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Lateral transfer was not an adverse action under Title VII**By Lawrence Peikes**

A female police officer who was involuntarily transferred to a lateral, although less desirable, assignment did not make out a case of gender discrimination under Title VII because the transfer was not a demotion, ruled the 7th U.S. Circuit Court of Appeals.

Brenda O'Neal was a sergeant with the Chicago Police Department. In February 2002, Sgt. O'Neal obtained a position as administrative sergeant in the narcotics and gangs investigations section of the organized crime division.

Some time after O'Neal began working in the narcotics unit, a rumor began circulating that she had been romantically involved with a former Chicago police officer who had recently been released from prison after serving time on a narcotics charge. Believing that O'Neal might thus be a security risk to the narcotics unit, Chief Jerry Robinson, who had first approved her assignment to the unit, recommended that she be transferred out.

On Robinson's recommendation, O'Neal eventually was reassigned to a position as a beat sergeant. A male officer replaced O'Neal as administrative sergeant in the narcotics unit.

O'Neal thereafter filed suit in federal court against the City of Chicago and Chief Robinson alleging racial and gender discrimination. The trial court ruled for the defendants on all counts without a trial. O'Neal appealed only the grant of summary judgment on her gender discrimination claim, arguing that the lateral transfer from administrative to beat sergeant was effectively a demotion. More specifically, O'Neal claimed the transfer adversely affected her opportunities for promotion, marred her reputation and negatively altered her working conditions, therefore giving rise to a viable claim under Title VII.

The 7th Circuit recognizes three general categories of adverse employment actions that support claims under Title VII. These are cases in which:

- The employee's compensation, fringe benefits or other financial terms of employment are diminished.
- A nominally lateral transfer with no change in financial terms significantly reduces the employee's career prospects.
- The employee's working conditions are changed in a way that subjects her to a humiliating, degrading, unsafe, unhealthful or otherwise significantly negative alteration in her workplace environment.

O'Neal claimed her case fell within the second category. Although she characterized her former position as more "prestigious," such subjective consideration alone would not render the transfer actionable under Title VII. O'Neal presented no objective evidence that as a sergeant in the narcotics unit she was better positioned for a promotion, or that as a beat sergeant she ran the risk of having her skills diminish over time.

O'Neal also claimed that her reputation had been marred by the transfer because it gave credence to the false rumor of a relationship with a criminally dishonest former officer. The court observed, however, that any such reputational harm was caused by the rumor itself, not the alleged discriminatory transfer.

O'Neal's last argument, that the transfer negatively altered her working conditions, was based on the allegation that as a beat sergeant she had fewer supervisory responsibilities, fewer opportunities for overtime, and was deprived of certain perks. However, the court saw these distinctions as merely indicative of a subjective preference for the administrative sergeant position over the beat sergeant position. Objectively speaking, O'Neal presented no evidence of a decrease in pay or a significant diminution of supervisory responsibilities.

Despite a slight variation in day-to-day functions, all of O'Neal's responsibilities in both positions were within the reasonable scope of a sergeant's duties. Being required to perform somewhat different tasks within the broader scope of a job description did not, according to the 7th Circuit, constitute an adverse employment action under federal law.

O'Neal v. City of Chicago, 7th Cir., No. 04-1402, Dec. 20, 2004.

Professional Pointer: Although this ruling is a rather straight-forward application of the 7th Circuit's jurisprudence concerning the standard for proving an adverse employment action, the court hinted that O'Neal may have had a more viable claim had she focused on the department's response to the false rumor. In observing that O'Neal failed to link any reputational harm to the involuntary transfer, the court noted that she did not allege that the rumor rose to the level of harassment or created a hostile work environment. O'Neal also presented no evidence that Chief Robinson propagated or endorsed the rumor. Employers should take the court's passing comments on O'Neal's case as an admonition that managerial indifference to rumor mongering could, in appropriate circumstances, be used as evidence of a hostile work environment.

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Editor's Note: This article should not be construed as legal advice.

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