

# Supervisor who told Employee she was “too old” not Responsible for Firing

1 min read

Apr 28, 2013

A 61 year-old employee’s supervisor made age-related comments over a four month period. Later, while informing the employee that she was being fired, the supervisor suggested that the employee was “too old” for the job. The employee sued her former employer for age discrimination in violation of the Age Discrimination in Employment Act (“ADEA”) and the state’s civil rights act. The trial court dismissed the employee’s lawsuit and the employee filed an appeal.

The Sixth Circuit upheld the lower court’s ruling. The Court found that the supervisor had merely relayed a decision made by higher level management. “[A]lleged statements of individuals with no authority to fire” cannot demonstrate that the employer’s reason for termination was discriminatory. The employer argued, and the employee agreed, that her performance fell well below minimum requirements on performance reviews and that she violated company policy at least twice prior to her termination. The reports of inadequate performance were generated by a third-party company who anonymously evaluated the employee’s skills. The Court found that the supervisor’s comments were not direct evidence of discrimination and did not establish that the employer’s stated reason for termination was false as required in order to prove discrimination under the ADEA. Additionally, the court found that written discovery responses identifying the supervisor as one of the individuals who recommended the employee’s “discipline, demotion, and/or discharge” did not indicate that the supervisor had any decision-making power. According to the Court, the discovery responses were consistent with the employer’s assertion that the supervisor was merely conveying the results of independent evaluation and the decision to terminate made by those in higher authority.

This case shows employers how input from a neutral third-party, and independent decisions made by upper management can help an employer overcome an inference of discrimination. Documentation and neutrality is always key. For more information read [Marsh v. Associated Estates Realty Corp., Case No. 12-1594 \(6th Cir. April 5, 2013\)](#).

---

*Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm’s national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution,*

*and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit [www.hinshawlaw.com](http://www.hinshawlaw.com) for more information and follow @Hinshaw on LinkedIn and X.*

## Topics

ADA, Age Discrimination