

## An Employer's Reasonable Belief Defeats Claim of Pretext, Even If the Belief is Later Proven Wrong

by Dennis J. Merley - Thursday, April 18, 2019



Can an employer lawfully terminate an employee for misconduct even if the employee disputes the allegations and later proves them wrong? The 10<sup>th</sup> Circuit Court of Appeals just answered “yes” in a very convincing and helpful decision.

While working for Jacobs Technology, Inc. one day, Raymond Montoya asked co-worker Louis Lombardi if he could borrow his work truck. Lombardi agreed but before Montoya could enter the vehicle, Lombardi decided to check with Montoya’s team leader and told Montoya to wait until he got proper authorization to turn over the truck. Lombardi then drove off in search of the team lead.

Upon his return, Lombardi saw Montoya standing in the middle of the road. Lombardi claims that he was driving slowly to maneuver the truck around Montoya when Montoya suddenly reached out and struck the passenger side of the truck with his arm and fist. Montoya, on the other hand, claimed Lombardi deliberately drove the truck toward him and hit him on his left side. Both men agreed that after contact was made, Lombardi got out of the truck and they began to argue.

### Yes You Did – No I Didn’t

Both workers reported their version of the incident to the team leader. Subsequently, Human Resources Manager Yolanda Ramos interviewed three witnesses to the event. The first two said they had not seen anything but the third – an employee of an outside contractor working at the facility – confirmed Lombardi’s version, recalling that Montoya stepped forward to slap and punch the truck (although it appears that nobody ever asked or confirmed why Montoya decided

to actually punch a truck).

Ramos prepared her investigative report and recommended that Montoya be terminated for various reasons, including providing untruthful and misleading information during the investigation. She further recommended that Lombardi be suspended for three days for violating several company rules. The company accepted Ramos' recommendations and terminated Montoya for two reasons: (1) safety violations, and (2) the belief that Montoya had lied about the incident.

Montoya sued for a variety of claims, all of which were dismissed by the lower court. Montoya then appealed to the federal Tenth Circuit Court of Appeals but only in regard to his claim under his age discrimination claim under the Age Discrimination in Employment Act (ADEA).

## **You Don't Need To Be Right, Just Reasonable**

The Appeals Court began their analysis by noting that there was no dispute that Montoya established an initial inference of discrimination or that the company had dispelled that inference by articulating a legitimate, nondiscriminatory reason for their action. Thus, their decision turned on whether Montoya met his burden to show that the employer's reasons for their actions were a pretext for illegal discrimination.

One way for Montoya to have shown pretext was to establish that the reasons articulated for the termination decision were "so incoherent, weak, inconsistent, or contradictory that a rational fact finder could conclude they are unworthy of belief." Meeting this standard would require more than just proving that the company should have decided differently or that their decision was unwise or unfair. Instead, the critical question was whether the employer "reasonably believed at the time of the termination that [Montoya] had violated company policy, and acted in good faith upon that belief."

To put it another way, it was not enough for Montoya to show that the company came to the wrong conclusion; he needed to establish that the company really did not believe their own reasons and may have been pursuing an illegal agenda.

Montoya offered several arguments in favor of a finding of pretext, most notably:

- It was unreasonable for the company to believe one version of the story over another when the two versions were so very different;
- He was treated more harshly than the similarly situated co-worker (Lombardi); and
- The employer deviated from their policies in deciding to terminate his employment.

## **Employer's Belief Was Justified**

The Court was unpersuaded by any of these arguments and ruled that Montoya failed to meet

his burden of proof. In regard to accepting one version of the events over the other, they explained that it is not a court's role function to decide who was right and who was wrong. Rather, the Court must determine whether whatever decision the employer came to was made for illegal reasons. Merely showing that the employer favored one employee's story without attacking the underlying reasons for doing so, is not sufficient to establish a wrongful motive.

Montoya's claim of differential treatment also failed because he did not compare himself to a similarly situated co-worker. Montoya was terminated in large part because he told a story that was uncorroborated and therefore considered untruthful. Lombardi, on the other hand, benefited from an independent witness who verified his version of the events. As such, Montoya and Lombardi were not similarly situated in regard to their credibility and it therefore was not improper for Lombardi to be treated more favorably in regard to the truthfulness of his account of the interaction with Montoya.

Finally, while deviation from established policy can be a strong indication of pretext, no such deviation occurred in this instance. Montoya pointed to the company's failure to follow their progressive disciplinary policy but the Court aptly noted that the policy permits the employer to terminate for a serious offense and grants the employer discretion to determine what is serious. Thus, there was no deviation from the policy at all.

The Court concluded that the employer had a reasonable belief that Lombardi's story was more credible than Montoya's. Since they were justified in coming to that belief, and the conclusion was not so inconsistent or contradictory as to be unworthy of credence, Montoya was unable to show that the decision was a pretext for an illegal motive.

## **Bottom Line**

This case demonstrates the critical nature of conducting a thorough and credible investigation into allegations of employee wrongdoing. If the investigation is thorough, the evidence is credible and the determination is reasonable, a court will be reluctant to disregard it even if it can be coherently argued that the findings were inaccurate or that a reasonable person might have decided things differently.

This is why each allegation of misconduct requires an effective, well-reasoned and thoroughly documented investigation. Don't jump to conclusions or skip steps – the credibility of the investigation is perhaps the best defense of all.