"Cat's Paw" Theory Wins in Supreme Court

The U.S. Supreme Court recently issued a ruling that accepted the "cat's paw" theory as the basis for holding an employer liable for discrimination. The "cat's paw" theory is derived from a 17th century fable about a clever monkey who persuades a naive cat to reach into the fire to snatch some chestnuts, with the result that the cat is burned and the monkey gets the chestnuts. A "cat's paw" thus came to refer to "one used by another to accomplish his purposes." Webster's Third New International Dictionary (1976). In the employment context, a "cat's paw" is an unbiased official who is nevertheless influenced by another employee, harboring discriminatory motives, to make a decision adverse to a third employee.

In *Staub v. Proctor Hospital*, No. 09-400 (U.S. Mar. 1, 2011), the high court was squarely confronted with this theory. The issue was whether an employer could be held liable for discrimination when its vice president of human resources (who was not biased) terminated an employee as the result of being unknowingly influenced by the discriminatory *animus* of the employee's supervisor and that individual's supervisor. The plaintiff in the case was Staub, an angiography technician employee of Proctor Hospital who also served as a member of the United States Army Reserve. As a reservist, Staub was required to undergo two to three weeks of full-time annual training, which took him away from his job. Both his immediate supervisor (Mulally) and Mulally's supervisor (Korenchuk) were hostile to Staub's military obligations. This hostility arose from their belief that the training was just "smoking and joking" and their resentment of the fact that Staub's training absences required others to take over Staub's duties.

Mulally gave Staub a disciplinary warning that included a directive requiring Staub to report to her or Korenchuk when his cases were completed. Based on a report from Korenchuk that Staub had violated the reporting directive, Proctor's vice president of human resources (Buck) reviewed Staub's personnel file and decided to fire him. Staub filed a grievance, claiming that Mulally had fabricated the allegation underlying the disciplinary warning out of hostility toward his military obligations. Buck reaffirmed her decision.

Staub then sued Proctor Hospital under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), which forbids an employer to deny "employment, reemployment, retention in employment, promotion, or any benefit of employment" based on a person's "membership" in or "obligation to perform service in a uniformed service." It further provides that liability exists "if the person's membership . . . is a motivating factor in the employer's action." Staub did not claim that Buck was motivated by hostility to his military obligations but, instead, that Mulally and Korenchuk were, and that their actions influenced Buck's decision. A jury found Proctor Hospital liable and awarded Staub damages. The Seventh Circuit reversed, however, after concluding that Proctor Hospital was entitled to judgment as a matter of law because Buck had not blindly relied on Mulally's and Korenchuk's advice in making her decision. Instead, she discussed the matter with at least one additional individual and reviewed Staub's entire personnel file.

In reviewing the Seventh Circuit decision, the Supreme Court noted that if a supervisor performs an act motivated by anti-military *animus* that is intended by the supervisor to lead to an

adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable under USERRA. In construing the phrase "motivating factor in the employer's action," the Court rejected Proctor Hospital's contention that an employer is not liable unless the *de facto* decision maker is motivated by discriminatory *animus*. So long as the earlier supervisor intended, for discriminatory reasons, that the adverse action occur, and if the earlier supervisor's act is a proximate cause of the ultimate employment action, the employer has USERRA liability. In reversing and remanding the decision of the Seventh Circuit, the Court noted that both Mulally and Korenchuk acted within the scope of their employment when they took the actions that allegedly caused Buck to fire Staub. There was also evidence that their actions were motivated by hostility toward Staub's military obligations, and that those actions were causal factors underlying Buck's decision. Finally, there was evidence that both Mulally and Korenchuk had the specific intent to cause Staub's termination.

While this case involved liability under USERRA, it appears likely that the rationale of the case will be applied to similar situations where other unlawful discrimination is involved. It is also likely that *Staub* will encourage the bringing of discrimination lawsuits by employees who are terminated, not promoted, etc., since it will no longer be necessary for them to show that the individual making the decision did so for discriminatory reasons. Merely proving that some other employee or official held such motives and had an influence of the decision-maker will be sufficient to establish the "cat's paw" theory of liability for the employer.