

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Cheryl Kellogg v. Ball State University

984 F.3d 525 (7th Cir. 2021) · No. 20-1406 · Decided January 5, 2021

SUMMARY

The Seventh Circuit reversed summary judgment for Ball State University in Cheryl Kellogg's Title VII and Equal Pay Act claims alleging sex-based pay discrimination. The court held that the Academy director's statement that Kellogg did not need more starting pay because her husband worked created a factual dispute regarding the employer's nondiscriminatory explanations. The court also held that the statement could be considered under the paycheck accrual rule and as evidence supporting a timely claim, and remanded for further proceedings.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Kanne; Scudder; St. Eve
JURISDICTION	Federal
DECIDED	January 5, 2021
DOCKET	20-1406
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Kellogg appealed the Southern District of Indiana's grant of summary judgment to Ball State University on her Title VII and Equal Pay Act claims alleging sex-based pay discrimination.
STANDARD OF REVIEW	De novo review of the district court's summary judgment order.
PRECEDENTIAL VALUE	Published and precedential Seventh Circuit opinion.
PARTIES	Cheryl Kellogg v. Ball State University d/b/a Indiana Academy for Science, Mathematics and Humanities

TOPICS

- employment discrimination
- title vii
- wage and hour
- appellate procedure
- evidence

PRACTICE AREAS

- employment discrimination
- employment law
- civil rights
- appellate procedure

QUESTIONS PRESENTED

1. Whether Kellogg's evidence, including Williams's statement about her husband's employment, created a triable issue that the Academy's asserted nondiscriminatory explanations for her pay were pretextual under Title VII.
2. Whether a discriminatory compensation decision outside the limitations period could support liability for later paychecks under the paycheck accrual rule.
3. Whether time-barred acts could be used as evidence supporting a timely Title VII or Equal Pay Act claim.
4. Whether the paycheck accrual rule applies to Equal Pay Act compensation-discrimination claims.
5. Whether Kellogg was limited to relying on one comparator employee based on her complaint and deposition testimony.

HOLDINGS

1. Williams's statement that Kellogg did not need more starting pay because her husband worked created a genuine dispute over whether the Academy honestly believed its asserted gender-neutral explanations for her lower pay.
2. Under the Lilly Ledbetter Fair Pay Act, each paycheck resulting in whole or in part from an earlier discriminatory compensation decision constitutes an actionable unlawful employment practice, allowing Kellogg to rely on Williams's earlier decision for paychecks received within the limitations period.
3. A plaintiff may use acts outside the statutory limitations period as evidence supporting a timely claim, including to show that the employer's asserted explanations were pretextual.
4. The paycheck accrual rule applies to allegations of unlawful discrimination in employee compensation under the Equal Pay Act.
5. Kellogg was not limited to relying on comparator McSparrin; her complaint and deposition did not relinquish her ability to rely on other comparators, and the Academy had notice of them.

KEY QUOTATIONS

“Under the paycheck accrual rule, Williams’s statement can establish liability because it affected paychecks that Kellogg received within the limitations window.” (p. 2)

“That statement, which must be taken as true, creates a dispute over whether the Academy “honestly believed in the nondiscriminatory reasons” that it offered.” (p. 5)

“So the paycheck accrual rule applies to “allegations of unlawful discrimination in employee compensation” under the EPA, just as we have held that it applies to such allegations under 42 U.S.C. § 1983” (p. 10)

FACTUAL BACKGROUND

Ball State University's Indiana Academy hired Cheryl Kellogg as a life science teacher in 2006 at a starting salary of \$32,000. During salary negotiations, the Academy's director, David Williams, allegedly told Kellogg that she did not need more money because her husband worked at Ball State. Kellogg later complained that she

was paid less than similarly situated male colleagues and sued after receiving paychecks during the limitations period; the Academy attributed the disparity to salary compression and qualification differences.

PROCEDURAL HISTORY

Kellogg sued Ball State University in 2018, alleging discriminatory compensation under Title VII and the Equal Pay Act. The district court granted the Academy summary judgment, concluding that the employer had offered undisputed gender-neutral explanations for Kellogg's pay and that the older discriminatory statement could not establish liability. The Seventh Circuit reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings consistent with the opinion, including consideration of Williams's statement and Kellogg's reliance on other comparators.

CASES CITED

- Flexible Steel Lacing Co. v. Conveyor Accessories, Inc., 955 F.3d 632, 643 (7th Cir. 2020)
- Georgia-Pacific Consumer Products LP v. Kimberly-Clark Corp., 647 F.3d 723, 727 (7th Cir. 2011)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)
- AutoZone, Inc. v. Strick, 543 F.3d 923, 929 (7th Cir. 2008)
- Lauderdale v. Illinois Department of Human Services, 876 F.3d 904, 909-10 (7th Cir. 2017)
- Burks v. Wisconsin Department of Transportation, 464 F.3d 744, 750-51 (7th Cir. 2006)
- St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507-08 (1993)
- Merillat v. Metal Spinners, Inc., 470 F.3d 685, 693, 695, 697-98 (7th Cir. 2006)
- Jackson v. E.J. Brach Corp., 176 F.3d 971, 984 (7th Cir. 1999)
- Balderston v. Fairbanks Morse Engine Division of Coltec Industries, 328 F.3d 309, 323 (7th Cir. 2003)
- Cullen v. Olin Corp., 195 F.3d 317, 323 (7th Cir. 1999)
- Groesch v. City of Springfield, 635 F.3d 1020, 1023-28 (7th Cir. 2011)
- Reese v. Ice Cream Specialties, Inc., 347 F.3d 1007, 1013-14 (7th Cir. 2003)
- Hildebrandt v. Illinois Department of Natural Resources, 347 F.3d 1014, 1028 (7th Cir. 2003)
- Fischer v. Avana, Inc., 519 F.3d 393, 401 (7th Cir. 2008)
- West v. Ortho-McNeil Pharmaceutical Corp., 405 F.3d 578, 581 (7th Cir. 2005)
- Davis v. Con-Way Transportation Central Express, Inc., 368 F.3d 776, 786 (7th Cir. 2004)
- National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 102, 113 (2002)
- Warren v. Solo Cup Co., 516 F.3d 627, 629 (7th Cir. 2008)
- Varner v. Illinois State University, 226 F.3d 927, 932 (7th Cir. 2000)

- Stopka v. Alliance of American Insurers, 141 F.3d 681, 685 (7th Cir. 1998)
- Poullard v. McDonald, 829 F.3d 844, 853 (7th Cir. 2016)
- Ledbetter v. Goodyear Tire & Rubber Co., Inc., 550 U.S. 618, 637 (2007)
- Dasgupta v. University of Wisconsin Board of Regents, 121 F.3d 1138, 1140 (7th Cir. 1997)
- Ashcroft v. Iqbal, 556 U.S. 662 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)
- Ineichen v. Ameritech, 410 F.3d 956, 963 (7th Cir. 2005)
- Bank of Illinois v. Allied Signal Safety Restraint Systems, 75 F.3d 1162, 1168 (7th Cir. 1996)

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