

PITT, DOWTY, McGEHEE & MIRER, P.C.

VII.

positive and negative factors considered in evaluating cases

In selecting cases to be pursued, we evaluate the strengths and weaknesses of each case presented to us. The selection process can occur within a relatively short period of time (immediately after the first consultation), but more likely after several meetings and investigative steps. The selection process can take several weeks or months of review or investigation. Personnel files and medical records are reviewed; available witnesses are interviewed; when necessary, legal principles are researched to determine applicability to the case at hand.

The following is a list of recognized "strengths" in cases we handle:

- Long-term employment and documented consistent satisfactory or better performance.
- Coworkers or peers who will support allegations of high performance or discrimination/harassment.

- Evidence of promotions, regular pay increases or other forms of employer recognition of satisfactory performance.
- In psychiatric/stress cases, no significant prior history or psychological disorder or an aggravation of a preexisting condition.
- Likelihood of bias, such as a female claiming harassment working in a predominantly male environment or profession or a female claiming denial of promotion to a position held solely by men.
- "Large" employers (1,000) or an employer with a known history of discriminatory practices.
- In harassment cases, evidence of complaints to employer without appropriate action, or no evidence of inappropriate participation in the events claimed to form the hostile work environment.
- Although professional medical treatment is not required in order to bring a claim for non-economic damages, physicians/psychologists/psychiatrists supporting claim of injury caused by harassment or discrimination is helpful.
- Positive employee traits, including ability to tell a cogent story, likeable personality, high energy, strong community links.
- Probability of high economic damages because employee unlikely to find comparable employment, such as in a case where the employee is older (55 or older), or has a visible disability.
- Evidence of high integrity and honesty in all dealings with employer and peers.

The following is a list of "weaknesses" found in the cases we are asked to review:

- Short-term employment.
- History of job hopping or frequently changing positions.
- Misrepresentations, exaggerations, or inaccuracies in job application or resume.
- Inconsistent record of performance or evidence of poor performance prior to claimed act of discrimination.
- Multiple supervisors have evaluated the claimant as an unsatisfactory performer.
- Coworkers and/or peers will not support claimant's position.

- Prior psychiatric history which the employer may use to explain poor performance or misconduct.
- Physicians/psychologists/ psychiatrists who will not support claimant or cannot clearly link injuries from discrimination to current status.
- Low economic damages because of likelihood to find replacement position.
- Any evidence of dishonesty or lack of integrity.
- In harassment cases, failure to report offensive conduct without rational reason.
- In harassment cases, evidence of participation in the creation of the environment alleged to be hostile.
- Small employers (1-20 employees) with limited assets.
- In disability discrimination cases, temporary or minor physical, or mental conditions which are not recognized as legal disabilities.
- Cases which are not timely or barred by the statute of limitations.