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No Nexus Between Protected Class Status and Employment Action

10/16/2012

By Wayne L. Helsby

A potential employer's legitimate nondiscriminatory reasons for not hiring an applicant, who was a transgender individual, were not a pretext for discrimination, the 8th U.S. Circuit Court of Appeals held.

Gage Hunter, a transgender female who identified as a man, sued his potential employer United Postal Service Inc. (UPS), when he was not offered a position as a part-time package handler after interviewing in 2008. Hunter alleged that UPS discriminated against him based on his gender, sexual orientation and disability when he was not offered a position.

Hunter was born a female, but had identified himself as male since childhood. In 2006, Hunter applied for a position with UPS under his birth name, Jessica Axt, and presented himself as a female. He was offered a position but declined the offer. In 2008, Hunter had not yet undergone gender reassignment surgery; however, he did begin making other changes, such as binding his breasts, taking male hormone shots, cutting his hair short, and dressing in male clothing. He applied to UPS again as Jessica Axt, but presented himself as male. He toured the company's local facility and was asked to interview subsequently.

His interview with UPS employee Brad Trendle lasted for approximately 8 minutes, and included questions about why he was interested in the part-time position, whether he would be able to perform the job functions and whether he was interested in the benefits the job offered. Hunter replied that he was capable of doing the job, but could work only part-time, because he received Social Security disability benefits.

At the conclusion of the interview, another UPS employee came in and whispered in Trendle's ear. Trendle then told Hunter that UPS was not hiring and coded his application as "poor interview answers." In court, Trendle testified that he thought Hunter's work history was problematic. Trendle had lied to Hunter at the interview about UPS not hiring, but this fact was not noted on any internal UPS documents.

Hunter sued UPS claiming that he was discriminated against based on his gender, sexual orientation and disability when UPS elected not to hire him. The district court ruled in UPS's favor on July 22, 2012, finding no grounds for a claim of discrimination, because there was no evidence that Trendle perceived or knew previously that Hunter was transgender and discriminated against him on that basis. The 8th Circuit affirmed.

The 8th Circuit elaborated by stating that, in Hunter's case, the evidence did not show that it was readily apparent that Hunter was born a female and attempted to deviate from traditional gender stereotypes. The 8th Circuit stated that in discrimination cases based on a protected status that is not obvious, the employee must show that the employer was sufficiently aware of the employee's status and based its discrimination on that factor.

The 8th Circuit accepted the nondiscriminatory reasons UPS gave for not hiring Hunter and determined that Hunter failed to provide a genuine set of facts that proved that UPS's reasons were pretextual.

Hunter v. United Postal Service, Inc., 8th Cir., No. 11-3186 (Sept. 17, 2012).

Professional Pointer: Employers should ensure that they have legitimate nondiscriminatory reasons for making all employment-related decisions, including those during the application process. Even when an applicant does not readily appear to qualify for a protected status, an employer would be wise to document legitimate nondiscriminatory employment decisions consistently.

Wayne L. Helsby is a shareholder with Allen Norton & Blue, P.A., the Worklaw® Network member firm in Winter Park, Fla.

Society for Human Resource Management

1800 Duke Street
Alexandria, Virginia 22314 USA

Phone US Only: (800) 283-SHRM (7476)
Phone International: +1 (703) 548-3440

TTY/TDD (703) 548-6999
Fax (703) 535-6490

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