



WEEKLY LAW RESUME™

Issue By: STEVEN D. WERTH

February 2, 2012

Employee Fails to Introduce Substantial Evidence of Retaliatory Intent Following Termination Due to False Charges of Sexual Harassment Against Supervisor

Richard Joaquin v. City of Los Angeles

Court of Appeal, Second District (January 23, 2012)

Richard Joaquin worked for the Los Angeles Police Department (“LAPD”) as a police officer. In 2005, he complained of sexual harassment by Sergeant James Sands. Following an investigation by Internal Affairs, it was determined that the allegations against Sands were unfounded. Sands then pursued a complaint against Joaquin due to the fabricated claim of sexual harassment. Finding that Joaquin’s claim was unfounded, Internal Affairs recommended that the Board of Rights adjudicate the matter. The Board of Rights found that Joaquin’s claim was fabricated, and recommended his termination. As a result, the LAPD Chief of Police adopted the recommendation, and in 2006 Joaquin was terminated.

Joaquin thereafter petitioned for a Writ of Mandate, which the trial court granted, ordering him reinstated. Joaquin then sued the City of Los Angeles, claiming that the termination was retaliatory, in violation of California’s Fair Employment and Housing Act (“FEHA”). The jury awarded him over \$2 million. The California Court of Appeal reversed.

FEHA prohibits employers from retaliating against employees engaging in protected activity such as opposing practices prohibited by FEHA. In this case, Joaquin established a prima facie case of retaliation because he engaged in protected activity when he reported sexual harassment and suffered an adverse employment action when the LAPD terminated him. Because Joaquin stated a prima facie case, the burden then shifted to the LAPD to articulate a non-retaliatory reason for terminating Joaquin. The LAPD met this burden by showing that it terminated Joaquin because he fabricated a sexual

San Francisco Office

505 Montgomery Street, 7th Floor | San Francisco, CA 94111 | Phone: 415-981-6630 | Fax: 415-982-1634

Monterey Office

2 Lower Ragsdale Drive, Suite 120 | Monterey, CA 93940 | Telephone: (831) 655-8822 | Fax: (831) 655-8881

Web: www.lowball.com



Weekly Law Resume

A Newsletter published by Low, Ball & Lynch
Edited by David Blinn and Mark Hazelwood

harassment claim against Sands. The burden then shifted to Joaquin to show retaliatory intent on the part of the LAPD and a causal link between the retaliatory intent and his termination.

The Court concluded that Joaquin had failed to introduce substantial evidence of retaliatory intent. The recommendation to terminate did not arise from the report of sexual harassment, but the fabricated report of sexual harassment. The question before the court was whether an employer may discipline an employee if the “employer concludes that the employee has fabricated a claim of sexual harassment, or whether such a complaint is insulated from discipline even where, as here, the employer determines it was fabricated.” The Court concluded that under “appropriate circumstances, an employer may discipline or terminate an employee for making false charges, even where the subject matter of those charges is an allegation of sexual harassment.”

COMMENT

In appropriate circumstances, an employer may discipline or terminate an employee for making false charges, even where the subject matter of those charges is an allegation of sexual harassment. The ultimate question is whether the employer’s stated reason for the discipline (i.e., that the employee was untruthful during an investigation) was perpetual or whether there is other evidence that as a whole supports a reasoned inference that the challenged action was the product of discriminatory or retaliatory animus.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/B226685.PDF](http://www.courtinfo.ca.gov/opinions/documents/B226685.pdf)

This content is provided for informational purposes only. The content is not intended and should not be construed as legal advice.

Visit our [website](#) for a fully searchable [archive](#) of past editions of the Weekly Law Resume and other Low, Ball & Lynch publications.

The Weekly Law Resume TM is published fifty-two times a year, and is a complimentary publication of Low, Ball & Lynch, Attorneys at Law, a Professional Corporation, with offices in San Francisco and Monterey, California. Information regarding this and other Weekly Law Resume TM articles is available at www.lowball.com.

San Francisco Office

505 Montgomery Street, 7th Floor | San Francisco, CA 94111 | Phone: 415-981-6630 | Fax: 415-982-1634

Monterey Office

2 Lower Ragsdale Drive, Suite 120 | Monterey, CA 93940 | Telephone: (831) 655-8822 | Fax: (831) 655-8881

Web: www.lowball.com