 42 U.S.C. § 1981 and 42 U.S.C. § 1983. Judge Marsh held that plaintiff failed to show the existence of severe or pervasive harassment necessary to sustain a claim of a sexually or racially hostile work environment. Judge Marsh further held that plaintiff's claims of retaliation failed because there was no evidence of a causal connection between her complaints and any adverse action, plaintiff has no evidence giving rise to an inference that defendant's proffered reasons for its decisions are pretextual, and plaintiff failed to submit any evidence that defendant has a policy or custom of retaliation. Finally, Judge Marsh held that defendant took prompt and effective remedial action and the comments of an individual co-worker cannot be attributed to defendant for purposes of sustaining a policy or custom

necessary for liability under 1983 or § 1981. Campos v. Portland Public Schools, 99-1744-MA, Opinion, November, 2000.
Plaintiff's Counsel:
Glenn Solomon
Defense Counsel:
Jeffrey Austin

7 Plaintiff applied for a position as a temporary painter and was turned down. He then filed an action claiming that the decision not to hire him was in retaliation for a prior discrimination action that he had filed against the defendant and settled two years previously.

Judge Ann Aiken granted a defense summary judgment motion finding no evidence of a causal connection between plaintiff's protected activity and the hiring decision. The court reviewed the defendant's hiring process and found that the screening system, which awarded points for special skills and experience, was neutral in design and as applied to the challenged hiring process. Judge Aiken rejected plaintiff's claims that the process was arbitrary and that committee members awarded points in an arbitrary and discriminatory manner. Clark v. Lane Community College, CV 99-6297-AA (Sept., 2000).
Plaintiff's Counsel:
David Force
Defense Counsel:
Karen Vickers

Habeas

Judge Marsh held that the U.S. Supreme Court's decision in Apprendi v. New Jersey, 120 S. Ct. 2348 (2000) should not apply retroactively to cases on collateral review. Apprendi set forth the principle that any "sentencing factor" that increases the maximum penalty that a criminal defendant faces, must be submitted to a jury and established beyond a reasonable doubt. Prior to Apprendi, several state and federal statutory schemes had judges making certain determinations, such as drug quantity, under preponderance of the evidence standard. Judge Marsh held that Apprendi announced a "new rule" under Teague v. Lane and that as such, it should not apply retroactively to cases on collateral review. Judge Marsh further found that the rule was not a "watershed" rule of criminal procedure such that it would fall within one of the narrow exceptions to the general principle that new rules should not be applied retroactively.

The court noted that several circuit courts had held that Apprendi should not apply retroactively to successive petitions and that the only other published decision on initial habeas petitions had held that Apprendi should be applied retroactively.

The case in review involved a § 2255 challenge to a drug distribution charge. Judge Marsh found that even if Apprendi applied, the defendant could not sustain his claim since he was sentenced well below the lowest possible statutory maximum sentence. United States v. Pittman, CV 00-449-MA; CR 96-293-MA, 2000 WL 1390065 (Nov. 15, 2000).
AUSA: Michael Brown
Defense Counsel:
Marc Blackman

Infamous Oregonians

Diane Downs' federal habeas corpus petition was recently rejected by the Ninth Circuit. The court affirmed Judge Ancer Haggerty's findings that Downs did not receive ineffective assistance of counsel. The court also held that the prosecution did not engage in misconduct when it asked Downs, on cross-examination, if she had been diagnosed as a "deviant sociopath." The court rejected claimed Brady violations, finding that the prosecution owes no duty to turn over notes that might have provided leads to potentially exculpatory evidence. Downs v. Hoyt, 2000 WL 1701454 (9th Cir. November 15, 2000).