

Employee Decisions Doom Sex Harassment Claim

A federal appellate court has recently helped clarify employer and employee responsibilities in addressing sexual harassment complaints. The Eleventh Circuit Court of Appeals, which hears appeals from all federal district courts in Alabama (as well as those in Georgia and Florida), ruled against a female employee who was fired when she refused, after bringing forward a complaint of sex discrimination, to cooperate with her employer's resolution efforts. *Baldwin v. Blue Cross/Blue Shield of Alabama*, No. 05-15619 (11th Cir. Mar. 19, 2007).

Susan Baldwin, a marketing representative employed by the Huntsville Blue Cross/Blue Shield (BCBS) office, claimed that the district manager to whom she reported propositioned her several times and used frequent, sexually oriented profanity in the workplace. Her claim was presented to the human resources office several months after the manager's conduct began. BCBS representatives assigned to investigate the claims were not able to confirm that such conduct had occurred, though hostility between Baldwin and her supervisor was noted. The district manager was given a warning. BCBS also proposed that an expert be engaged to counsel both parties and monitor their interactions. Baldwin refused, indicating that she did not feel she needed to be involved in the counseling. She was next offered a similar job in Birmingham, which she refused because of family connections in Huntsville. When she insisted that she would no longer work for the district manager, she was placed on administrative leave and then discharged.

Baldwin sued for sex harassment under Title VII of the Civil Rights Act of 1964 and for several torts under state law. The district court dismissed all her claims, and she appealed to the Eleventh Circuit Court of Appeals. The Court of Appeals reviewed the sex harassment claims she brought under the "hostile environment" theory, focusing on what it considered to be the critical issue: an available employer defense established by two 1998 Supreme Court cases, *Faragher v. City of Boca Raton* and *Burlington Industries, Inc. v. Ellerth*. Under the *Faragher- Ellerth* defense, an employer can defeat a hostile environment claim if it shows, first, that it exercised reasonable care to prevent and promptly correct the offensive behavior and, secondly, that the employee unreasonably refused to take advantage of preventive or corrective options offered by the employer.

Under the circumstances of this case, the appellate court ruled that BCBS's response to the complaint was adequate: "Where the employer sees hostility but cannot tell if there has been harassment, warning the alleged harasser, requiring both parties to participate in counseling, and monitoring their interactions is a proper and adequate remedy, at least as a first step." Baldwin's refusal to cooperate, in terms of participating in the counseling, was found to be unreasonable. The court further held that Baldwin failed to take advantage of preventive/corrective opportunities in another sense, in that she waited too long to bring her complaint to BCBS officials. In effect, the facts before the court indicated that BCBS fulfilled its responsibilities in dealing with the alleged hostile environment harassment but Baldwin failed to fulfill hers, which was fatal to her attempt to hold BCBS liable for her supervisor's behavior.