Supervisor's Comments Were Evidence of Age Discrimination

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A 76-year-old security guard who was the subject of repeated comments about his age by one of the supervisors who decided to discharge the worker can proceed with his Age Discrimination in Employment Act (ADEA) claim, the 8th U.S. Circuit Court of Appeals ruled.

At approximately 5:30 a.m., while on duty and driving a vehicle supplied by his employer, Securitas, Carlyn Johnson struck a parked truck. Johnson called his supervisor immediately but was unable to reach the supervisor until 7 a.m.

While speaking with his supervisor, Johnson said his shift ended at 7 a.m. His supervisor agreed and told Johnson to go home and that he would call him later. Shortly after Johnson left, the supervisor learned from another supervisor that Johnson was scheduled to work until 8 a.m.

During the company's accident investigation, Johnson was required to provide a statement describing the incident and to undergo a blood test. Securitas' incident report noted that Johnson was aware that this shift ended at 8 a.m., not 7 a.m., although Johnson denied this. After the investigation was done, Johnson was fired.

Johnson requested that the company review his termination, denying that his shift ended at 8 a.m. Securitas responded that he was discharged for leaving his post after the accident without securing relief and for failing to speak with HR management about the accident before going home. A second review re-stated these original grounds and further asserted that Johnson was discharged for misuse of a company vehicle.

After pursing his claims through the Equal Employment Opportunity Commission (EEOC), Johnson sued, claiming age discrimination under the ADEA. As a basis for his claim, he asserted that one of the supervisors involved in the decision to discharge him had repeatedly made comments on his age. Specifically, Johnson alleged that the supervisor had advised him to "Hang up the Superman cape" and had made several comparisons between him and the supervisor's 86-year-old father. Additionally, Johnson alleged that the supervisor had told him on several occasions that he was "too old" to perform security duties.

The district court found that Johnson could not prove he was treated differently from other employees because of his age. According to the court, the statements made by Johnson's supervisor were either innocuous or too remote in time to be attributed to his firing. Consequently, the district court found that Johnson could not prove his discharge was related to his age and thus could not maintain his claims against Securitas. Johnson appealed the decision.

In reversing the district court's decision, the 8th Circuit noted that, in order to make a case for age discrimination, plaintiffs must demonstrate that 1) they are part of a protected age group; 2) they are meeting the reasonable job-performance requirements of their employer; 3) they were discharged; and 4) age was a factor in the employer's decision. Because Johnson met two of the above factors, the 8th Circuit determined that the two questions before it were whether Johnson met the reasonable expectations of Securitas and whether age factored into his termination.

Based on its review of his personnel file, the appeals court found that Johnson had met the company's legitimate expectations. Before the accident that led to his discharge, no complaints were filed against him and he had never been disciplined. Additionally, the court found that the supervisor's comments about Johnson's age indicated an unlawful motive for firing the worker. The appeals court determined that the comparison of Johnson to an 86-year-old retiree, and other statements about Johnson's age, could demonstrate that Securitas discharged the worker because of his age. Consequently, the 8th Circuit reversed the district court's decision and allowed Johnson to continue with his age-discrimination claim.

Johnson v. Securitas Sec. Servs. USA Inc., 8th Cir., No. 12-2129 (Aug. 26, 2013).

Professional Pointer: Employers should fully investigate every discharge, particularly those involving employees in a class protected by federal or state laws (or both). Here, it is likely that human resource management was unaware of the supervisor's ageist comments. Nevertheless, such comments may be attributed to the employer and may undermine its legitimate disciplinary decisions.

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