TASB School Law Update

Case of the Month

Fifth Circuit Court of Appeals

Former employee fails to show that district's mixed-motive defense did not apply to his USERRA claim.

Daniel Arturo Garcia-Ascanio was an assistant principal for eighth grade students at Spring ISD as well as a member of the Army Reserve. In November 2018, Garcia met with his supervisors to discuss issues, including complaints about him from parents. During the meeting, an assistant superintendent asked Garcia how he could manage his job duties along with his military duties so as not to "screw over your colleagues because of your choices." Afterwards, Garcia hired an attorney who sent a letter to Spring ISD regarding his rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA), a federal law that protects employees from employment discrimination or retaliation because of the employee's military service or USERRA-protected activity. Garcia was reassigned to be the assistant principal for seventh grade students, but parents continued to complain, and eventually the district investigated Garcia for allegedly mishandling student discipline involving illegal drugs.

In the spring of 2019, the Spring ISD board of trustees voted to propose nonrenewal of Garcia's contract. Garcia sued the district, alleging the district's proposed action violated his rights under USERRA. The district rescinded the nonrenewal and offered him a position at a different school, however Garcia refused to take the position. According to Garcia, he did not accept the position because he was concerned, based on language in the contract offered to him by the district, that he would be admitting to allegations against him that might negatively impact his military career.

Garcia's lawsuit proceeded, and a jury found that the district's constructive discharge of Garcia was at least partly motivated by Garcia's military service and engaging in USERRA-protected activity. However, the jury also found that the district would have taken the same action even absent Garcia's military service and protected activity. The trial court entered judgment for Spring ISD, and Garcia appealed.

In his appeal to the Fifth Circuit, Garcia argued that the district's mixed-motive defense should not apply in a constructive discharge case, reasoning that "constructive discharge is formally affected by the employee's decision, the employee's intention, and the employee's ultimate act," and thus "the employer cannot 'intend' to constructively discharge an employee." According to the Fifth Circuit, however, Garcia's argument "fundamentally misunderstands the nature of the claim and its focus on the actions and motivations of the employer."

Citing its past cases, the Fifth Circuit explained that a constructive discharge occurs when "*the employer* makes working conditions so intolerable that a reasonable employee would feel compelled to resign." *McCoy v. City of Shreveport*, 492 F.3d 551, 557 (5th Cir. 2007) (emphasis added). Furthermore, USERRA provides employers with a mixed-motive defense and does not make an exception for constructive discharge. 38 U.S.C. § 4311(c)(1)-(2). Thus, the Fifth Circuit upheld the trial court's decision in Spring ISD's favor. *Garcia-Ascanio v. Spring Indep. Sch. Dist.*, 74 F.4th 305 (5th Cir. July 17, 2023).