

ORIGINAL
IN THE OHIO COURT OF CLAIMS

FILED
COURT OF CLAIMS
OF OHIO

WILLIAM RUSSELL
Plaintiff

v.

CLEVELAND STATE UNIVERSITY
Defendant

and

STEVEN LISS
Plaintiff

v.

CLEVELAND STATE UNIVERSITY
Defendant

Case Nos. 2013-00138 and
2013-00139

2014 DEC 22 PM 4: 22

Judge Patrick M. McGrath
Magistrate Holly T. Shaver

CLEVELAND STATE UNIVERSITY'S
MEMORANDUM IN OPPOSITION TO
MOTION IN LIMINE

Steven Liss and William Russell have filed a motion to exclude any reference by Cleveland State to their skills and abilities. That motion—which cites no case law—rests entirely on two questions and answers they have extracted from their attorney's deposition of James Drmek:

Q [Mr. Griffin]: Now, you talked about a variety of concerns relating to Steve and Bill today. And we've talked about a whole bunch of different issues which you believe are . . . negative instances. Did any of those impact *your decision* to terminate Steve Liss or Bill Russell?

A [Dr. Drmek]: No.

Q: Did any of those concerns impact *CSU's decision* not to rehire or to find new jobs for Steve Liss or Bill Russell?

A: No. I . . . think if Steve would have come into the Skype interview for the Assistant Dean job and had a kick-ass vision for Student Engagement that he potentially could have got that job.

(Drmek Dep. at 248-249) (emphasis added).

ON COMPUTER

When carefully parsed, those two questions and answers reveal much. For example, Dr. Drnek had “a variety of concerns” about “a whole bunch of issues” relating to Mr. Liss’s and Mr. Russell’s job performance, though he did not “terminate” either of them because of those concerns. Also, though Dr. Drnek was responsible for the reorganization that resulted in their termination, he was not responsible for their inability to find new positions at Cleveland State. As this Court knows, Mr. Russell could have “bumped” into a new position, but he declined to do so; and the search committees that considered Mr. Liss’s half-hearted applications for positions that the reorganization created determined that others were better suited for those positions. What those two questions and answers do not reveal—but the remaining 270 pages of Dr. Drnek’s deposition do reveal—is this. First, Cleveland State’s “concerns” about their job-related “issues” *were one reason for the reorganization itself*. (Drnek Dep. at 239-242). And second, Dr. Drnek would never have placed Mr. Liss into a new leadership position because, among other things, Dr. Drnek had already asked him to assume additional responsibilities, and he refused. As Dr. Drnek put it, “He made it perfectly clear. And so I didn’t feel the need to go back to him a second time. You know, I don’t know . . . anybody in my position that would have done that.” (Drnek Dep. at 207)

In short, Mr. Liss’s and Mr. Russell’s past job performance was one of the factors that led to the reorganization, and their past job performance was undoubtedly a factor in Mr. Liss’s inability to obtain one of the positions for which he interviewed. But that decision fell to others, and their reasons are theirs to tell. As the Tenth District Court of Appeals has explained, there is “no authority for the proposition that all members of a hiring committee must have the same opinions about candidates, lest pretext be inferred.” *Knepper v Ohio State University*, 2011-Ohio-6504 at ¶22. And there is no authority for censoring witness’s thoughts and perceptions of discrimination plaintiffs’ skills and abilities either.

Respectfully submitted,

MICHAEL DE WINE

Ohio Attorney General



RANDALL W. KNUTTI (0022388)

AMY S. BROWN (0079650)

EMILY M. SIMMONS (0082519)

Assistant Attorneys General

Ohio Attorney General's Office

Court of Claims Defense Section

150 East Gay Street, Floor 18

Columbus, OH 43215

T: (614) 466-7447 | F: (614) 644-9185

Randall.Knutti@OhioAttorneyGeneral.gov

Amy.Brown@OhioAttorneyGeneral.gov

Emily.Simmons@OhioAttorneyGeneral.gov

**COUNSEL FOR DEFENDANT,
CLEVELAND STATE UNIVERSITY**

CERTIFICATE OF SERVICE

On December 22, 2014, I sent a copy of this document via electronic mail to Plaintiff's Counsel: Mark Griffin (mgriffin@tpgfirm.com) and Sara Verespej (SVerespej@tpgfirm.com).



RANDALL W. KNUTTI (0022388)
Principal Assistant Attorney General