

SUPERINTENDENT'S DEATH CREATES HURDLES IN CASE OF AGE DISCRIMINATION, RETALIATION



A woman who, on two separate occasions, was not hired for a school librarian position claimed a school district had discriminated against her because of her age and retaliated against her for filing an EEOC (Equal Employment Opportunity Commission) charge – for being denied the job the first time. A superintendent's death, and consequent lack of deposition, became a major factor in the case. The woman applied for the librarian position with the Shelter Island Union Free School District in New York. She was interviewed by the then-superintendent, but the job went to a 35-year-old man; the woman was 42 at the time. She filed a charge of age and sex discrimination with the EEOC and received a Right-to-Sue letter, but did not file a lawsuit. Four years later, the position was open again. The woman reapplied but was not one of the four applicants selected for an interview, and a 32-year-old woman was hired. After filing a second EEOC charge, the woman brought action against the district, alleging a violation of the ADEA (Age Discrimination in Employment Act), as well as retaliation in violation of both the ADEA and Title VII of the Civil Rights Act. The superintendent, a month prior to the woman's suit, had left his job due to declining health. He had to cancel a scheduled deposition for the same reason but submitted an affidavit. In it, he cited the woman's history of working an abundance of short-term positions and denied considering either her age or EEOC charge. The superintendent died five months later. Federal judges believed that the woman had sufficient evidence for a trial. Both parties argued over the inclusion of the superintendent's affidavits, and the court ultimately ruled that they were "inadmissible hearsay." The plaintiff made a motion to restrict the district from using the resumes as evidence, but they were allowed as circumstantial to support the argument that the superintendent had relied on them in his decisions. At trial, the plaintiff's testimony acknowledged her sporadic work history – 12 jobs in 10 years and two letters of recommendation for jobs five years prior to her application. During its direct case, the district called the two persons hired in lieu of the plaintiff. They testified that they spent more than half the time teaching and both had more experience in that regard than the plaintiff. The jury ruled in favor of the district. The woman made a motion for judgment as a matter of law, which was denied. On appeal, judges noted that the superintendent may not have been aware of the applicants' ages. Resumes did not list dates of birth, and though the plaintiff argued that her initial EEOC charge did, it could likewise be inferred that, years later, her resume hadn't been associated with her EEOC charge. The plaintiff also argued a causal link between the filing with the EEOC and not being selected for an interview. The four-year gap could be subverted by showing a lack of employment or any connection with the district during that time, but the district was still allowed to argue against it for the jury's determination. Appellate judges believed that the school district successfully proffered evidence supporting the decision not to hire the plaintiff. The denial of the motion for judgment as a matter of law was affirmed.