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Fired for lying, employee can file claim



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The majority decision in the following case suggests that unless an employer has verifiable and objective evidence (and perhaps documentary evidence) that proves falsehood to a high degree of certainty, an employer should be hesitant to discharge an employee simply for lying in the course of an investigation related to a claim of discrimination. The fear of creating a good retaliation claim when only a poor discrimination complaint exists should persuade employers to be cautious in taking action against a complaining employee.

When Randy Gilooly claimed that discipline he was to receive was in retaliation for a complaint of sexual harassment, his employer – Missouri Department of Health and Social Service – investigated the claim. The investigator concluded that Gilooly lied based on eyewitness accounts of particular events that contradicted Gilooly's versions of the events. As a result, he was fired for making false statements during the investigation and a grievance hearing.

Gilooly claimed the firing was further retaliation. The Missouri Commission on Human Rights rejected his claim, and Gilooly appealed. Ultimately, the Court of Appeals for the 8th Circuit determined Gilooly could pursue his retaliation claim, even though he was not successful in articulating a hostile work environment claim or in presenting sufficient evidence to defeat a Motion for Summary Judgment by the Employer with regard to discriminatory treatment. The court had to look no further than the termination letter, which stated the reason for Gilooly's termination was his conduct and deception during the sexual harassment investigation. While the employer had relied on a letter from the state agency investigator, the court found "there is no clear evidence that indicates Gilooly had been caught in a clear, unequivocal lie, but, rather, the evidence shows that the investigator had found Gilooly to be less credible than the other witnesses. [W]e conclude that this case gives the necessary inference of a retaliatory motive."

(Gilooly v. Missouri Department of Health and Senior Services, August 31, 2005) ■