



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for April 19, 2024

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COURT DECISIONS

PRECEDENTIAL:

Petitioner: Jatonya Muldrow
Respondent: City of St. Louis, Missouri
Tribunal: United States Supreme Court
Case Number: [22-193](#)
Issuance Date: April 17, 2024

TITLE VII ADVERSE EMPLOYMENT ACTIONS/REASSIGNMENT

The petitioner, a sergeant for the St. Louis Police Department, was involuntarily reassigned to another unit, and was replaced by a male police officer. Although the petitioner had the same pay and title, the reassignment, among other things, impacted her schedule, put her in a less prestigious environment, reduced her visibility and responsibilities within the department, and impacted her daily attire, as she previously could wear plainclothes but now had to wear a uniform. The petitioner sued the City for violations of Title VII, alleging that she was reassigned because she was a woman. The United States District Court for the Eastern District of Missouri granted summary judgment to the City, finding that the petitioner had not suffered a significant

change in working conditions producing a material employment disadvantage. The United States Court of Appeals for the Eighth Circuit affirmed the decision, agreeing with the district court that the petitioner was required to—and failed—to show a material significant disadvantage.

Holding: An employee challenging a reassignment under Title VII must show that the reassignment caused some harm with respect to an identifiable term or condition of employment, but the harm need not be significant.

1. Title VII makes it unlawful for an employer “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex.” 42 U.S.C. § 2000e-2(a)(1). The Court carefully analyzed this statutory language, explaining that, in order “to discriminate against” an individual, there must be “differences in treatment that injure” the individual, citing to its decision in *Bostock v. Clayton County*, 590 U.S. 644, 681 (2020). In other words, the phrase “discriminate against” means to treat an individual worse, but does not establish an elevated threshold of harm.
2. The Court reiterated that “terms [or] conditions” covers more than economic or tangible terms or conditions of employment. The Court also noted that the parties agreed that the petitioner’s reassignment implicated terms or conditions of her employment.
3. The Court concluded that, in order to establish a Title VII discrimination claim involving a reassignment, an employee must show that the reassignment resulted in some harm with respect to an identifiable term or condition of employment. However, the employee does not have to prove that the harm resulting from the reassignment was “significant” or otherwise surpass a heightened bar.
4. The Court remanded the matter to the courts below to apply the proper standard and determine whether the petitioner established that her transfer caused some injury with respect to the terms or conditions of her employment.
5. Justice Alito, Justice Thomas, and Justice Kavanaugh wrote concurring opinions.

NONPRECEDENTIAL:

Mellick v. Department of the Interior, No. [2023-1733](#) (Fed. Cir. Apr. 17, 2024) (MSPB Docket No. SF-0752-16-0121-B-1). The Court affirmed the Board’s decision, which dismissed the appellant’s removal appeal under a Last Chance Agreement (LCA) for lack of jurisdiction, finding that he

did not establish that the agency breached the confidentiality provision of the agreement, and he did not otherwise establish that his waiver of appeal rights was unenforceable. The Court agreed with the Board, and rejected the appellant's claim that the agency breached the agreement, finding, among other things, that it was not a breach of the confidentiality provision to disclose the terms of the LCA to the agency personnel responsible for executing those terms.

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