

11th Circuit Overrules Summary Judgment in ADEA Case Based On Vice-President's Reputed Statement

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The case of *Kragor v. Takeda Pharmaceuticals America, Inc.*, No. 11-16052 (11th Cir. December 20, 2012) reminds employers how easily summary judgment can slip away in a discrimination case based on statements attributed to senior management. The court started its analysis with a quote from the mathematician, physicist, and philosopher Blaise Pascal. “Contradiction is not a sign of falsity, nor the lack of contradiction a sign of truth.” Given that plaintiff appealed a summary judgment granted to the employer, such words signaled a reversal on appeal.

The plaintiff claimed age discrimination led to her discharge. She asserted on appeal that sufficient evidence contradicted the employer’s stated reason for her discharge, and when combined with other evidence, required a jury to decide if her termination occurred due to unlawful age discrimination. The authority that supported plaintiff’s efforts appears in a U.S. Supreme Court opinion. (“[A] plaintiff’s prima facie case, combined with sufficient evidence to find that the employer’s asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated.” *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 148 (2000).) The Eleventh Circuit viewed the record as indicating that the executive who fired plaintiff for alleged misconduct possibly “later said that the plaintiff was an exceptional employee who had done nothing wrong, had done everything right, and should not have been fired.” As a result, the Court ruled that a jury had to decide plaintiff’s age discrimination claim. *Id.*

The underlying dispute was whether the plaintiff had violated a company conduct policy that prohibited employees from giving gifts to health care providers in order to induce the recipient to prescribe the company’s products. The trial court had found that plaintiff lacked enough evidence to show that the employer’s reason for the discharge was an untrue or misleading reason for the employment decision. The appeals court had to decide if there was sufficient evidence that required giving the trier of fact the opportunity to find unlawful discrimination. Plaintiff met her initial burden by showing that she was over age 40, that she was fired and replaced by a younger worker, and that she was qualified for the position from which she was discharged. In

response, the employer submitted evidence that plaintiff violated, or appeared to have violated, certain policies that dictated how its employees were to conduct their business relations with healthcare providers. The employer relied on an internal investigation that HR, legal and compliance staff conducted and that produced a recommendation to discharge plaintiff. A corporate vice-president received the recommendation.

In response to the employer's summary judgment motion, plaintiff produced a declaration of the doctor with whom plaintiff had allegedly violated certain business conduct policies. The doctor asserted that he had called higher management personnel of the employer, and had heard from the same vice-president that plaintiff "had done nothing wrong, that she had done everything right, and further indicated that she should not have been fired." The court focused on the fact that the statement described by the doctor was attributed to the same vice-president who terminated plaintiff. The resulting factual dispute meant that a jury would have to decide if plaintiff's termination occurred due to age discrimination. Nevertheless, the court stressed that plaintiff had not proven her case. At trial, the vice president could deny having made such a statement, or explain that it was meant to only voice his personal beliefs, or was meant to not claim improper conduct by the doctor, among other possibilities. A jury would still have to evaluate the dispute over the grounds that the employer relied on when ending plaintiff's employment, and determine whether unlawful age discrimination was the "but-for" cause behind the termination.

The Kragor opinion shows how a statement by an external third party can generate a sufficient factual dispute that bars summary judgment in employment discrimination cases.

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Topics

ADEA, Age Discrimination