

Mary Lynn Reid v. State of Vermont Department of Disabilities, Aging, and Independent Living, Docket No. 276-5-04 Wncv (Teachout, J., Aug. 1, 2007)

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**STATE OF VERMONT
WASHINGTON COUNTY**

MARY LYNN REID,)	
Plaintiff,)	Washington Superior Court
)	Docket No. 276-5-04 Wncv
v.)	
)	
STATE OF VERMONT DEPARTMENT)	
OF DISABILITIES, AGING, AND)	
INDEPENDENT LIVING,)	
Defendants.)	

RULINGS ON MOTIONS FOR SUMMARY JUDGMENT

Plaintiff worked for the Defendant Department as a vocational rehabilitation counselor from 1987 to 2004. Her suit alleges (1) sex discrimination in the forms of denial of a promotion in favor of a less qualified male candidate and a sexually hostile work environment, (2) disability discrimination in the form of failure to provide reasonable accommodation for her disability of ADD, and (3) retaliation for her complaints about the treatment of women in the work environment in the forms of refusal to promote her and refusal to provide reasonable accommodation.

The Department has moved for summary judgment on all claims, and Plaintiff has made a cross motion for summary judgment with respect to the sex discrimination claim of denial of promotion. The court has reviewed the parties' statements concerning material facts, supporting citations from the record, and all memoranda. For the reasons set forth more particularly below, the court finds that there are substantial disputes of material facts related to all claims, and denies both motions.

Defendant's Motion for Summary Judgment, filed March 23, 2007

Sex Discrimination. Both parties acknowledge that Plaintiff has made out a prima facie case. The Department contends that it has produced a non-discriminatory reason for Plaintiff's failure to be promoted: an independent interviewing committee recommended another candidate over Plaintiff after evaluating the candidates on specified criteria. It notes that the burden thus

shifts to Plaintiff to show that the Department's proffered reason is a pretext for the real reason of sex discrimination, and argues that Plaintiff cannot make this showing.

Plaintiff has put forth facts which, if believed by a fact-finder, support a reasonable inference of a sexually hostile environment, and more specifically, that the independent interviewing committee was organized and influenced by the manager responsible for the sexually hostile environment. While the Department argues that some of Plaintiff's facts are inadmissible, that argument is vague as it relates to record testimony of several potential witnesses. Though it is true that Plaintiff's statement of "facts" includes argument as to how testimony may be characterized, that does not mean that the identified testimony itself is inadmissible, or that the jury could not make the argued inferences from the testimony.

Thus, Plaintiff has met her burden to come forward with evidence showing that the Department's non-discriminatory basis for the denial of promotion was a pretext, and that sexual discrimination was the real reason.

Material facts on all issues are genuinely disputed, and call for resolution by a jury.

Disability Discrimination. The Department initially did not challenge Plaintiff's ADD as a disability, but argued that it is not a FEPA disability because Plaintiff's employability is not affected by it, as she has a long and successful work history, and is currently working successfully at another job she obtained after she left the Department. The Department further argues that even if her employability is affected, she was able to do the essential functions of the job without accommodation. It further argues that the Department granted reasonable accommodations (some flexibility in her scheduled work day, a work schedule that allowed for uninterrupted time, assistance from an occupational therapist, and permission to use a palm pilot), and to the extent that not all Plaintiff's requests were granted, they were not "reasonable" accommodations in relation to the work. In its subsequent memorandum, the Department made the further argument that ADD/ADHD is not a qualifying impairment.

The facts put forth by the parties show that there are genuine disputes of material facts: whether Plaintiff's ADD disables her to such an extent that it is a qualifying impairment, whether Plaintiff could do the essential functions of the job without accommodations, whether or not the steps that were taken in adjusting her work circumstances were accommodations or discretionary decisions on the part of her supervisors, and whether or not they constituted reasonable accommodations.

Retaliation. The Department argues that Plaintiff's claim that she "stood up" for two people she believed were being treated unfairly does not constitute lodging a complaint; that Plaintiff never made a complaint prior to the same conduct she alleges is retaliatory (failure to promote her and denial of accommodation requests); that she cannot show a causal connection between any complaint she made and her failure to be promoted or a denial of the accommodations she requested; and that she cannot show that Department decisions were motivated by retaliation in response to her own conduct. Plaintiff has set forth a quantity of evidence in response that shows that several important facts are disputed: whether the Plaintiff's conduct in complaining to management in the manner she did amounts to lodging a complaint of

discriminatory acts under the statute; whether such conduct took place prior to the decision not to promote her; whether it resulted in the withdrawal of some accommodations that had been put in place in 2002; and whether there is a causal connection between such conduct and the alleged adverse employment actions (failure to promote and denial of accommodations).

Because there are genuine disputes of material fact as to each of Plaintiff's claims, Defendant's Motion for Summary Judgment is *denied*.

Plaintiff's Cross Motion for Summary Judgment, filed May 8, 2007

Sex Discrimination. Plaintiff argues that the Department has not met its burden to come forward with a non-discriminatory reason for the failure of Plaintiff to be promoted. Plaintiff argues that the undisputed facts show that the interviewing committee that made the hiring recommendation was not independent in the manner the Department alleges. The facts concerning the manner in which the interviewing committee was selected and did its work are highly disputed. The jury will have to evaluate a great deal of evidence in order to make a finding on that issue.

In any event, the Department has met its burden of production with evidence showing that a hiring panel made up of four women and one man (excluding Mr. Hutchins) discussed the duties of the job, the activities of the position, and the interview questions to use relating to five specifically identified criteria; and that the panel interviewed each of the three candidates, voted on each of the criteria as to each candidate, determined that a Mr. Doe received the most votes, and made recommendations to management. Because the Department has met its burden of production, Plaintiff is not entitled to summary judgment on this claim.

Accordingly, Plaintiff's Motion for Summary Judgment is *denied*.

ORDER

For the foregoing reasons,

- 1) Both parties' Motions for Summary Judgment are *denied*, and
- 2) A pretrial status conference will be scheduled.

Dated at Montpelier, Vermont this 1st day of August 2007.

Mary Miles Teachout
Superior Court Judge