

Koski v. Gainer

United States District Court for the Northern District of Illinois, Eastern Division
October 17, 1997, Decided ; October 17, 1997, Filed; October 22, 1997, Docketed
No. 92 C 3293

Reporter: 1997 U.S. Dist. LEXIS 16511

GLENN KOSKI, et al., Plaintiffs, v. TERRANCE GAINER, et al., Defendants.

Counsel: [*1] For GLENN KOSKI, FRED WINTERROTH, JESSE BEAN, JERRY MYERS, ANTHONY BISHOP, AARON BOOKER, OWEN REEVES, DALE VOLLE, JAMES HARTE, plaintiffs: Kimberly Ann Sutherland, Attorney at Law, Chicago, IL.

For TERRANCE GAINER, HARRY ORR, JOHN REDNOUR, DAVID P SCHIPPERS, RICHARD T MITCHELL, NANCY BEASLEY, FRED E INBAU, JAMES E SEIBER, JAMES REDLICH, STATE OF ILLINOIS, defendants: Paula J. Giroux, Illinois Attorney General's Office, Chicago, IL.

Judges: Harry D. Leinenweber, Judge, United States District Court.

Opinion by: Harry D. Leinenweber

Opinion

ADDENDUM TO SEPTEMBER 29, 1997 MEMORANDUM OPINION AND ORDER

The plaintiff, Glenn Koski, has pointed out the court in its order of September 29, 1997 failed to address the second of his two denial of promotion claims. In his first claim, Koski had sought promotion to the rank of sergeant off of the 1984 promotion list but was passed over in favor of Steven Crudup, an African-American male. Koski was No. 4 on the list and Crudup was No. 10. Koski made claim in this suit that he was denied this promotion because of his race (white). The court did not reach the merits of this claim because the court held that Koski was barred by the statute of limitations. [*2] However he did present in a timely fashion a second claim that he was denied promotion to the rank of master sergeant, when he again was passed over in favor of Crudup.

Koski was promoted to sergeant in 1989. In November, 1993, Crudup and a white male, Fay Meiborg, were appointed acting master sergeants. In February, 1994, another acting master sergeant position became open and Koski received this appointment. However, this position was withdrawn in June, 1994, so Koski returned to the position of sergeant. Shortly

thereafter Crudup and Meiborg received master sergeant appointments.

The captain in District 16 at the time of the 1994 master sergeant appointments was Earl Hernandez. He testified that he had only been in that district since May of 1993 so he relied upon staff recommendations to pick the candidates. He said race had nothing to do with the appointment. He said that the staff was unanimous in urging Crudup over Koski. He also said that he believed that Crudup's seniority over Koski as both sergeant and acting master sergeant was material to the staff decision in Crudup's favor. He also said that Koski transferred out of District 16 before the promotions were made, although [*3] this fact was not determinative.

The documentary evidence showed that Koski, as well as Crudup, had been recommended for promotion by all of District 16's command staff. Moreover the individual rating charts of the command personnel showed that all seven staff members rated Koski over Crudup in all ten specific categories measuring leadership and work skills on which ratings were made. Each rating chart was approved by Hernandez. This seems contradictory to Hernandez' testimony that the staff was unanimous in favor of Crudup. In addition Koski was No. 2 on the 1994 master sergeant promotion list while Crudup was No. 4 (Meiborg was No. 3). The evidence also showed that Koski was senior to Crudup, and had received 5 awards and 73 letters of recommendation compared to Crudup's zero awards and 25 letters of recommendation. Koski had never been disciplined where Crudup had one letter of reprimand in his file. Hernandez specifically recommended Koski for promotion at a time that there were thought to be four positions available. However, the number of master sergeant positions was reduced to three and Koski was the odd man out.

Koski called Lt. William Heintz, who was patrol commander [*4] in District 16 from October 1993 until the end of the year. Heintz testified that Hernandez never asked him for his position on the master sergeant appointments but if he had been asked he would have recommended Koski over Crudup. Koski testified that his decision to seek transfer out of the district was not made until after he had been told by Hernandez that he was being passed over in favor of Crudup. There is a dispute over what exactly Koski was told by Hernandez: Koski says Hernandez said he had to appoint Crudup for affirmative action reasons while Hernandez denied he told him that.

The other reason offered: the seniority of Crudup over Koski as both a sergeant and an acting master sergeant also rings a bit hollow. There was substantial reason to believe that Crudup received the promotion to sergeant over Koski in 1984 for affirmative action reasons. The reason the court declined to apply equitable tolling to Koski's 1984 claim was because the evidence showed he had reason to believe that his failure to receive the appointment was due to considerations of race. With regard to the acting position appointment, the official position of the ISP was that appointment to an acting [*5] position was not considered a promotion but because it would enhance the opportunity for minority candidates to receive promotions, such acting appointments

could "be made with the ISP affirmative action goals in mind."

The court finds by a preponderance of the evidence that Koski was passed over for promotion to the position of master sergeant in 1994 because of his race in violation of Section 1994 and Title VII.

IT IS SO ORDERED.

Harry D. Leinenweber, Judge

United States District Court

Dated: *October 17, 1997*