

Seventh Circuit Orders Jury Trial Because Employer Couldn't Prove date of Phone Call Triggering Title VII's 300-Day Limitations Period

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A Wisconsin employer is facing a federal jury trial, all because it failed to properly document a simple phone call. In a decision issued yesterday, *Begolli v. Home Depot U.S.A., Inc. et al*, No. 12-1875 (7th Cir. Nov. 29, 2012), the Seventh Circuit Court of Appeals revived a plaintiff's discrimination claim against the employer after a lower court had dismissed the suit, finding that a question of fact existed as to whether the plaintiff had filed within Title VII's 300-day limitations period. The trial was necessary because the employer could not prove when it had called the plaintiff to deny his employment application.

The plaintiff, an Albanian national, alleged that the employer had refused to hire him for a position based upon his national origin in violation of Title VII of the Civil Rights Act of 1964. The employer did not dispute that it had refused to hire the plaintiff, but argued that his claim was barred by the 300-day limitations period applicable to Title VII claims — the complaint had been filed on June 26, 2008, and the employer claimed that it had turned the plaintiff down by phone on August 27, 2007 (304 days earlier). Unfortunately for the employer, it had no proof of that call, and the plaintiff denied ever receiving it. Instead, the plaintiff claimed that he had been notified of the employer's decision to deny his application sometime after August 27, 2007, bringing his complaint within the 300-day period.

The federal district court judge, finding that the plaintiff's denial of the call raised a factual issue, held an evidentiary hearing. Following the hearing, the judge was convinced that the employer was telling the truth and so dismissed the plaintiff's suit as time-barred. The plaintiff appealed, arguing that the employer's statute of limitation's argument was a defense that needed to be heard by a jury, and a panel of Seventh Circuit judges agreed. In its decision, the panel rejected the district court judge's finding that the Title VII limitations period was akin to other disputes, which can be resolved by a judge through an evidentiary hearing, such as a prisoner's failure to exhaust remedies in civil rights suits. "We see a difference," the judges found, because "[t]he filing deadline is just a defense in a Title VII suit, and there is no reason to distinguish it from other defenses and therefore exclude

it from the jury trial.” As a result, the Seventh Circuit remanded the case and ordered further proceedings, essentially granting the plaintiff a trial by jury.

This case presents a clear lesson for employers regarding documentation, and the risks of not documenting employment actions. If the employer, in this case, had simply created reliable documentation of its June 26 phone call to the applicant, it would likely have been granted summary judgment (i.e., there would be no issue of fact as to when the 300-day limitations period began running). As it is, however, the employer is facing a costly jury trial. Employers should take heed of this decision and be vigilant in their documentation of hiring, firing, and disciplinary actions.

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