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CASE LAW UPDATE

Matt Ponzar

DHRA Associate General Counsel

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Navy can bargain over union proposal of teleworking on “official time”

- *NAGE, Local R1-144, FUSE and DON, Naval Undersea Warfare Center, Division Newport, Newport, R.I., 65 FLRA No. 115 (FLRA 02/23/11)*
- **Facts:** The union proposed that up to five union officials would each be eligible for telework up to 20 hours per week to perform union duties on official time at their home work site. The agency challenged the proposal's negotiability on three grounds: 1) it affected the management right to assign and direct employees; 2) it concerned representational duties, not conditions of employment; and 3) it violated the telework law (P.L. 106-346). The union filed a negotiability appeal, asserting that the proposal was intended to clarify the agency's telework policy, which established policies and procedures for employees wishing to work from home. The union argued that agency policy allowed them to do it in 2004 and 2005.
- **Held:** The Agency shall negotiate over the proposal that union officials would be eligible for telework to perform union duties on official time at their home work site.
- **Point:** The telework law does not require that union officials be permitted to perform union duties from home, but it also doesn't prohibit the parties from agreeing to such contract terms.

Retired former worker can continue to use agency e-mail as union president

- *SSA and AFGE, Local 1760*, 65 FLRA No. 110 (FLRA 02/16/11)
- **Facts:** The agency removed a retired employee's access to its computer system per policy. However, the ex-employee continued to serve as a local union president. The union argued that as union president, the retiree retained a contractual right to use e-mail, the intranet, and an official time tracking system. The agency argued that the union's actions during negotiations showed that "local presidents" were active employees and that the security of its system could be compromised by allowing non-employee access. The arbitrator noted that the union president served as a full-time representative with access to the system for several years and there was no evidence of a security breach. The agency had also allowed another retired president of another local access to e-mail, but failed to explain why it shouldn't provide equal treatment. The agency argued before the FLRA that the award was contrary to law because it violated management's right to determine its own security practices among other things.
- **Held:** The FLRA upheld the arbitrator and found that the former worker retained a contractual right, as union president, to use the agency's e-mail system.
- **Point:** The agreement provided that the agency would allow the union limited access to the e-mail system, and required the local president to use the e-mail system.

Fifth Amendment rights are triggered by a need to testify

- *AFGE, Local 3310 and Department of the Army, Army Corps of Engineers, Engineer Research & Development Center, Waterways Experiment Station, Vicksburg, Miss., 65 FLRA No. 91 (FLRA 01/27/11)*
- **Facts:** The grievant was caught on video with what looked like agency wire in his truck. He was suspended, but denied taking the wire, but couldn't remember what was in his truck. The union argued a number of things, including that the award violated the grievant's Fifth Amendment privilege against self-incrimination. Moreover, the agency wouldn't postpone the administrative disciplinary process and arbitration hearing until after final disposition of the criminal case. The arbitrator found that all the evidence implicated the grievant.
- **Held:** The agency had cause to suspend the grievant for unauthorized possession of government property. There was no evidence that the agency compelled the grievant to testify or make statements on matters that could incriminate him.
- **Point:** An agency violates the Fifth Amendment when it penalizes an employee who properly asserts the privilege, which wasn't the case here. The grievant was not compelled to testify at arbitration or make incriminating statements about himself.

Grievant's prior election closes off option to arbitrate

- *AFGE, Local 738 and Department of the Army, Combined Arms Center and Fort Leavenworth*, 111 LRP 1127 (Fed. Arb. 10/26/10)
- **Facts:** The grievant first challenged his termination with the Office of Special Counsel who declined to order corrective action. The grievant next went to the Merit Systems Protection Board, who dismissed his appeal as untimely. Finally, the grievant filed a grievance. The agency tried to block arbitration. The arbitrator noted there are three options for contesting an alleged prohibited personnel practice per 5 U.S.C. § 7121(g). The grievant's request for corrective action filed with OSC, then subsequent appeal to MSPB, was important to showing the grievant's election of remedy for his termination. He made his election of remedy when he first went to OSC.
- **Held:** The grievant went to OSC (and MSPB) prior to filing a grievance. His first choice constituted an election of remedy that barred arbitration per statute.
- **Point:** After the grievant first elected his remedy of choice, he tried to use the grievance process to take another bite at the apple. All he got was another worm. 6

Permanent service is cut off by a temp appointment

- *Roy v. Department of Justice*, 2011 MSPB 36 (MSPB 03/04/11)
- **Facts:** Appellant was general attorney with the Department of Homeland Security, which was a permanent, excepted service position. She then accepted a temporary excepted service appointment as an immigration judge with the Department of Justice. Her temp appointment was then converted to a permanent excepted service appointment, subject to completion of a two-year trial period. About 18 months later, DOJ terminated her based on alleged misconduct. The administrative judge dismissed her appeal for lack of jurisdiction over the termination action because she did not complete her trial period. Appellant asked the board to add her permanent service at DHS to her permanent service at DOJ without looking at her intervening temp appointment.
- **Held:** The MSPB upheld the AJ's dismissal of appellant's appeal for lack of jurisdiction. There was a break in service of more than one workday between both periods of permanent service, so the DHS period of permanent service could not be tacked on to the DOJ service when determining current continuous service.
- **Point:** Time spent in a permanent position immediately before a temporary position cannot be added to time spent in a later permanent position. Time spent in a temporary position in the excepted service does not qualify for tacking to a permanent position when calculating current continuous service. The MSPB will not overlook the time spent in the intervening temporary position for purposes of tacking.

Appellant didn't have to prove entitlement to promotion

- *Becwar v. Department of Labor*, 2011 MSPB 34 (MSPB 03/04/11)
- **Facts:** Appellant retired from her GS-11 EO Specialist position, then filed a USERRA appeal alleging discrimination based on her military service requirements. The administrative judge found that appellant was unable to explain her ability to perform at the GS-12 level or that her performance deficiencies were caused by her absences for military duty. The AJ denied her appeal. Appellant argued to MSPB that in the initial decision, the AJ improperly increased her burden of proof by requiring her to prove her entitlement to the GS-12 EOS position.
- **Held:** The MSPB agreed and vacated to the extent the AJ placed the burden on appellant to prove her entitlement to a GS-12 position as a threshold issue. The MSPB did not grant appellant corrective action under USERRA because the agency showed that it would not have promoted the appellant absent her military status, based on her performance during the performance appraisal period at issue.
- **Point:** Appellant didn't have to prove her entitlement to a position as a threshold issue in her USERRA discrimination appeal.

The MSPB has no authority to review a claim via the Vet Pref Act

- *Burroughs v. Department of the Army*, 2011 MSPB 31 (MSPB 03/04/11)
- **Facts:** Appellant, a 5-point veterans preference eligible, filed a board appeal alleging that the agency selection process violated his vet pref rights when the agency didn't select him. The administrative judge dismissed the appellant's Veterans Employment Opportunities Act appeal for lack of jurisdiction after finding he failed to make a nonfrivolous allegation that the agency violated his vet pref rights or show he exhausted his remedy with the Department of Labor. The appellant went to the MSPB arguing board jurisdiction over his appeal pursuant to the VPA and that the minimum educational requirement for the aerospace engineer position at issue constituted an unlawful employment practice. See 5 U.S.C. § 3308.
- **Held:** The MSPB affirmed the dismissal of appellant's VEOA claim for lack of jurisdiction (failure to exhaust his administrative remedy) and found it did not have jurisdiction over vet pref claims under the VPA. The board remanded appellant's employment practices claim back to the regional office because the AJ should have told appellant how to establish jurisdiction over this claim.
- **Point:** The Veterans Preference Act creates substantive rights for preference eligibles, but does not vest the MSPB with jurisdiction to adjudicate claims arising out of alleged violations of those rights. Instead, the board's authority to adjudicate veterans' preference claims arises from the VEOA.

Some statements made to a union rep aren't privileged

- *Berkner v. Department of Commerce*, 2011 MSPB 27 (MSPB 02/18/11)
- **Facts:** The agency removed the appellant for making inappropriate statements after she told her union representative that she would kill herself, return to haunt people, and possibly take others with her if the agency removed her. The administrative judge denied the appellant's motion to preclude the testimony of her union representative. The AJ found no legitimate claim of privileged communications and affirmed the removal. The appellant argued that the AJ erred in denying her motion because the FLRA had determined that communications between a union representative and a bargaining unit employee are privileged against disclosure to management for purposes of disciplining the employee.
- **Held:** The MSPB ruled that the appellant's communications with her union representative were not privileged and that they were distinguishable from those held to be privileged under FLRA law. The FLRA limited the scope of protection, recognizing an agency's need for information regarding protected conversations may arise in the context of an investigation of employee misconduct. The MSPB also found that the appellant's communications were not protected under board law or the attorney-client privilege. The board affirmed the removal.
- **Point:** Per FLRA case law, the general rule is that an agency may not interfere with the confidentiality of communications between an employee and union rep in the course of representing the employee in a disciplinary proceeding. Exceptions arise when the right to maintain confidentiality of the conversations is waived or some great need for the info is established.

Servicemember didn't intend to abandon civilian career

- *Erickson v. U.S. Postal Service*, 2010-3096 (Fed. Cir. 02/28/11)
- **Facts:** Petitioner joined the USPS in 1988. In 2000, the Postal Service terminated him for excessive use of military leave. Throughout his tenure with the USPS, Petitioner was a member of the National Guard, which often required his absence from the USPS. Between 1991-1995, he was absent from his Postal Service position for a total of more than 22 months. Between 1996 and the date of his removal in 2000, he worked at the USPS for no more than 4 days. While on military leave in January 2000, Mr. Erickson spoke by telephone with Roslyn Warner, a LR specialist at the USPS, regarding his federal civilian career. Ms. Warner summarized the conversation in an e-mail that she sent to a supervisor. She wrote that “[Mr. Erickson] told me he is staying in the military until his orders expire . . . he likes the military and said that he did not like working for the [Postal Service]. He doesn't care for the way they treat their employees.” See *Erickson v. United States Postal Service (Erickson I)*, 571 F.3d 1364, 1366 (Fed. Cir. 2009).

Petitioner testified before the Board that when Ms. Warner asked him why he did not resign from his position with the USPS, he replied that he did not wish to quit and that he believed his job was with the Postal Service. Following the conversation between Mr. Erickson and Ms. Warner, the Postal Service issued a notice of proposed removal to Mr. Erickson, citing excessive use of leave as the reason for his termination. Petitioner did not respond to that notification, and the USPS removed him in March 2000.

Servicemember didn't intend to abandon civilian career

The case traveled through the Board and Federal Circuit back to the Board. The Board relied on a number of factors in deciding that the employee abandoned his civilian career like:

1. The length of the employee's active service in the military and that he was serving his fifth consecutive voluntary reenlistment when he was removed for excessive use of military leave.
 2. The employee expressed a preference for military over civilian service.
 3. The employee failed to respond to the notice of proposed removal or otherwise to contest his removal until five years after he received the removal notice.
- **Held:** The Federal Circuit found the MSPB opinion that Petitioner abandoned his civilian career was not supported by substantial evidence, and thus vacated and remanded for further proceedings on the discrimination claim. In short, Petitioner did not intend to abandon his civilian career. There is no showing that the employee manifested a clear intent to abandon his civilian career. Thus, he did not waive his USERRA rights. Specifically, Petitioner's absences for military duty were considerably shorter than the periods held to support a finding

Service member didn't intend to abandon civilian career

- of abandonment in other cases. Petitioner's absences did not exceed USERRA's five-year cumulative limit at the time of his removal (barring exempted periods). The court found that the employee's remarks fell far short of being unequivocal expression of intent to abandon his civilian career. His statement that he liked the military and did not like the way employees were treated in the USPS could not be regarded as equivalent to an expression of intent to resign from his civilian position. The court also found that while an extensive delay in bringing a USERRA claim might offer some support for a conclusion that an employee abandoned his USERRA rights, that factor was not entitled to substantial weight in this case, particularly in light of the fact that during most of the intervening period, the employee was on active duty in an overseas military deployment.
- **Point:** USERRA does not protect an employee who leaves a civilian job for a military career. When an employee leaves his civilian position for military service, his continuing USERRA protection depends on whether he left his civilian job to serve a temporary period of military service, or whether he left his civilian job to embark on a military career. Affirmative intent to abandon (resign) and total length of military service are important factors to consider.

Veteran may be entitled to lost wages or benefits for rights violation

- *Williams v. Dept. of the Air Force*, 2011 MSPB 19 (MSPB 02/09/11)
- **Facts:** After finding that the Air Force had complied with its order to reconstruct the selection process for a contract specialist position, the MSPB dismissed the matter as moot and forwarded the appellant's requests regarding lost wages, benefits, and possible liquidated damages for adjudication. The administrative judge denied the appellant's motion for liquidated damages but did not address his claim for lost wages or benefits. The appellant alleged that the AJ erred by finding that the agency's violation of his veterans' preference rights was not willful without holding a hearing and did not address his request for lost wages and benefits. The board previously found that the agency violated the appellant's preference rights, and the Air Force conceded that it would have selected the appellant but for its violation. However, because the AJ did not address whether the appellant suffered lost wages or benefits, the MSPB remanded the case for a calculation of lost wages and benefits. There was a question as to whether the Air Force willfully violated the appellant's veterans' preference rights after the MSPB ordered it to reconstruct the selection process the first time. The agency did not properly reconstruct the selection process until after the board issued a second reconstruction order. On remand, the AJ was to make findings regarding the agency's willfulness from the time the first reconstruction order was issued until the date the Air Force offered the appellant a contract specialist position.

Veteran may be entitled to lost wages or benefits for rights violation

- **Held:** The MSPB found that appellant may be entitled to lost wages or benefits under the VEOA and remanded for further adjudication. The MSPB affirmed the initial decision denying appellant's request for damages under the VEOA to the extent it determined that the appellant was not entitled to an award of liquidated damages for the agency's violation of his veterans' preference rights in its 2005 selection process because the violation was not willful.
- **Point:** An award for lost wages or benefits under the VEOA has two requirements:
 1. The agency violated the appellant's vet pref rights; and
 2. Appellant lost wages or benefits as a result of the violation.

Veteran may be entitled to lost wages or benefits for rights violation

- MSPB Lee case (rubber stamp commander's hand-picked person)

The Navy did not show it complied with the settlement

- *Raymond v. Department of the Navy*, 2011 MSPB 15 (MSPB 02/08/11)
- **Facts:** The parties settled the appellant's removal appeal. She later filed a petition for enforcement alleging agency noncompliance regarding back pay and benefits.
- **Held:** The MSPB found the Navy was not in compliance with the settlement agreement. There were several evidentiary gaps and contradictions with Navy submissions. The MSPB could not find that the Navy had given the appellant the back pay and benefits it agreed to. The MSPB also found that the Navy was noncompliant when it failed to reinstate the appellant's health benefits and her status with her Thrift Savings Plan.
- **Point:** An agency must produce evidence of its compliance with settlement agreements. Evidence of compliance must include a clear explanation of the efforts taken to comply, which is supported by understandable documentary evidence.

Agency must return employee to specific office area

- *Gorny v. Department of Interior*, 115 M.S.P.R. 520 (MSPB 02/02/11)
- **Facts:** The MSPB reversed the appellant's removal from her public affairs specialist position. The appellant filed a petition for enforcement alleging that the agency failed to comply with the final order by failing to restore her to her former position or an equivalent position. The administrative judge found that the agency had a compelling reason for not reinstating the appellant to her former position and duties because her former position no longer existed after a reorganization. The AJ found that the agency failed to fulfill its subsequent obligations to assign the appellant duties and responsibilities that were substantially equivalent in scope and status to those of her previous position, including her work area. The AJ recommended that the appellant's PFE be granted in part.
- **Held:** The MSPB found that the agency was in partial noncompliance with its obligations regarding the appellant's physical office location because she demonstrated harm by being physically separated on a different floor from the Office of Communications. The agency must submit evidence that it restored the appellant to office space that was in the same physical area as her coworkers and that was commensurate with

Agency must return employee to specific office area

the office space of her coworkers of similar status and responsibilities. The MSPB found that the topical focus of her new position was substantially similar to that of her former position. Furthermore, the appellant's responsibilities were substantially similar to those of her former position despite the absence of an “acting chief” responsibility.

- **Point:** An employee whose removal is reversed could be entitled to return to a particular physical office location if she introduces evidence that demonstrates she was harmed by not being returned to that location. In this case, appellant was isolated from coworkers who similarly performed public relations work.

The Supremes: employer's anti-military animus surfaced through cat's paw

- *Staub v. Proctor Hospital*, 562 U.S. ____ (2011), reversing and remanding 560 F.3d 647 (7th Cir. 2009)
- **Facts:** Petitioner, a hospital technician and Army Reservist, lost at the 7th Circuit and appealed to the Supreme Court. He alleged that Proctor Hospital violated USERRA when it fired him, claiming that both his boss and her supervisor were hostile to his military obligations. He received a disciplinary warning with a directive to report to his boss when his hospital cases were completed. After receiving a report that the technician violated the directive, the HR official fired him. The hospital argued that an employer should not be liable unless the ultimate decision-maker, the official who actually makes the termination decision, is motivated by discriminatory animus.
- **Held:** The Supreme Court reversed the 7th Circuit's summary judgment, disagreeing with the hospital when it stated "the one who makes the ultimate decisions does so on the basis of performance assessments by other supervisors." The Court also noted that an "employer's authority to reward, punish, or dismiss is often allocated among multiple agents."

The Supremes: employer's anti-military animus surfaced through cat's paw

Here, there was evidence that the technician's first and second level supervisors were motivated by hostility toward the technician's military obligations. Their actions were causal factors underlying the ultimate decision to terminate the technician. The Court would not adopt a "hard-and-fast" rule immunizing an employer who performs an independent investigation and rejects discriminatory animus, but further explained that if an ultimate decision-maker's investigation results in an adverse action for reasons unrelated to the lower-level supervisor's original biased action, the employer will not be liable.

- **Point:** If a supervisor performs an act motivated by anti-military animus that is intended by the supervisor to cause an adverse employment action, and if the act is a proximate cause of the adverse employment action, then the employer is liable under USERRA. The Court implied that its holding might also apply to Title VII cases due to USERRA's similarity to Title VII.
- Classic example of the "cat's paw" theory of liability. The employee alleged that his first level and second level supervisors influenced a higher level official who ultimately fired him.

Constructive discharge leads to 9 years of back pay

- *Oest v. DOJ, Federal Bureau of Prisons*, 111 LRP 15554 (EEOC OFO 02/23/11)
- **Facts:** A supervisor for the Federal Bureau of Prisons alleged that the agency subjected him to discrimination based on his sex (male). He reported LT for abusing an inmate, then was demoted and placed under the supervision of a LT who made threats against him. The supervisor resigned and rejected another position because he had to interact with corrections staff and was under the supervision of the CPT who supervised the LT he had reported.
- **Held:** The administrative judge found that the supervisor was constructively discharged and awarded him 9 years of back pay (less mitigation). The EEOC agreed and found the agency subjected him to discrimination, giving little thought to what the offered position would entail. A reasonable person in the supervisor's situation had no alternative but to resign.
- **Point:** An agency's actions could equate to constructive discharge if it reassigns a complainant to a position with little regard for the harassment he could be subjected to.

Allowing breaks doesn't mean an employee is regarded as disabled

- *Teninty v. DoD, Department of the Army*, 111 LRP 16859 (N.D. Ill. 03/03/11)
- **Facts:** An Army health technician was fired and alleged the Army subjected her to discrimination based on gender, race, disability, and a hostile work environment, and that the agency caused her anxiety disorder. She said her supervisor allowed her to take breaks if she was upset or anxious (and regarded her as disabled). She also argued that the agency failed to accommodate her disability (although she didn't make a request for accommodation and admitted she didn't provide any documentation to the agency regarding her condition).
- **Held:** The court granted summary judgment to the agency. It found that a personality conflict with a supervisor or coworker does not establish a disability, even if it produces anxiety and depression. The agency offered numerous legitimate, nondiscriminatory reasons for its decision, specifically the technician was counseled, reprimanded, and warned by her supervisors about her aggressive and unprofessional attitude.

Allowing breaks doesn't mean an employee is regarded as disabled

The court found the tension between complainant and her coworkers was due to a difficult working environment as opposed to discrimination.

Complainant's hostile work environment claim failed because she did not show the alleged harassment was motivated by her race or disability.

Complainant's Equal Pay Act claim failed because the agency explained each pay discrepancy was essentially due to these employees having superior qualifications.

- **Point:** If an agency allows an employee to take short breaks, such as when she gets upset or anxious, it does not mean the agency regards her as disabled.

Long absence, inadequate documentation OK fitness-for-duty exam

- *Gillins v. U.S. Postal Service*, 111 LRP 11563 (EEOC OFO 02/04/11)
- **Facts:** After a confrontation on the workroom floor, a mail handler remained out of work for four months before she tried to return. Complainant alleged that the USPS subjected her to discrimination based on race (African-American), sex (female), color (black), and disability (stress, anxiety attacks, depression) when management did not accept her medical documentation allowing her to return to work and informed her that she would need an evaluation to return to work.
- **Held:** The EEOC found that the USPS did not discriminate. The extended length of absence, inadequate documentation (lacked specificity), USPS policy, and the fact that her absence was a result of a workplace confrontation led to the finding that the USPS's decision to send the mail handler for a fitness-for-duty exam was reasonable, job-related, and consistent with business necessity.
- **Point:** A fitness-for-duty exam can prevent an agency from further claims of discrimination and will be upheld by the EEOC if handled the right way.

Telework not suitable for clerk's job duties

- *Duckwiley v. GSA*, 111 LRP 10547 (EEOC OFO 02/04/11)
- **Facts:** A clerk alleged that GSA subjected her to disability discrimination and reprisal when it denied her requested reasonable accommodation of working from home 2 days/week, downgraded her position, and moved her to a different work location. She was responsible for serving as a receptionist, screening visitors, and taking telephone calls for a floor of the building, which required her physical presence in the office. Notably, a work study of all clerical positions resulted in a RIF. The clerk's position was downgraded. The agency moved her when it closed a location. She also alleged that she was subjected to retaliation for writing a letter to a member of Congress. The EEOC has held that such letters must oppose or allege discrimination for them to be a protected activity (not the case here).
- **Held:** GSA did not discriminate. The clerk did not show she was a qualified individual with a disability. The requested accommodation would have prevented her from performing essential duties of her position. She did not identify a vacant funded position for which she was qualified (to which she could have been reassigned).

Telework not suitable for clerk's job duties

- **Point:** When job duties require an employee to physically being in the office (e.g. screening visitors), telework is not a suitable reasonable accommodation.

Lack of medical documentation dooms telework request

- *Collins v. EPA*, 111 LRP 7826 (EEOC OFO 01/21/11)
- **Facts:** An environmental scientist alleged that the EPA subjected her to discrimination based on sex (female), disability (chronic fatigue syndrome), age (born in 1947), and in reprisal for prior protected EEO activity. The scientist requested to work from home three days per week (30 hours/week). She submitted letters from her chiropractor in support of the request. The agency rescinded her modified work arrangement after she failed to provide documentation from a medical doctor explaining her condition. The scientist contended that her need for an accommodation was obvious because supervisors witnessed her disability progress through the years and that the agency already had documentation supporting prior requests.
- **Held:** The EEOC found that the agency was justified in requesting further medical documentation and was not obligated to provide the requested accommodation because the scientist submitted stale, brief, and vague information that did not support her requests. The EEOC also found that the chiropractor was not a medical doctor and the diagnosis of chronic fatigue syndrome was outside the scope of standard chiropractic therapy.

Lack of medical documentation dooms telework request

- **Point:** An agency may require that the documentation of an employee's disability and/or limitations come from an "appropriate" health care professional.

Fiancee's retaliation

- *Thompson v. North American Stainless, LP*, 562 U.S. ____ (2011)
- **Facts:** Thompson and his fiancée both worked at NAS. His fiancée filed an EEO complaint and three weeks later he was fired. The District Court (ED Kentucky) granted summary judgment for NAS, concluding that Title VII “does not permit third party retaliation claims.” The Sixth Circuit ultimately granted a rehearing and affirmed the District Court in a 10 to 6 vote. The Supreme Court looked at two questions: First, did NAS’s firing of Thompson constitute unlawful retaliation? Second, if it did, does Title VII grant Thompson a cause of action?
- **Held:** The Court answered the first question in the affirmative. Essentially, they found that the antiretaliation provision must be construed to cover a broad range of employer conduct. The Court thought that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancée would be fired. The second question was a little harder. The Court looked at the language of the statute to see if Thompson was a “person claiming to be aggrieved.”

Fiancee's retaliation

The Court applied the “zone of interests” test used in other Court cases to the term “aggrieved” in Title VII. Essentially, a plaintiff may not sue unless he “falls within the ‘zone of interests’ sought to be protected by the statutory provision whose violation forms the legal basis for his complaint.” They found that Thompson fell within the “zone of interests” protected by Title VII because Thompson was not an “accidental victim of the retaliation...injuring him was the employer’s intended means of harming [his fiancée].”

- **Point:** A third party can file a retaliation claim as a “person claiming to be aggrieved.” While the Court created no hard rule in who could be a “person claiming to be aggrieved,” it did not foreclose that a family member, close friend, or virtually anyone could be “aggrieved.” Citing precedent, the Court noted again that “the significance of any given act of retaliation will often depend upon the particular circumstances.”

Remember: CYA (Call Your Attorney)

- Mathew.Ponzar@osd.pentagon.mil
- (703) 696-2704
- Hope you enjoy the rest of your day!