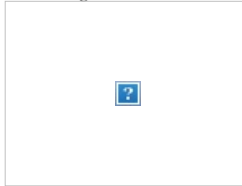


DISCRIMINATION AT DEPT OF TRANSPORTATION, OR SUBPAR JOB PERFORMANCE?



A man working for the Texas Department of Transportation alleged racial discrimination and claimed that his termination was retaliation. He took his case to court. The former employee was an engineer at the department for 13 years. He is of Asian descent and Indian national origin. He alleged disparate treatment when, after seven years of employment, he was not awarded an annual pay raise. He notified upper management and received a merit raise the following year. The man cited a subsequent “dramatic” alteration in his employment. He claimed that, while his previous annual performance evaluations had been positive, he now began receiving ratings indicating a need for improvement. He alleged a “conspiracy” among three of his supervisors. From two of these supervisors, the employee received subpar performance assessments and 90-day improvement plans, which the man alleged were “unjustified and fabricated.” The negative reviews concentrated on the man’s communication skills: inappropriate language, not following the proper chain of command, calls and emails to persons other than individuals related to projects, and confusion and extra work created by his negligence of proper communication protocols. The man filed two separate complaints with the department’s Civil Rights Division, asserting discrimination based on the negative reviews. He stated that other employees were treated more favorably, as his supervisors would stop at others’ cubicles more frequently than his own and further noting dissimilar treatment for non-Indian workers. The department’s HR investigated and found no evidence to support the employee’s allegations,



nor any wrongdoing or unprofessional behavior from either of the supervisors. The man was later placed on probation due to “unprofessional conduct and poor customer service skills.” He later alleged that the probationary status was retaliation for his complaint. He was warned of potential termination should he not improve his job performance and was twice counseled by his supervisors over the next two months. After a complaint from an individual at another office at the company, claiming that the employee “scolded” the person for “copying” a supervisor’s email and making unreasonable requests, the man was fired. The man filed a charge of discrimination with the EEOC (Equal Employment Opportunity Commission) and the Texas Workforce Commission. He filed lawsuits in the Texas state court and the federal district court. The district court denied a motion to stay, pending the outcome of the state court proceedings. It then granted summary judgment in favor of the company, stating that the man had not presented a prima facie case of discrimination or retaliation – in other words, he had not shown sufficient evidence to support either claim. On appeal, the man alleged that the department’s evidence in court was falsified and that his negative evaluations were merely to create a “paper trail” to disguise discriminatory and retaliatory acts. The appeals court noted the plaintiff’s “long history” of unfavorable evaluations, years before he’d filed a complaint. The man had likewise failed to prove preferable treatment for other, non-Indian employees or that the evaluations were fallacious. The court found no evidence of discrimination or retaliation and consequently affirmed the district court’s decision.