International Association of Chiefs of Police, Inc.

2008 Annual Conference
San Diego, CA
Nov. 9, 2007

Recent Judicial Decisions Regarding Police Psychological Evaluations

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FFDE and Discrimination Allegation

Plaintiff is a police officer, with the Bensenville, Illinois police department, who was involved in an officer involved shooting resulting in the wounding of an unarmed Bensenville resident. After the shooting, the Chief of Police asked the DuPage County Sheriff's Office, Major Crimes Task Force, to investigate the incident. The officer stated it was so dark he couldn't tell who the person was and thought he was pointing a gun at him, although it turned out to be a radio in the person's hand. The Chief placed the officer on administrative leave and ordered a fitness for duty evaluation.

Subsequently the Chief changed the work status from administrative leave to administrative duties. The State's Attorney declined to file charges against the officer but informed the Chief that the officer "exercised questionable judgment in drawing and firing his weapon." As a result,

an administrative investigation was conducted and the Chief thereafter filed charges against the officer, resulting in his being suspended for 30 days.

The officer filed EEOC complaints alleging, among other things, that the Chief discriminated against him on the basis of his race by not returning him to active duty in a timely fashion following the shooting and subsequently filing disciplinary charges against him. The court found that the officer failed to present sufficient evidence to fulfill the requirements to prove a prima facie case that he was treated differently based on his race. Purley v. Bensenville Public Safety Department, #05-cv-5110, 2007 U.S. Dist. Lexis 60789 (N.D. Ill. 8/20/2007).

Fitness for Duty Evaluation

A 30 year member of the Yuba County Sheriff's Office had a history of emotional problems. After attempting suicide, and a mental health evaluation, she was returned to duty. The next year, after a confrontation with a woman who she thought was having an affair with her husband, she was again evaluated. A mental health expert testified that she had a personality disorder that affected her fitness and that she did not meet the standards of California's Peace Officer Standards and Training (POST) criteria. A Superior Court ruled that the county could not retire the officer by reason of disability.

The Court of Appeal reversed ruling that the expert did not have to identify a specific duty the officer failed to perform and the county did not have to establish that actual harm had occurred before it could take action to retire the officer. Sager v. County of Yuba, #C053253, 68 Cal.Rptr.3d 1, 156 Cal. App. 4th 1049 (3d Dist. 10/10/2007).

FFDE and Reasonable Accommodations

Following a series of fitness for duty evaluations, a 23 year veteran of the Phoenix Police Department was compelled to retire. Defendant City forced him to retire based on medical opinions that Plaintiff's neurological condition precluded him from performing the duties of a police officer. Plaintiff acknowledged that he had a disability but argued that, under ADA, the City was obligated to provide him with a reasonable accommodation of finding work for him with the City in a different position, before it could force him to retire. The employer has a duty to "gather sufficient information from [Plaintiff] and qualified experts as needed to determine whether Plaintiff could perform other available jobs with the City."

As a result, the employer's motion for summary judgment was denied since "an employer cannot prevail at the summary judgment stage if there is a genuine dispute as to whether the employer

engaged in good faith in the interactive process" to identify a reasonable accommodation. Fitzsimmons v. City of Phoenix, Civ #06-3103, 20 AD Cases (BNA) 1174, 2008 U.S. Dist. Lexis 42281 (D. Ariz. 5/28/2008)

Update: Fitness for Duty Evaluation is an Adverse Employment Action

Note: A 2007 decision in this case was discussed in last year's article.

Officer Niles Dodd was employed by the Southeastern Pennsylvania Transportation Authority (SEPTA) for seven years before being terminated. As a Rastafarian he was prohibited from cutting his hair which resulted in his being in violation of a department regulation regarding the length of hair. As a result, he was disciplined and thereafter he distributed two memoranda entitled "Issues of Concern" and "This Department Needs an Enema." Following the distribution of the memos, the Chief of Police ordered him for a fitness for duty evaluation on the grounds that the "Enema" memo raised questions about the officer's ability to function as a police officer.

There were several subsequent suspensions and finally a termination from employment. Plaintiff alleged that the FFDE and internal affairs investigations constituted "adverse employment actions," which are defined as actions which "might have dissuaded a reasonable worker from making or supporting a charge of discrimination."

The court ruled that the fact that the officer "was the subject of an involuntary psychological evaluation is a permanent record in his personnel file and may be a detriment to obtaining law enforcement positions in the future. The involuntary psychological evaluation thus rises to the level of a "materially adverse" action." As a result, the court held, there was sufficient evidence in the record for the officer to proceed with a retaliation claim under Title VII. Dodd v. SEPTA, #06-4213, 2007 U.S. Dist. Lexis 46878 (6/28/2007); 2008 U.S. Dist. Lexis 56301 (E.D. Pa. 7/23/2008). (E.D. Pa. 6/23/2008).

Update: Fitness for Duty Evaluation Not Discriminatory

Note: A 2007 decision in this case was discussed in last year's article.

A sergeant with the Nashville Police Department was referred for a FFDE based on "increasingly paranoid behavior." An independent psychologist concluded that she could not handle the routine of supervising others but, with psychological treatment, could eventually return to normal patrol duties. As a result, her peace officer authority was temporarily suspended

("decommissioned") and after several months of treatment she was reinstated and re-commissioned. She subsequently sued, claiming age discrimination, sex discrimination and retaliation.

The court ruled that there was no evidence of pretext in the employer's legitimate, non-discriminatory, reasons for the employee's decommissioning while undergoing therapy. Additionally, during the time of treatment, the employee was not qualified to perform the essential functions of her position, for purposes of an ADA claim. Reed v. Metropolitan Government of Nashville and Davidson County, 2008 U.S. App. Lexis 13909 (Unpub. 6th Cir. Tenn, 6/26/2008).

Religious Beliefs of Psychologist

The City of Springfield, Illinois decided to change psychologists it used for pre-employment psychological evaluations. Plaintiff claimed it lost its contract, after 15 years of providing services to the City's police and fire departments, due to the psychologist's membership on the Board of Directors of a non-profit, conservative, religious organization. The City conceded that Campion's activities and association with the group were protected under the First Amendment. Plaintiffs, therefore, had to prove that his protected activity was a motivating factor in their terminating his contract.

The court ruled that the Plaintiffs failed to prove that he was discriminated against due to his protected speech and/or religion and, therefore, the City was entitled to summary judgment. Campion, Barrow & Associates v. City of Springfield, 2008 U.S. Dist. Lexis 21249 (C.D. Ill., 3/18/2008).