

Colorado Supreme Court to decide parameters of governmental immunity in El Paso sheriff lawsuit

By MICHAEL KARLIK Colorado Politics
May 20, 2020



(Photo by Pattanaphong Khuankaew, istockphoto)

The Colorado Supreme Court will take up an age discrimination case arising from the El Paso County Sheriff's Office, in which the justices will consider what compensation is available to the plaintiff under the state's governmental immunity law and whether the lack of immunity from employee discrimination claims applies to local government entities or just to the state. Timothy Williams, according to his lawsuit, worked for the Sheriff's Office between 2002 and 2016. The Gazette reported that he clashed with Sheriff Bill Elder after he served on a conduct review board for a deputy and alleged that the office "conspired to cover up" the misbehavior.

Williams alleged that Elder became enraged with him over the outcome of the disciplinary proceedings.

During Williams' last year as an employee, the sheriff had employees fill out a survey asking for their eligibility date of retirement. In November 2016, days after Elder purportedly berated Williams, Elder met with him and told Williams that if he "couldn't cut it," he needed to "get out." Williams' retirement date was less than two years away, leading him to believe that the remarks were age oriented.

The day after the meeting, Elder demoted Williams from his previous rank as lieutenant. Williams immediately resigned to avoid reductions in his retirement benefits. Subsequently, Williams filed an age discrimination complaint with the Colorado Civil Rights Division and Equal Employment Opportunity Commission. The Sheriff's Office alleged in return that Williams took departmental accreditation documents with him and he left, a charge that Williams considered retaliation. At trial, the district court determined that Williams' request for lost pay and monetary damages did not run afoul of the Colorado Governmental Immunity Act, which limits the liability of public employees and entities in order to safeguard the provision of taxpayer-funded services.

Judge Rebecca R. Freyre, writing for the Colorado Court of Appeals panel that reviewed the decision, concluded instead that the General Assembly intended to treat age discrimination differently under the Colorado Anti-Discrimination Act. Under CADA, remedies for age claims specifically include reinstatement with back pay — which was unavailable to Williams because his position was filled — and front pay, which amounts to wages lost due to the firing. However, the court did not find that other compensatory damages were allowed under governmental immunity.

CADA claims are "not designed primarily to compensate individual claimants," she pointed out, but rather to correct discriminatory behavior. Williams' retaliation Michael Karlik, Colorado Politics claim, however, was allowed to seek monetary damages under the governmental immunity act because such an award would be "incidental" to eradicating workplace discrimination.

“[W]e conclude that the General Assembly intended that compensatory damages awarded under the CADA be excluded from the immunity provisions of the CGIA,” Freyre wrote.

Accordingly, the appellate court permitted Williams to seek front pay for his age discrimination claim and compensation for his retaliation claim. The judges determined that their interpretation of the governmental immunity law applied to both local governments and the state.

The case is Timothy Williams v. Bill Elder.