

10th Circ. Backs Utility Co.'s Win In Pipe Fitter's Bias Suit

By **Patrick Hoff**

Law360 (July 28, 2022, 5:55 PM EDT) -- The Tenth Circuit on Thursday refused to reopen a Hispanic and Native American former pipe fitter's suit alleging that a utility company denied her a promotion because of her race, rejecting her argument that a jury received flawed instructions before handing her a loss.

A three-judge panel said it wouldn't disrupt a jury's verdict against Anita Martin in her suit against the Public Service Co. of Colorado, ruling that a district court's denial of PSC's bid for summary judgment on timeliness grounds didn't put the statute of limitations issue to bed.

"When a court denies a summary judgment motion, it simply means that the movant — here, PSC — has not 'shown that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law,'" U.S. Circuit Judge Joel M. Carson **wrote for the panel**. "In other words, PSC's failure to meet that standard meant only that 'a genuine issue remained for trial.'"

Martin's suit, initially filed in Colorado state court in December 2019 and removed to federal court the following month, alleged PSC violated Title VII and Section 1981 of federal civil rights law.

According to the operative complaint, PSC hired Martin as a laborer in 1983, and she was promoted to pipe fitter in 1987.

In 2016, a lead pipe fitter position — a job that came with higher pay — came open, and Martin believed she was next in line for promotion after nearly two decades of experience, according to the suit. When she inquired about the position, however, Martin was told she couldn't be promoted until the vacancy notice was posted, and she was assigned part-time lead pipe fitter responsibilities in the meantime, she said.

In March 2017, Martin said, she asked again about being promoted to lead pipe fitter and was this time told she would not be promoted because the two existing white male lead pipe fitters didn't want it to happen.

Martin then went to PSC's senior manager of operations and told him that if the vacancy wasn't posted, she would retire effective May 31, 2017, according to the suit. Martin said no efforts were made to post the vacancy or promote her, so she retired.

U.S. District Judge R. Brooke Jackson in September refused to toss the suit, ruling that Martin's claims were not barred due to timeliness. When the case went to trial later that month, the jury instructions included information about how long the statute of limitations was for each claim, as did the verdict form.

Martin appealed the jury's verdict that PSC did not discriminate against her, arguing that Judge Jackson's denial of summary judgment precluded timeliness from being a factor in the jury's decision.

The appeals panel said, however, that Martin didn't show the district court abused its discretion in crafting the jury instructions or verdict form.

"The verdict form did not ask the jury to decide any timeliness issues," Judge Carson wrote. "Rather, the instruction provided the dates applicable to Ms. Martin's claims and the verdict form asked only whether she had shown that PSC unlawfully discriminated against her during those time periods."

Anne Sulton, who is representing Martin, said in an email to Law360 that she's disappointed with the decision.

Representatives for the Public Service Co. of Colorado did not immediately respond to requests for comment Thursday.

U.S. Circuit Judges Scott M. Matheson Jr., Paul J. Kelly Jr. and Joel M. Carson sat on the panel for the Tenth Circuit.

Martin is represented by Anne T. Sulton of Sulton Law Offices.

The Public Service Co. of Colorado is represented by Meghan W. Martinez and Sarah G. Nolan of Martinez Law Group PC.

The case is Martin v. Public Service Co. of Colorado, case number 21-1354, in the U.S. Court of Appeals for the Tenth Circuit.

--Editing by Leah Bennett.