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**The Employer  
Advisory**

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**Employment Case Analysis You Can Use**

**7TH CIRCUIT HOLDS THAT LATERAL JOB TRANSFER WITH INCREASED COMMUTE  
DOES NOT AMOUNT TO ADVERSE EMPLOYMENT ACTION**

Doris Griffin worked for the United States Postal Service for 38 years until her retirement. While Ms. Griffin was working as an Equal Employment Opportunity counselor at the post office, she filed formal EEO charges. She alleged that her supervisor was harassing her. Ms. Griffin filed charges of discrimination based on race, sex, age, disability and retaliation. Examples included: 1) that her supervisor refused to accommodate her request for a parking spot close to the office after ankle surgery; 2) that her supervisor refused her request for an annual leave; 3) that Ms. Griffin was given a greater number of difficult cases to investigate; and 4) that her supervisor suggested to upper management that Ms. Griffin be given a written warning regarding her job performance.

Ms. Griffin again filed formal EEO charges claiming discrimination based on race, sex, age, disability and charges of retaliation. Ms. Griffin supported these allegations with the fact that her ankle disability had not been accommodated and that her supervisor's negative job evaluation was approved by upper management. Griffin's employer never finished investigating either of the formal administrative charges.

Griffin was transferred from the Chicago office to the Bloomingdale office as part of the Postal Service's restructuring. Griffin objected to the transfer and again filed charges alleging that the transfer was due to her age and in retaliation for her earlier charges. Griffin also complained that her commute time had increased. The Postal Service ended its review of these charges because Griffin failed to cooperate with the investigation.

Griffin retired and sued her former employer in federal court for age discrimination, retaliation and constructive discharge based on the discrimination and retaliation. The Postal Service responded with assertions that Griffin could not prove a prima facie case of discrimination or retaliation because she had not performed her job satisfactorily. The Postal Service offered the written warning approved by upper management and several unsatisfactory job reviews as proof of poor job performance. Additionally, Griffin had not suffered an adverse employment action because her transfer was not a demotion but rather an accommodation of a better working environment. Finding that Griffin failed to prove that she had performed her job satisfactorily, the court granted summary judgment.

The Seventh Circuit Court of Appeals affirmed the decision but on different grounds. Rather than job performance, the Appellate Court focused on whether Griffin had suffered an adverse employment action.

The Seventh Circuit found that most of Griffin's complaints were unrelated to an adverse employment action and some were "plainly trivial." An adverse employment action must be "materially adverse, not merely an inconvenience or a change in job responsibilities." The court found that none of Griffin's allegations significantly altered the terms and conditions of her job and therefore did not amount to an adverse employment action.

The court also reviewed Griffin's claim that her supervisor's hostile behavior amounted to an adverse employment action and found that claim equally without merit. The supervisor's comments that Griffin was a "bad influence on the office" and that Griffin thought she knew everything may have created an unpleasant office atmosphere but were not severe and pervasive enough to rise to the level of an adverse employment action. Summary judgment for the Postal Service was properly upheld.

**In order to prove discrimination or retaliation, an employee must prove an adverse employment action. Job transfers without loss of benefits, harder work assignments, increased commutes, refusing preferred vacation requests and negative performance evaluations do not rise to the level of an adverse employment action.**

Griffin v. Potter, No. 03-1342, (7th Cir.), February 3, 2004. (KAA)

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