

Management's Response

Management responded to the complainant's assertions with evidence that the complainant was suspended for reasons related to his misconduct. The complainant's supervisors denied any discriminatory or retaliatory intent. Rather, they stated that the complainant was suspended because: (1) he was late for work and then refused to meet with his supervisor, Ms. CH, and his union representative, Mr. DH, about the matter; and (2) he was willfully idle on the job and then falsely told his acting supervisor, Ms. LC, that he had been working. Management witnesses explained that the decision to suspend the complainant was based on his prior disciplinary record, his chronic attendance problems, the nature of his misconduct, and the principle of progressive discipline. Management explained that less severe actions had been taken in the past in response to the complainant's chronic tardiness and other problems, but that these lesser measures had been insufficient to change the complainant's attitude, conduct, and performance.

Management's evidence is sufficient to raise a genuine issue of material fact as to whether the complainant was discriminated against when he was suspended. Thus, we find that management met its burden to articulate a legitimate, non-discriminatory reason for its decision to suspend the complainant. To prevail, the complainant must show that management's explanation is pretext, and that management's action was actually based on prohibited retaliatory intent.

Pretext

The complainant introduced sufficient evidence to establish the following: (1) his supervisors harbored retaliatory intent; (2) management's stated reasons for the suspension lack credibility; and (3) his supervisors have been found to have discriminated against him at other times.

Retaliatory Intent: We credit the evidence from the complainant's former supervisor, Mr. AH, that the complainant was targeted for particular scrutiny and treatment because of his prior EEO activity. As in our Final Action of April 11, 2005 (in which we adopted the decision of the administrative judge in VA Case Nos. 200L-0629-2003101173, 200L-0629-2003104390, and 200L-0629-2004101651), we credit the finding of the EEOC administrative judge that Mr. AH is worthy of belief. Based on his affidavit, and on the testimony he provided in the EEO hearing of February 18, 2005, we find that the evidence of record shows that Ms. CH, Ms. JB, and then Ms. LC were "abusing the rules" and retaliating against the complainant for his protected EEO activity.⁶ Specifically, the evidence shows that the complainant's supervisors considered him to be a troublemaker and that they therefore focused on him and documented his deficiencies in order to build a record upon which they could base a removal action. We note Mr. AH's evidence that Ms. JB frequently stated her desire to be rid of the complainant, and that she violated administrative procedures in order to create specious charges against the complainant.

⁶ We also note the evidence that they also retaliated against other employees who filed EEO complaints.

VA Case No. 200L-0629-2004100828