

Discrimination found when VA used internship program to promote and advance younger employees at the expense of older, more experienced employees.

The Office of Employment Discrimination Complaint Adjudication (OEDCA) regularly issues decisions interpreting the Age Discrimination in Employment Act of 1967 (ADEA). The ADEA prohibits employment discrimination against people over 40. ADEA claims can arise in the employment selection and promotion processes. The ADEA requires management to articulate a legitimate, nondiscriminatory reason for its actions. In order to prevail in his discrimination claim under the ADEA, the complainant must show, by a preponderance of the evidence, that management's stated reasons for taking an action is a pretext for discrimination based on his or her age. Pretext can be established by evidence showing that a discriminatory reason more likely than not motivated management, that management's articulated reasons are unworthy of belief, that management had a policy or practice disfavoring the individual's protected class, that management had discriminated against the individual in the past, or that management had traditionally reacted improperly to legitimate civil rights activities.

The following case went to a hearing where an Equal Employment Opportunity Commission (EEOC) Administrative Judge (AJ) found age discrimination by the VA when Mr. J was not promoted to a supervisory position. OEDCA accepted the AJ's finding of discrimination.

Mr. J was a GS-12 Loan Specialist (Team Leader) at a VA Regional Loan Center. He began his employment with the VA in 2000 in the facility's loan production section. In 2002, he became a team leader and was responsible for coordinating team member activities, answering team member questions, communicating orders, reviewing leave requests, and ensuring quality customer service. There was a period of time when Mr. J and the other team leader, Mr. V, did not have a supervisor and the two team leaders rotated the responsibility of the section head and were in charge of day-to-day operations.

In June 2003, the VA began an intern program where it hired recent college graduates for entry level positions at the GS-5 and GS-7 levels. The majority of the interns hired were in their 20s. Mr. J's supervisor testified that interns were fast-tracked and promoted quickly. One of the interns hired was Mr. W. As part of his two-year training program, Mr. W completed a four-month rotation in the loan production section. In May 2006, he was assigned to the section permanently under the direction of team leader Mr. V.

In March 2008, the VA posted a vacancy for a GS-13 Supervisory Loan Specialist in the loan production section. Mr. J submitted an application and was subsequently interviewed, but not selected for the position. The selectee was Mr. W.

The EEOC AJ found discrimination based on age when Mr. J was not selected. The AJ concluded that Mr. J's qualifications were plainly superior to those of Mr. W in terms of

years of experience, background as a team leader and acting supervisor, positive employee feedback on his performance as a team leader and acting supervisor, and his years of private sector experience. In contrast, the AJ found Mr. W lacked private sector and leadership experience, and had received negative employee feedback on his supervisory performance.

The AJ further found that management witnesses lacked credibility when they claimed that Mr. J was not promoted because of his difficulty in accomplishing work goals and meeting deadlines and that employees reporting to him had complaints about his performance. Finally, the AJ found a history of discrimination against older employees at the facility as evidenced by a pattern of promoting, advancing, and providing greater opportunities to excel for younger employees in the internship program at the expense of older, more experienced employees. For example, a witness for Mr. J testified that younger employees received special projects without any request for other volunteers.

The AJ ordered that Mr. J be appointed to the GS-13 Supervisory Loan Specialist position and be awarded back pay.

**BOTTOM LINE:** This is a case where on close examination management's reasons for not promoting Mr. J were not believable given the evidence in the record and testimony at the hearing. Since management's reasons were not credible, the EEOC AJ concluded, as a matter of law, that the real reason for Mr. J's non-promotion was his age.