

FILED

FEB 21 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEVEN CABASA,

Plaintiff-Appellant,

v.

CITY AND COUNTY OF HONOLULU,  
Department of Environmental Services; et  
al.,

Defendants-Appellees.

No. 15-16597

D.C. No.

1:14-cv-00080-DKW-RLP

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Hawaii  
Derrick Kahala Watson, District Judge, Presiding

Submitted February 16, 2018\*\*  
Honolulu, Hawaii

Before: O'SCANNLAIN, CLIFTON, and IKUTA, Circuit Judges.

Steven Cabasa appeals the district court's order granting summary judgment to the City and County of Honolulu, Department of Environmental Services (the

---

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

City) on his claim that the City retaliated against him for protected conduct in violation of the Hawaii Whistleblower Protection Act (HWPB), Haw. Rev. Stat. § 378-62. We have jurisdiction under 28 U.S.C. § 1291.

It is undisputed that a candidate for the Wastewater Pumping Operations Supervisor position must receive at least a 70% score on the promotional examination to be considered for the position and that Cabasa received a 57.5% score on the examination. Accordingly, there is no genuine issue of material fact that the City would not have promoted Cabasa “regardless of the protected activity.” *Crosby v. State Dep’t of Budget & Fin.*, 76 Haw. 332, 342 (1994) (quoting *NLRB v. Howard Elec. Co.*, 873 F.2d 1287, 1290 (9th Cir. 1989)).

**AFFIRMED.**