

VERDICTS & SETTLEMENTS

EMPLOYMENT LAW

RETALIATION

Discrimination, Harassment

VERDICT: Defense.

CASE/NUMBER: Robert Chavez v. City of Los Angeles, et al. / BC311284.

COURT/DATE: Los Angeles Superior Central / Feb. 22, 2010.

JUDGE: Hon. Joanne B. O'Donnell.

ATTORNEYS: Plaintiff - Gloria D. Haney (Law Offices of Gloria D. Haney, Orange); Rochelle E. Jackson (Law Offices of Rochelle E. Jackson, Orange); Melinda G. Wilson (Law Offices of Melinda G. Wilson, Gardena).

Defendant - Edward P. Zappia, Eric W. LaPointe (The Zappia Law Firm, Los Angeles).

MEDICAL EXPERTS: Defendant - Richard G. Ness, M.D., psychiatry, Los Angeles.

TECHNICAL EXPERTS: Defendant - David H. Hinig, police practices, Los Angeles.

FACTS: Plaintiff Robert Chavez had been employed by the City of Los Angeles as a police officer in the Los Angeles Police Department

since 1989. During his employment, Chavez made numerous complaints and had filed multiple lawsuits alleging defamation, harassment, discrimination, and retaliation.

Chavez complained that he was put under surveillance; that he was being followed by LAPD vehicles and that, on at least one occasion, a vehicle tried to run him off the road; that he received prank phone calls; and, that up until 2001 LAPD helicopters had "buzzed" and or hovered over his house, 30-40 times, at a height low enough to shake his house.

In 2000, Chavez filed a workers' compensation stress claim, at which time his doctor found him unfit for duty. He was put on paid stress leave for nearly a year and then returned to work.

In 2001, after a short period of time back at work, Chavez again filed a workers' compensation stress claim. His doctor found him unfit for duty and he was put on paid stress leave for two years.

Chavez sought to return to work in March 2003 and, according to City of Los Angeles policy, Chavez had to be evaluated for fitness for duty by a city psychologist. When the city psychologist imposed psychological work restrictions, which precluded Chavez from carrying a weapon, Chavez was placed on paid leave.

However, at this same time, Chavez's doctor advised the City that, for workers compensation purposes, Chavez could return to his police officer duties and would ultimately testify to the same at trial. Additionally, the agreed-upon medical examiner (a board certified psychiatrist), approved by the City and Chavez, also concluded that, for workers compensation purposes, Chavez could return to duty without restriction during the relevant period the City psychologist contended he could not work as a police officer. Chavez's doctors did not examine him for "fitness for duty" purposes.

After a thorough review of Chavez's extensive medical records and further psychological evaluations over the course of a year, the City psychologist imposed permanent psychological work restrictions on Chavez. The City then placed Chavez on unpaid leave.

Chavez filed suit against the City in state court. The City removed the case to federal where the federal civil rights claims were dismissed on summary judgment and the remaining state claims were remanded to state court. The state court granted the City's motion for summary judgment on the FEHA claims. Meanwhile, Chavez amended his complaint to include claims for constructive wrongful termination, breach of covenant of good faith and fair dealing, retaliation, and intentional infliction of emotional distress. The state court granted the City's motion for summary judgment,

dismissing those claims as well; but, the appellate court reversed the granting of the motion on the issue of retaliation. The case proceeded to trial solely on the retaliation claim.

PLAINTIFF'S CONTENTIONS:

Chavez contended he was not properly evaluated by the City psychologist. Furthermore, Chavez noted that none of the board certified psychiatrists who evaluated him deemed him psychologically unfit for work as a police officer during the relevant period in the litigation, only the City psychologist alone made this determination.

Chavez contended that the LAPD retaliated against him when they removed him from police officer duties, failed to return him to police officer duties, and when the City stopped paying his salary because he had made previous complaints of discrimination, harassment, and retaliation against the LAPD and City. Chavez contended the City's alleged reliance on the City psychologist's determination that he was unfit for duty was pretext for retaliation because the City psychologist's evaluation of him was biased, the City never made any attempts to resolve the conflict between the City psychologist's determination and the psychiatrists' determinations who evaluated Chavez, and the City made the decision to stop paying Chavez his salary in 2005, weeks after Chavez prevailed in his 2000 retaliation claim, which was tried in 2005.

DEFENDANT'S CONTENTIONS:

Defendants contended that Chavez was legitimately and lawfully removed from active duty in the interests of public and officer safety as required by law when a city psychologist found him psychologically unfit for duty, just as his own psychologists had concluded when Chavez previously filed claims for workers' compensation benefits. Specifically, the defense contended that, in 2001, Chavez's doctor declared him permanently unfit for duty.

Defendants also contended that Chavez was never harassed, discriminated, or retaliated against, rather, that Chavez consistently received positive performance evaluations and pay raises, even while at home on paid leave for years; and he was promoted from police officer I to police officer III during the alleged period of harassment, discrimination and retaliation.

Defendants further contended that Chavez was offered a civilian/non-sworn position, as well as his disability retirement, to which he was entitled. The defense contended that Chavez refused both.

RESULT: The jury returned a verdict for the City, finding that it did not subject Chavez to an adverse employment action.

OTHER INFORMATION: Plaintiff has since filed a writ of mandate seeking a due process hearing.

FILING DATE: Feb. 27, 2004.