

Tuesday, Sept 26, 2017

Keuka College discrimination suit gets reworked

Judge notes missed deadline and insufficient 'quality or quantity of harassment'

By: Bennett Loudon | September 26, 2017

U.S. District Court Judge Elizabeth A. Wolford has dismissed part of a lawsuit filed by a former instructor at Keuka College who claims she was denied tenure because of discrimination.

Wolford dismissed two claims made under Title VII of the Civil Rights Act and a hostile work environment claim filed under New York State Human Rights Law.

She denied the defense motion to dismiss two additional claims made under the state Human Rights Law. And she granted a plaintiff's motion to amend the complaint with a Section 1981 claim that the plaintiff was denied tenure "because of her racial and national origin of being Chinese."

Unlike Title VII claims, Section 1981 discrimination claims don't require a prerequisite EEOC claim and there is no cap on compensatory or punitive damages.

Plaintiff Yang Zhao was an adjunct instructor at the school from February 2006 to June 2012 and an assistant professor in the Division of Business and Management since August 2012.

Named defendants in the case are: Keuka College President Jorge Diaz-Herrera; Provost and Vice President for Academic Affairs Paul Forestell; and Dan Robeson, chairman of the department of business and management.

Zhao is represented by Joseph A. Gawlowicz, an attorney at Trevett Cristo PC. He did not respond to a request for comment on the decision.

"The defendants engaged in racial and national origin discrimination against (Zhao) in 2014 and 2015 by denying her a promotion to a tenured professor position because of her racial and national origin of being Chinese," according to the 18-page complaint filed in September 2016.

In addition to compensatory damages of \$1 million, Zhao is seeking to be rehired by Keuka College, with tenure, back pay, unspecified punitive damages and attorneys' fees.

The Title VII claims were dismissed because an EEOC complaint was not filed as required within the 300-day deadline.

The hostile work environment claims — one filed under Title VII and the other under the state Human Rights Law — were dismissed because Zhao "has not alleged a hostile work environment."

"The factual allegations in the proposed amended complaint do not allege a sufficient quality or quantity of harassment so as to lead to a plausible conclusion that a reasonable employee would find the conditions of her employment altered for the worse," Wolford wrote in the 24-page decision filed Sept. 7.

"Instead, plaintiff complains of a discreet incident of discrimination related to the denial of tenure," the judge wrote.

The alleged discrimination happened primarily in one written document.

"All of the Title VII claims were dismissed, along with the hostile work environment claims, so we're very pleased about that," said defense attorney Mary Jo S. Korona, a partner at Leclair Korona Vahey Cole LLP.

Korona said she will likely file a motion to dismiss the 1981 claim after discovery in the case is completed.

"There's a very cautionary message in the decision," Korona said.

In granting the motion to amend the complaint with the 1981 claim, Wolford wrote: "This conclusion does not mean that plaintiff can prove discriminatory intent at trial, or even sufficiently to survive a motion for summary judgment. It simply means that under the relaxed standard at this stage in the proceedings, she has plausibly alleged discriminatory intent."

And Korona pointed out that if Zhao does not prevail on the 1981 claim, she will be required to pay the defense's attorneys' fees.

"It can run the other way too if the defense loses," she said.

The case is one of about 90 that will be mediated in November during Settlement Week, an initiative designed to attempt to reduce the caseload in the U.S. District Court for the Western District of New York.

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