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Employee Misconduct and Discipline or Termination

The Eighth Circuit recently ruled that where an employee commits misconduct, but is not disciplined or terminated until after she reports violations of equal opportunity laws, it raises a “genuine doubt as to the legitimacy” of the employer’s motive for terminating said employee. In [Hairston v Wormuth](#), Hairston was hired by Pine Bluff Arsenal (the “Arsenal”) and terminated 11 months later. During her employment, multiple employees, including Hairston, experienced conflict with other employees. And in her first six months on the job, Hairston accused her supervisor, Johnson, of a couple of instances she perceived as sexual harassment.

When Johnson was informed of these accusations, he responded with multiple complaints about Hairston – including sexual comments and a failure to perform her job duties. Johnson mentioned complaints from other employees about Hairston. After these reports, Arsenal worked with an investigator to investigate both Hairston’s and Johnson’s allegations. The report from the investigator identified Hairston as the “subject” of the investigation and Mr. Johnson as the “victim” and concluded that Hairston’s accusations were unfounded, but that some of Johnson’s were substantiated. The investigator determined that the statements he received from other employees were sufficient to support disciplining Hairston.

Shortly thereafter, Hairston contacted Arsenal’s equal employment opportunity office and she submitted a complaint against Johnson about a new incident. A few days later, Arsenal terminated Hairston based on the investigative report. Hairston filed suit alleging sexual harassment and retaliatory discharge. The Eighth Circuit court noted that most, if not all, of the purported misconduct described in Hairston’s termination letter was known to the Army and eight months had elapsed between Johnson’s first complaint about Hairston’s misconduct and her termination. The court also noted that there was minimal evidence Arsenal investigated Hairston’s complaints about Johnson in the same manner that it investigated Johnson’s complaints about Hairston. According to the court, these two aspects of the record were enough to let the retaliation claim go to trial.

Arsenal’s failure to address Hairston’s misconduct when it occurred allowed her to argue that it did not warrant discipline or termination – and “would allow a reasonable jury to conclude” that Arsenal “unlawfully retaliated against her”.

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