

SUPREME JUDICIAL COURT OF MAINE

Daniel LePage v. Bath Iron Works Corp. et al.

LePage v. Bath Iron Works Corp., 909 A.2d 629 (Me. 2006) · Decided November 14, 2006

SUMMARY

The Supreme Judicial Court of Maine affirmed summary judgment for Bath Iron Works Corp. and General Dynamics Corp. in Daniel LePage's claims under the Maine Human Rights Act and Maine Whistleblowers' Protection Act. The court held that the disability-discrimination claim was untimely because the limitations period began with the employer's April 30, 2002 firearm-qualification decision, and that the alleged statements by a human-resources executive did not constitute an actionable adverse employment threat under the whistleblower statute.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Levy, J.; Saufley, C.J.; Clifford, J.; Dana, J.; Alexander, J.; Calkins, J.; Silver, J.
JURISDICTION	Maine
DECIDED	November 14, 2006
DISPOSITION	affirmed
PROCEDURAL POSTURE	LePage appealed from summary judgment entered in favor of Bath Iron Works Corp. and General Dynamics Corp. on claims under the Maine Human Rights Act, the Maine Whistleblowers' Protection Act, and for intentional infliction of emotional distress.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, with all facts and reasonable inferences taken in favor of the nonmoving party. Summary judgment is appropriate when the record reveals no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Daniel LePage v. Bath Iron Works Corp., General Dynamics Corp.

TOPICS

[ada / disability](#)[employment law](#)[retaliation](#)[appellate procedure](#)[standard of review](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether BIW's April 30, 2002, decision not to qualify LePage to carry a firearm was a discrete discriminatory act that commenced the MHRA limitations periods, or instead part of a continuing violation.
2. Whether statements made by BIW's human-resources executive after LePage questioned the firearm-qualification decision constituted an adverse employment action under the Maine Whistleblowers' Protection Act.

HOLDINGS

1. BIW's April 30, 2002, decision disqualifying LePage from carrying a firearm was a discrete discriminatory act that provided unambiguous and authoritative notice of the alleged discrimination. The later reconsideration process and continuing effects did not create a continuing violation or restart the limitations periods; LePage's MHRA claims were therefore untimely.
2. Although the MWPA's prohibition expressly includes threats concerning an employee's compensation, terms, conditions, location, or privileges of employment, the statements attributed to BIW's human-resources executive did not constitute an actionable threat or other adverse employment action on the summary-judgment record. LePage therefore failed to establish the adverse-action element of his MWPA claim.

KEY QUOTATIONS

"A discriminatory act is a discriminatory act, even if the employer represents that it may change its position if the employee's circumstances change." (909 A.2d at 634)

"The existence of [post-decision] procedures to assure fairness in [an employer's] tenure decision [regarding an employee] should not obscure the principle that limitations periods normally commence when the employer's decision is made." (909 A.2d at 635)

"the appropriate standard is not whether an employer's alleged discriminatory act has reached a state of actual or absolute finality or permanence, but rather, whether the employee has "receive[d] unambiguous and authoritative notice of the discriminatory act."" (909 A.2d at 635)

"To succeed on a claim under the MWPA, a plaintiff must demonstrate: (1) that he was engaged in a protected activity; (2) that he suffered an adverse employment action; and (3) that a causal nexus exists between the activity and the adverse action." (909 A.2d at 636)

FACTUAL BACKGROUND

LePage had worked as a security guard for Bath Iron Works since 1982. After the Navy required guards at certain stations to be armed, BIW instituted physical and psychological qualification procedures; based on psychological evaluations concerning LePage's aggressive tendencies, judgment, communication, and response to criticism, BIW disqualified him from carrying a firearm and denied him the additional pay received by armed

guards. BIW later declined to reconsider the decision, although LePage remained employed as an unarmed security guard. After LePage questioned the decision through counsel, he alleged that a BIW human-resources executive threatened his employment, but the court found no evidence of an actionable threat or other adverse employment effect.

PROCEDURAL HISTORY

LePage filed a discrimination claim with the Maine Human Rights Commission on November 20, 2003; the Commission dismissed the claim and authorized suit. He filed a Superior Court complaint on September 10, 2004. The Superior Court granted defendants summary judgment on all counts, ruling that the MHRA claim was untimely, the MWPA claim lacked an adverse employment action, and the emotional-distress claim was barred by the Workers' Compensation Act. The Supreme Judicial Court of Maine affirmed.

DISPOSITION

affirmed

CASES CITED

- *Lever v. Acadia Hospital Corp.*, 2004 ME 35, 845 A.2d 1178
- *Prescott v. State Tax Assessor*, 1998 ME 250, 721 A.2d 169
- *Glass v. Petro-Tex Chemical Corp.*, 757 F.2d 1554 (5th Cir. 1985)
- *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002)
- *De Leon Otero v. Rubero*, 820 F.2d 18 (1st Cir. 1987)
- *Velazquez v. Chardon*, 736 F.2d 831 (1st Cir. 1984)
- *Delaware State College v. Ricks*, 449 U.S. 250 (1980)
- *Sharp v. United Airlines, Inc.*, 236 F.3d 368 (7th Cir. 2001)
- *Morris v. Government Development Bank of Puerto Rico*, 27 F.3d 746 (1st Cir. 1994)
- *DiCentes v. Michaud*, 1998 ME 227, 719 A.2d 509
- *Blackie v. State of Maine*, 75 F.3d 716 (1st Cir. 1996)
- *Kinney v. Maine Mutual Group Insurance Co.*, 2005 ME 70, 874 A.2d 880
- *Jacques v. Pioneer Plastics, Inc.*, 676 A.2d 504 (Me. 1996)
- *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)

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