

## Company can refuse to rehire a former drug addict who was dismissed for violating company policy

The U.S. Supreme Court recently ruled that an employer can refuse to rehire a recovered drug addict who was dismissed for violating company policy.

### The Facts of the Case

Joel Hernandez worked for Hughes Missile Systems (which later became Raytheon Co.) for 25 years. On July 11, 1991, Hernandez' behavior at work suggested that he was under the influence of drugs. He submitted to a drug test which came back positive for cocaine. Hernandez admitted that he had used cocaine the night before the test. As a result of the test, he was forced to resign. In his employment file, the reason for separation was listed as "discharge for personal conduct (quit in lieu of discharge)."

In January 1994, Hernandez applied to be rehired by Raytheon. He attached two letters to his application: one from his pastor stating that he was a "faithful and active member" of his church, and one from an Alcoholics Anonymous (AA) counselor stating that he was in recovery and attended AA meetings regularly.

Joanne Bockmiller, a Raytheon employee, reviewed Hernandez' application. She pulled his personnel file and discovered that he had been discharged for workplace misconduct. She then rejected Hernandez' application because the company allegedly had an unwritten policy against rehiring employees who were terminated for workplace misconduct.

Hernandez filed a charge with the Equal Employment Opportunity Commission (EEOC) claiming that Raytheon had discriminated against him in violation of the Americans with Disabilities Act (ADA). Hernandez claimed that

Raytheon had given him disparate treatment because of his former drug addiction, a disability under the ADA.

Later, Hernandez added that even if Raytheon had an unwritten no-rehire policy, it still violated the ADA because the policy would have a disparate impact on former drug addicts. Disparate impact claims involve employment practices which appear to be neutral in their treatment of groups of people, but in fact fall more harshly on one group than another.

The District Court granted summary judgment to Raytheon for the disparate treatment claim. The court did not rule on the disparate impact claim because Hernandez had failed to raise that theory in a timely manner.

Hernandez appealed the case. The Ninth Circuit Court of Appeals agreed with the lower court on the disparate impact claim, but disagreed on the disparate treatment claim. The court ruled that Raytheon's neutral no-rehire policy was not a legitimate, nondiscriminatory reason for rejecting Hernandez' application.

Raytheon appealed to the U.S. Supreme Court. The Supreme Court said that the Appeals Court had confused the definitions for *disparate treatment* and *disparate impact* claims. The Supreme Court ruled that Raytheon's no-rehire policy was a legitimate, non-discriminatory reason for refusing to rehire an employee who was terminated for violating workplace conduct rules. The Supreme Court sent the case back for further proceedings consistent with this opinion.

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