

Chicago Daily Law Bulletin®

Volume 161, No. 59

Poor documentation leads employer to come up short on summary judgment

It is an all too common occurrence when an employer's failure to properly document the decision-making process when terminating an employee ultimately prevents it from obtaining summary judgment.

The most recent example comes from the 7th U.S. Circuit Court of Appeals. In *Ledbetter v. Good Samaritan Ministries, et al.*, No. 14-2822 (7th Cir., Feb. 6), the 7th Circuit reversed summary judgment in favor of the employer because there were "too many loose ends."

Plaintiff Linzie Ledbetter worked for Good Samaritan Ministries, an emergency shelter and transitional housing program. He was reprimanded for misconduct twice in five months, first in June 2010 and again in September 2010.

On Oct. 5, 2010, Good Samaritan's board president met with the plaintiff to address his misconduct. After that meeting, the plaintiff accused the board, his co-workers and residents of the shelter of lying and trying to frame him for termination.

On Oct. 14, the executive director and the plaintiff's supervisor met to discuss the plaintiff's status, and Good Samaritan claimed that the two decided to terminate the plaintiff's employment. The plaintiff, however, was not informed of his firing.

Unfortunately for Good Samaritan, the plaintiff had filed a charge with the Equal Employment Opportunity Commission on

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Oct. 4, 2010, alleging discrimination based on race and retaliation. The executive director and the plaintiff's supervisor learned of the EEOC charge on Oct. 19, 2010, and Good Samaritan informed the plaintiff the following day that his employment was terminated.

On appeal, the 7th Circuit focused on when Good Samaritan made the decision to fire the plaintiff. If the decision was made on Oct. 14, prior to receiving notice of the Oct. 4 EEOC charge, then Good Samaritan could not have retaliated against the plaintiff for going to the EEOC.

However, if Good Samaritan decided to fire the plaintiff the day after the executive director and the plaintiff's supervisor were notified of the EEOC charge, Good Samaritan's motivation to terminate the plaintiff could have been based on his EEOC charge, making Good Samaritan's conduct illegal.

The 7th Circuit had no trouble casting doubt on the employer's contention that the decision to fire the plaintiff was made Oct. 14, before notice of the EEOC charge arrived. Good Samaritan lacked

any documentation regarding the termination process, notes from the Oct. 14 meeting between the executive director and the plaintiff's supervisor or even a record that the meeting took place at all.

Instead, the employer supported its position with one-page affidavits from the executive director and supervisor, each averring to the statements in the summary judgment motion and supporting memorandum that they decided to fire the plaintiff "on or around" Oct. 14.

The 7th Circuit stated that the phrase "on or around" implied that the employer did not know the date of the meeting that yielded the firing decision despite an expectation that the employer would have had precise knowledge of the date.

The court also questioned why the employer waited until Oct. 20 to inform the plaintiff of his firing if the decision was actually made on Oct. 14. The employer stated that the delay was due to the fact that the plaintiff's supervisor worked a second job and was not available until Oct. 20.

The 7th Circuit found this tes-

timony extremely self-serving and implausible because Good Samaritan failed to submit any documentation regarding the supervisor's unavailability or why another supervisor could not have told the plaintiff he was being fired.

Given the lack of evidence and questionable testimony about the Oct. 14 meeting — if it even took place — the 7th Circuit said it was unable to determine whether the executive director and the plaintiff's supervisor decided to terminate the plaintiff's employment that day or after the EEOC charge landed at Good Samaritan's office.

As this was a question of fact for a jury to decide, the 7th Circuit found summary judgment inappropriate and reversed and remanded the district court decision.

Had Good Samaritan kept proper documentation regarding the termination process, the defendants could have supported their position with documents and letters to the plaintiff regarding the date of the decision to fire him, avoided using the term "on or around" in affidavits and bolstered the credibility of their affidavits with documentation.

Since it failed to keep proper documentation, however, the defendants are heading back to court. To make matters worse for Good Samaritan, the 7th Circuit instructed the district court to consider appointing the pro se plaintiff an attorney to represent him during the remainder of the litigation.