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## White Employee Fails to Show Her Termination Was Reverse Discrimination

3/30/2012

By Matthew J. Cannova

There was no evidence of reverse discrimination in a white employee's termination, despite three similarly situated comparators being treated more favorably and the employer's deviation from its demotion policy, according to the 7th U.S. Circuit Court of Appeals.

Barbara Good, a white employee, brought suit under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. §1981 alleging that she was terminated because of her race.

Good was employed at the University of Chicago Medical Center (UCMC) as a lead technologist in the Computerized Tomography Department. UCMC maintained a four-step corrective progressive action policy that provided that an employee's failure to complete a performance improvement plan (PIP) was grounds for termination. According to UCMC's Policy and Procedure Manual, however, it was UCMC's policy to demote employees who could not perform their assigned job responsibilities because of a lack of skills or motivation to perform up to the required standards.

Good received poor performance reviews, so UCMC placed her on a 90-day PIP to improve her performance. Good's performance failed to improve during the 90 days, so UCMC issued a final warning and placed her on another 30-day PIP. The final warning provided that if Good's performance did not improve, "further corrective action may be taken, up to and including termination of employment." Good requested a demotion under UCMC's demotion policy, but her supervisor told her that the policy had changed.

When Good's performance still did not improve, Good's supervisor and the director of Good's department decided to terminate her employment. UCMC replaced Good with a white employee.

In her lawsuit, Good pointed to three nonwhite employees who had exhibited similar performance problems but were demoted instead of being placed on a PIP and then terminated. Good also provided evidence that UCMC's demotion policy had not changed.

The district court ruled for UCMC, finding that the demotion policy was discretionary and that only one of the nonwhite comparators was similarly situated, but that it was not sufficient to show Good's termination was because of her race.

The 7th Circuit affirmed, although it held that all three comparators were similarly situated to Good. The court held that Good had not produced evidence "leading directly to the conclusion that [the] employer was illegally motivated, without reliance on speculation," as is required by the direct method of proving discrimination. Even with the three comparators, there was no circumstantial evidence that UCMC was motivated to terminate Good because of her race or evidence of any anti-white bias. The fact that UCMC deviated from its highly discretionary demotion policy, standing alone, did not show improper motivation.

The court also held that Good had not produced any evidence of background circumstances demonstrating that UCMC had any "reason or inclination to discriminate invidiously against whites," or evidence that there was "something 'fishy' about her termination," in order to prove discrimination under the indirect method.

*Good v. Univ. of Chicago Med. Ctr.*, 7th Cir., No. 11-2679 (March 12, 2012).

**Professional Pointer:** This case illustrates the importance of monitoring the workplace to prevent any discriminatory behavior and of remedying such behavior should it occur, because it is much more difficult for employees to establish a discrimination claim when there is no circumstantial or background evidence of discriminatory bias. Even with careful monitoring, however, it is still important to draft policies to allow for the discretion of management and to carefully document reasons for employment decisions.

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