

City wins judgment in employment case

by Staff Report

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The city of O'Fallon won summary judgment in a case filed by a former police officer who sued claiming wrongful termination and violation of his freedom of speech.

David Buehrle claimed the city retaliated against him for filing workers' compensation claims and for a presentation he made to the city's Board of Aldermen. He also claimed age discrimination after younger officers received positions he sought.

U.S. District Judge Audrey G. Fleissig granted O'Fallon's summary judgment motion on several grounds in July.

"It was kind of the 'everything and the kitchen sink' approach," said defense attorney Stacie A. Owens, of Sandberg Phoenix & von Gontard in St. Louis. "We didn't think that he had a legal basis for his claim, and that's evident in our briefs that we filed with the Eastern District."

Buehrle has appealed to the 8th U.S. Circuit Court of Appeals.

The former officer's suit had four claims: He argued he was taken off light duty in retaliation for twice seeking workers' compensation, after hurting his foot and elbow in separate incidents while working; he made two age discrimination allegations after other officers were chosen for positions he wanted; and he claimed violation of his First Amendment right to free speech, saying he was harassed with internal investigations.

Buehrle had been chosen by the city to investigate wrongdoing and addressed the city's board with his findings.

An attorney for Buehrle, Debbie S. Champion, of Rynearson, Suess, Schnurbusch & Champion, declined to comment as the case is on appeal.

In her 25-page opinion, Fleissig dismissed the First Amendment claim, citing *Bonn v. City of Omaha*. In that case, the 8th Circuit ruled that an employee acting in his official role does not have freedom of speech protection. Because the mayor chose Buehrle to investigate wrongdoing, his presentation to the Board of Aldermen that suggested corruption, mismanagement and illegal activities within the city government was part of his assigned duties, the judge found.

One of his age discrimination claims was thrown out because he didn't file the complaint within the time period allowed. Fleissig wrote that in his other age discrimination claim, Buehrle failed to prove that the city passed him over solely because of his age rather than for other legitimate concerns.

The city had changed its procedure for promotions before Buehrle applied to advance. Instead of going strictly with the person who scored highest on reviews and tests, the city allowed for other considerations for promotions, or denial of them, such as trustworthiness and personality. The city said it used these new standards when passing over Buehrle.

The judge also rejected the officer's assertions that the city retaliated in response to his filing workers' compensation claims. For example, Buehrle argued he was removed from light duty work due to his speech to the city's board. Because the plaintiff offered alternative reasons for his treatment, the judge ruled, he can't claim it was exclusively because he sought workers' comp.

■ Defense judgment

Employment discrimination

■ **Court:** U.S. District Court for the Eastern District of Missouri

■ **Case Number/Date:** 4:10CV00509/July 12, 2011

■ **Judge:** Audrey G. Fleissig

■ **Caption:** David Buehrle v. City of O'Fallon, Mo.

■ **Plaintiff's Attorneys:** Debbie S. Champion and Melanie H. Supranowich, Rynearson, Sues, Schnurbusch & Champion, St. Louis

■ **Defendant's Attorneys:** Thomas E. Berry Jr. and Stacie A. Owens, Sandberg, Phoenix & von Gontard, St. Louis

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