

Employment Discrimination

Professor Perna

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QUESTION I

Linda Meyer, an employee of Giant Telecom, Inc., was the ~ of a prime and very successful Giant Telecom, Inc. phone store in Delray Beach, Florida. She believes that she was transferred improperly to a less lucrative phone store and that her supervisor (Cleland Wilson) hired a less qualified woman (Diane Maser) to replace her and manage the "better" Delray Beach location.

Mr. Wilson, the supervisor, had an ongoing "romantic" relationship with Ms. Maser prior to her transfer to the Delray Beach store. Mr. Wilson and Ms. Maser lived together for several years in Orlando where both were employed by Giant Telecom, Inc. in the regional sales office. This original relationship (which was completely voluntary and reciprocal) apparently "ended" some time in the spring of 1991 at the initiation of Ms. Maser. Following the "break-up," Mr. Wilson tried to reconcile with Ms. Maser but she would have nothing to do with him -- she told him that their relationship was over "forever".

About six months after the breakup, Wilson became a regional supervisor for Giant Telecom, Inc.. Maser soon realized that Wilson was in a position to "help" her in her career advancement. Immediately after Wilson's promotion, Maser had a change of heart about him. She called him and told him that there could be some hope for them in the future. Not wanting to be misunderstood, she told Wilson very explicitly about what she expected if she reestablished a sexual relationship with him -- she wanted a promotion to the position of store manager in one of the stores in Wilson's region. Wilson jumped at the opportunity to resume his "relationship" with Maser and promised that if they "got back together" he would indeed see to it that she was promoted to a store manager.

The couple started "dating" again about two months before Wilson "arranged" Ms. Maser's replacement of Linda Meyer as manager of the Delray Beach store. Shortly after her appointment as store manager, Maser started to have second thoughts about continuing her "relationship" with Wilson. When she spoke to Wilson about ending the "relationship" for a second time, she came away with the distinct impression that her job was conditioned on her continuing in the "relationship" with Wilson and that Wilson would fire her if and when she ended their "relationship."

Ms. Maser has recently complained to the company's EEO officer that she believes that she is the victim of sexual harassment. Ms. Meyer has also complained to the same EEO officer that she believes that she was improperly transferred and that she too was the victim of sexual harassment and/or sex discrimination. Meyer believes that Wilson violated her Title VII rights by participating in a "scheme" that allowed Ms. Maser to trade sexual intimacy for job advancement and in using his position as

supervisor to reward Ms. Maser into resuming and maintaining a sexual relationship with him. Both women maintain that they have been seriously harmed by Wilson's activities.

Assume that you are the chief in house attorney at Giant Telecom and that you have been recently told of this situation. Officials at the company are concerned that both women might pursue legal action against the company. The company wants your assessment of the viability and strength of the women's cases. Analyze fully the company's legal position.

END OF QUESTION I

QUESTION II

Ed Jones worked for Champion Tobacco Company for about eight and one-half years as a salesperson selling smokeless tobacco and pipe tobacco products. In March 1994, at age 5~, Jones was discharged from his position. Prior to the discharge, Jones was a loyal and competent employee who was clearly qualified for the sales position he held. He claims that his discharge was discriminatory. Champion claims that Jones was discharged because his job was being eliminated. The facts leading up to the discharge are as follows:

Prior to Jones' discharge, Champion's national sales force was organized into five regions which were subdivided into 29 divisions. Jones worked in the Denver division which was in the Dallas region. In March 1994 there were six field sales representatives in the Denver division: Ardrey, age 35; Allison, age 34; Brown, age 43; Tucker, age 39; Boyd, age 48 and Jones, age 53. Each salesperson serviced a distinct geographic territory near his or her home. Jones lived in El Paso, Texas and his territory was composed of a large sparsely-populated area that included southwest Texas and Southern New Mexico.

It was undisputed that in 1994, the Denver division's selling costs, and Jones' selling costs in particular, far exceeded both the national average for the company and the target maximum of 10 cents per dollar

of sales. Selling costs nationwide in Champion's 29 divisions averaged 8 cents per dollar of sales and 43 cents per pound of product sold, Selling costs in the Denver division averaged 17.9 cents per dollar of sales and \$1.01 per pound of product sold. Jones selling costs were 32 cents per dollar of sales and \$1.95 per pound of product sold.

Jones and Brown had the highest expenses and the lowest sales volume of any of the six Denver division salesmen, by a substantial margin. Selling costs for individual Denver division field sales representatives were as follows:

Salesperson	Total Sales	Sales Cost/Pound	Sales Cost/Dollar
Ardrey	\$866,306.00	\$.3226	\$.0551
Tucker	\$650,488.00	\$.3952	\$.0703
Boyd	\$522,035.00	\$.4873	\$.0868
Allison	\$230,970.00	\$1.3230	\$.2255
Jones	\$166,594.00	\$1.9577	\$.3279
Brown	\$100,439.00	\$3.6908	\$.5996

The bottom line, Champion contends, was that the Denver division could be more economically serviced. As a result, Dallas regional sales manager Tom Darrell decided to dissolve the Denver division. The plan called for the conversion of the two highest cost territories (Jones' and Brown's) to service by independent brokers and reassignment of the remaining four viable territories to existing adjacent divisions. Thus, Brown and Jones were discharged. The four remaining salespeople were reassigned to managers in other divisions but continued to work the same territories. Independent brokers assumed all of Brown's territory and the vast majority, both by geographic area and population, of Jones' territory. By converting Jones' territory to independent broker service, Darrell reduced the cost of selling in Jones' territory from \$55,000 in 1990 to \$24,000 in 1995. The remaining five eastern counties from Jones' territory not covered by independent brokers were assumed by Jim Fowler, a 34 year-old Champion salesman who had been servicing adjacent parts of Texas for about one year.

Jones believes that he was the victim of age discrimination. In support of his belief and in addition to the above noted facts, he can present the testimony of Dana Spelling, age 51, a Champion field sales coordinator who works with regional manager Darrell, also age 51, on a daily basis. Spelling will testify that in 1993, Darrell began harassing her with comments about how she was "getting old" and "losing her memory." Spelling expressed the opinion that Darrell had "blatantly discriminated" against Jones on the basis of age by discharging him to reduce costs and to avoid paying retirement benefits.

Assume that you are the chief in house attorney at Champion and that you have been recently told of the Jones situation. Officials at the company are concerned that Jones might pursue legal action against the company. The company wants your assessment of the viability and strength of Jones' case. Analyze fully the company's legal position in this case.

END OF QUESTION II

QUESTION III

Marcia Smith, aged 35, is paralyzed from the waist down as a result of a tumor of the spinal cord. Because of the paralysis, she is confined to a wheelchair. Her paralysis and confinement to a wheelchair makes her prone to develop pressure ulcers on her legs and feet, treatment of which often requires that she stay at home for several weeks at a time. The onset of the pressure ulcers occurs sporadically, usually not more than once or twice a year.

A few months ago, Smith applied for a position as Program Assistant in the housing office of Local College, a private university located in Smith's home town. The Program Assistant position involves preparing informational materials, planning meetings, interpreting college housing regulations, typing, mailing, filing, and copying. In short, the tasks were of a

clerical, secretarial, and administrative-assistant character.

At the end of the interview process, Local College officials concluded that Smith was the top candidate for the position. Their only concern was with the nature of the accommodations that would have to be made. Smith and the Local College officials had a number of discussions concerning possible accommodations. As a result of those discussions, Smith proposed two accommodations relating to her use of a wheelchair:

1. Physical modifications to the bathrooms to make them wheelchair accessible;
2. The purchase of special adjustable furniture to accommodate her wheelchair;

In addition, Smith is concerned about how Local College will handle her episodic bouts of pressure ulcers. These bouts can last anywhere from three to fifteen days. During these periods, Smith wants to work full time at home and believes that she would be able to do so if Local College provides her with a desktop computer at home.

Local College officials are concerned about the requested accommodations. Their primary concern with respect to the physical modifications is cost. They estimate that the bathroom modifications will cost approximately \$25,000 and the special furniture will cost approximately \$4,000. They are also concerned about Smith's request that she be allowed to work at home during bouts of pressure ulcers. First, a desktop computer for her home will cost approximately \$2500. But more importantly, they are concerned that they will not always have sufficient quantity or quality of work for her to perform at home. Their view is that if Smith must stay at home, she should take sick leave (10 days per year) or vacation leave (10 days per year) for the time missed. When she runs out of paid leave, the college will permit the use of unpaid leave for the remaining days off.

Assume that you are the University counsel and that you have been recently told of the Smith situation. The college wants your assessment of this situation and your advice as to how to proceed. Analyze fully the college's legal position in this case.

END OF EXAMINATION