

Lessons from Accountant’s Age Discrimination Suit

By Estelle McGrath

Insightful lessons can be learned by reviewing professional liability issues. With this in mind, Gallagher Affinity provides this column for your review. For more information about liability issues, contact Irene Walton at irene_walton@ajg.com.

A recent employment law case in Pennsylvania reinforces the necessity for employers to base all employment decisions on legitimate, nondiscriminatory business reasons. Further, the employer’s decision-makers should be able to clearly articulate the rationale supporting such decisions. In a perfect world, contemporaneous documentation would be available to assist the defense. In *Rodrock v. Public Utility Commission*,¹ an accountant’s claims of age discrimination failed because there was no evidence to support that his employer’s decision not to promote him was based on his age.

Plaintiff Rodrock was hired in 1973 as an accountant for the Public Utility Commission. Later, in 2006 and 2011, he applied for management positions but was not chosen. He eventually filed complaints asserting unlawful age discrimination. The Commonwealth Court’s decision was issued on Oct. 18, 2023, affirming the trial court’s decision in favor of the employer.

In its decision, the Commonwealth Court reiterated the prevailing standard in analyzing discrimination claims, which follows a three-part burden shifting framework as set forth in *McDonnell Douglas Corporation v. Green*.

Part One: Prima Facie

The court explained that the employee presented a prima facie case showing he was at least 40 years of age (the employee was 59 when he applied for the first management position and 64 when he applied for the second management position); he was qualified for the position in question (he scored more points on the interview questions than the other candidates); he

suffered an adverse employment action (failed to secure the desired position); and the position was awarded to someone sufficiently younger (20 years younger in one instance). These actions were pointed to as an inference of discriminatory animus.

Part Two: Nondiscriminatory Reasons

Under the *McDonnell* framework, the burden then shifts to the employer to articulate a legitimate, nondiscriminatory reason for the employment decision. At this stage, the employer only had to provide evidence that would allow the fact finder to determine that the decision was made for nondiscriminatory reasons. If the employer is able to articulate a legitimate business explanation, then the presumption of discriminatory intent created by the employee’s case is rebutted.

In regard to the nonpromotion in 2006, the employer’s executive director testified that leadership skills and experience were far more important than technical knowledge. She explained that the person working in that position would need “to be a stronger thinker with strong leadership and management skills” as that person would be “second in command to the bureau director.” Thus, the trial court found that the employer succeeded in proffering a legitimate, nondiscriminatory reason for the employee’s nonpromotion.

On appeal, the employee argued that the executive director’s testimony was contradicted by an earlier memo she had drafted upon hiring the other candidate. The employee pointed to language in the memo that noted “expertise in specific subject matters” was an insignificant factor in her hiring decision. The court disagreed and explained that the employer only had a burden of production at this stage, not persuasion. Thus, no credibility assessment was required. The burden of persuasion at all times rests with the plaintiff-employee.


The court also found that the employer presented a nondiscriminatory reason for

not promoting the employee in 2011. The employer explained that the position required experience in emergency preparedness and that the employee was not the best applicant for the job.

Part Three: Nondiscriminatory Reason as Pretext

Once an employer meets its burden under the second stage, the burden shifts back to the employee. At trial, the employee’s burden is to prove that not only was the employer’s proffered reason false, but the real reason was impermissible discrimination. The fact finder must weigh the employee’s explanation of intentional discrimination and that it was the “but-for” cause of the adverse employment action.

The appellate court agreed with the trial court, which concluded that there was no evidence – not even circumstantial evidence – to support an inference that the employee was not hired for either of the positions based on his age. The trial judge found that the executive director’s testimony was credible as to why the employee was not a good fit for management; the executive director’s reasoning was consistent that management experience and skills were more important than job knowledge; and the executive director had the final say as to who was hired.

In the end, the employee simply failed to produce any evidence to show pretext on the employer’s part, only speculation. This was not enough to succeed in this particular age discrimination claim. 

¹ No. 1038 C.D. 2022, Pennsylvania Commonwealth Court, Oct. 18, 2023.

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