

EMPLOYMENT**Disability Discrimination — Retaliation****Disciplinary action was linked to union activities, said officer**

VERDICT **\$70,000**
ACTUAL **\$191,458**

CASE Louise Ann Stewart v. Hudson County,
 No. HUD-L-3579-07
COURT Hudson County Superior Court, NJ
JUDGE Mary K. Costello
DATE 7/2/2009

PLAINTIFF
ATTORNEY(S) Paula M. Dillon, Krumholz Dillon, P.A.,
 Jersey City, NJ
 Alan L. Krumholz, Krumholz Dillon, P.A.,
 Jersey City, NJ

DEFENSE
ATTORNEY(S) Michael L. Dermody, Jersey City, NJ

FACTS & ALLEGATIONS In June 2007, plaintiff Louise Ann Stewart, 36, a Hudson County corrections officer employed at the county jail, was charged with a disciplinary infraction for malingering. In 2006, Stewart, who has been employed at the Kearny facility of the County of Hudson Department of Corrections since 1996, had suffered a knee injury while on the job, requiring surgery. Surveillance by her employer in December 2006, while Stewart was still undergoing treatment and recovery, revealed her at a strip mall during her workers' compensation leave. She was charged with malingering and fraud, a major disciplinary infraction, but was exonerated of those charges after a formal hearing.

Stewart sued Hudson County for disability discrimination under the New Jersey Law Against Discrimination (NJLAD), alleging her employer had retaliated against her unlawfully.

Plaintiff's counsel argued that the investigation of her that led to surveillance was a pretence and that her supervisors were trying to make a sham case against her on account of her union activities, outspokenness about workplace issues and most significantly, her pending application for promotion to sergeant, a position she had sought since 1999. Stewart's being observed at a strip mall was in connection with a doctor's appointment, said plaintiff's counsel, and not probative of the malingering accusation.

In support of her claims plaintiff pointed to significance in the timeline of the actions taken against her and the discretion exercised in the discipline chosen. The filing of a major disciplinary charge, as opposed to a minor one, automatically eliminated plaintiff from further consideration for promotion pending disposition of the charges. The charges of malingering and fraud were not filed against her until June 2007, just before

action had to be taken on her latest promotion application (she had been passed over several other times), and the internal department documents revealed that she was being investigated for many months prior to the filing of charges. Plaintiff also pointed to another disciplinary proceeding brought against her during the relevant time period and during which she had a promotion application pending when her superiors elected to charge her with major rather than minor infractions.

The defense maintained that plaintiff was a malingerer and fraud who was "faking injuries." The prosecution of the charges against her was delayed and hindered by damage and "screw-ups" with the surveillance video tape, said defense counsel. The actions taken against plaintiff were within managerial discretion and were not in retaliation, counsel maintained.

INJURIES/DAMAGES *emotional distress*

Plaintiff claimed that she was entitled to the salary differential she would have enjoyed had she not been denied the promotion to sergeant. She also advanced statutory claims for emotional distress, although no specific medical evidence was advanced in support of the emotional distress claim.

RESULT The jury determined that plaintiff proved by a preponderance of the evidence her claims under NJLAD and the workers' compensation law's prohibition against retaliation. A damage award of \$70,000 was returned that consisted of \$67,000 in economic damage (approximating the wage differential had she been promoted to sergeant) and \$3,000 for emotional distress.

LOUISE ANN STEWART \$67,000 future lost earnings
 \$3,000 emotional distress
 \$70,000

TRIAL DETAILS Trial Length: 10 days
 Trial Deliberations: 3 hours
 Jury Vote: 6-1 cause of action; 7-0
 economic damages; 6-1 emotional distress
 damages
 Jury Composition: 4 male, 3 female

POST-TRIAL The plaintiff made a post-verdict application for statutory attorney fees and costs and was awarded \$121,458, an amount that included the full amount of fee application and a 20 percent enhancement.

Hudson County's motion for a new trial was denied. The verdict is on appeal.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. No comment on the article was received from defense counsel.

—Jon Steiger