

Seventh Circuit Says Summary Judgment Stands: Evidence Does Not Support FCA Retaliation

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by Briana Al Taqatqa

Yesterday, the Seventh Circuit Court of Appeals affirmed a summary judgment decision dismissing a former employee's False Claims Act ("FCA") retaliation suit. *Lam v. Springs Window Fashions, LLC*, No. 21-2665, 2022 U.S. App. LEXIS 16633 (7th Cir. June 16, 2022). The appellate court agreed that the employer's conduct fell short of "harassment" under the statute, and that the employee failed to establish a causal connection linking her protected reports and her termination.

The employee, Jennifer Lam, began working at Springs Window Fashions, LLC ("Springs"), a window covering manufacturer, as its senior manager of global trade in January 2019. In that role, she came to believe the fabric blankets the company used to make window shades originated in China and not in Taiwan and Malaysia, as the supplier stated. Fabrics originating in China are subject to a higher 25 percent tariff.

Between June and September 2019, the employee informed her supervisor—the company's chief executive officer ("CEO")—that Springs would need to pay higher tariffs on the fabric. She claimed the CEO was "frustrated and visibly irritated" with her conclusions about the tariffs and "angrily berated" her in a senior leadership meeting. The employee also claimed two other executives "scolded" her for disagreeing with the CEO on the issue. The employee raised no further reports on the tariff issue.

In late September 2019, the employee began reporting to the company's chief financial officer ("CFO"). The CFO wanted Lam to focus on an inventory problem with three manufacturing facilities in Mexico. Displeased with her lack of progress on the inventory issue, the CFO put her on a performance improvement plan ("PIP") in December 2019. In February 2020, the CFO fired the employee for failing to adequately address the inventory problem, which resulted in an audit by the Mexican government.

The employee sued Springs for FCA whistleblower retaliation in April 2020. She claimed her supervisors harassed and then terminated her for her reports about violations of trade law. The district court granted the employer's motion for summary judgment, ruling

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that Springs did not retaliate by reacting angrily to the employee's reports about the Chinese tariff issue. The court also concluded the employee had not established a causal connection between her last report in September 2019 and her termination in February 2020.

On appeal, the parties asked the Seventh Circuit to define what constitutes "harassment" under the FCA. The employee pushed for the "harassment" standard used in Title VII retaliation claims: "whether the conduct here would have dissuaded a reasonable worker from complaining to management about its obligation to pay the tariffs." *Lam-Quang-Vinh*, 2022 U.S. App. LEXIS 16633, at *10 (citing *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 57 (2006)). Springs argued for the more stringent test used to analyze hostile-work-environment discrimination claims under Title VII: whether the "retaliatory acts were severe or pervasive enough to affect the terms and conditions of her employment." *Id.* (citing *Vance v. Ball State Univ.*, 570 U.S. 421, 427 (2013)).

The court concluded the employee could not meet either test and declined to decide which standard applies. The employee's claims that the CEO appeared "frustrated and visibly irritated," that he "berated" her, and that two other executives "scolded" her did not rise to the level of harassment even under the more lenient test. The court relied on its own Title VII precedent, which requires more than generic descriptions of yelling and "unspecified harassment" to prove a reasonable worker would be dissuaded from reporting violations of the law. *Id.* at *11-12 (citing *Stephens v. Erickson*, 569 F.3d 779, 790 (7th Cir. 2009); *Henry v. Milwaukee Cty.*, 539 F.3d 573, 587 (7th Cir. 2008)).

The court also rejected the employee's claim that her termination was retaliation. First, the court concluded there was not sufficient temporal proximity between Lam's last conversation about tariffs in September 2019 and her termination in February 2020. Likewise, there was no evidence that the CFO—who made the termination decision—was influenced by the CEO's disagreement with Lam about the tariffs. Second, there was no evidence that the CFO's vague statement months before the employee's termination that she "wouldn't be here in five years" was connected to the tariff issue. Third, there was nothing suspicious about the timing of the employee's PIP and subsequent termination; rather, the PIP was designed to address legitimate performance concerns. Further, the CFO implemented the PIP in response to a directive that all leaders review their employees and implement PIPs if needed.

Finally, the court concluded that Springs offered a legitimate reason for the employee's termination, and the employee failed to present evidence that the CFO did not honestly believe his reasons for firing her. The CFO testified that he terminated the employee because of her failure to address the inventory problem in Mexico. Although the PIP also stated the CFO was unhappy with *the way* the tariff issue had been communicated, his concerns related to the employee failure to provide necessary context and propose solutions. The Seventh Circuit agreed with the district court that there was no evidence Springs terminated the employee because she reported violations of trade law. *Id.* at *16-18.

Although the *Springs* opinion leaves open the question of what, exactly, constitutes

“harassment” for purposes of FCA retaliation outside of the Ninth and Fifth Circuits, the Seventh Circuit’s reasoning is consistent with the FCA retaliation analysis in those Circuits. The *Springs* decision is also consistent with employment retaliation cases arising under state and federal civil rights statutes, which generally set a high bar for establishing causation.

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