



**Management’s concerns about applicant’s “communication skills” found to be pretext for discrimination based on national origin and race**

The Office of Employment Discrimination Complaint Adjudication (OEDCA) regularly issues decisions interpreting Title VII of the Civil Rights Act of 1964, a Federal law prohibiting discrimination based on an individual’s race, color, national origin, gender, religion, or because she engaged in prior protected activity (i.e., reprisal). Title VII requires management to articulate a legitimate, nondiscriminatory reason for its actions. In order to prevail in his discrimination claim under Title VII, the complainant must show, by a preponderance of the evidence, that management’s stated reasons for taking an action is a pretext for discrimination. 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 race and national origin (Asian/Chinese) discrimination by the VA when Mr. W was not selected for the position of Program Analyst. OEDCA accepted the judge’s finding of discrimination.

Mr. W was an outside candidate who was found by the interview panel to be the best qualified for a Program Analyst position. However, the selection panel had concerns about Mr. W’s communication skills and whether he could “hit the ground running to establish a compliance program”. The panel further found that Mr. W did not have sufficient compliance experience and would require “extensive training” and that the VA needed to fill the position “right away.” Rather than hire Mr. W, the vacancy announcement was cancelled.

At the hearing, Mr. W demonstrated that who ever was selected for the position would require “extensive training” because it was a new position and that compliance regulations change frequently. One of the selecting officials agreed that anyone hired would require continued training.

Mr. W challenged the VA’s assessment that he lacked communication skills. He testified that the selecting officials objected to the fact that he is Chinese and speaks with an accent, and thus concluded that he would be unable to

communicate with his peers. He also showed that he had strong communication skills consisting of over 20 years of presenting research results and teaching.

The EEOC AJ found that management's assertions that Mr. W lacked communications skills to be "implausible". He further found that the VA's argument that the position needed to be filled quickly was not credible when the evidence showed that it took almost a year before the position was re-advertised.

**BOTTOM LINE:** This is a case where on close examination management's reasons for not selecting Mr. W for a position 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 the VA did not select Mr. W was because of his national origin and race. Thus, the EEOC AJ found Mr. W's non-selection violated Title VII and was discriminatory.