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EMPLOYMENT LAW UPDATE

Gardner, Willis, Sweat & Handelman, LLP hopes you find the information in this newsletter helpful. This information is intended to be general in nature and is not a substitute for competent legal advice. Because every issue is unique, we do not recommend that you apply the information in this newsletter without first seeking appropriate legal advice.

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*All inquiries are confidential.*

**Jones v. Valdosta Board of Education, 732 S.E.2d 830 (2012)**

In this matter, Ms. Jones, an older African-American and Muslim media specialist, brought a Title VII discrimination claim against the Valdosta Board of Education ("the Board") after she was passed over for a promotion. The trial court granted summary judgment in favor of the Board and Ms. Jones appealed. Because Ms. Jones established a prima facie case that she was a member of a protected class, as she is a sixty-four (64) year old, African-American, Muslim woman, the burden shifted to the Board to prove that she was not rejected for the position based on her membership in a protected class. The Georgia Court of Appeals cited the United States Supreme Court's decision in Texas Dept. of Community Affairs v. Burdine, 450 U.S., 248 (1981) for the appropriate standard:

"Specifically, an employer facing a prima facie case of discrimination may rebut the presumption of discrimination by producing evidence that the plaintiff was rejected, or someone else was preferred, for a legitimate, nondiscriminatory reason. The defendant need not persuade the court that it was actually motivated by the proffered reasons. It is sufficient if the defendant's evidence raises a genuine issue of material fact as to whether it discriminated against the plaintiff. To accomplish this, the defendant must clearly set forth, through the introduction of admissible evidence, the reasons for the plaintiff's rejection."

The Court of Appeals held that the employer's burden is very light in that it need only produce admissible evidence that would allow the trier of fact to **rationaly** conclude that the employment decision was not motivated by discrimination (emphasis added). The Court agreed with the evidence submitted by the Board and held that the Board had in fact met its burden by establishing that the committee members reviewing the applications found

Ms. Jones was not a good candidate for the job because of her job qualifications and that the person eventually hired for the position was better qualified. Further, Ms. Jones introduced no evidence of discriminatory intent or evidence that race, gender or age bias were the true reasons for her rejection.

**Significance:** When facing a prima facie case of discrimination, an employer can rebut the presumption of discrimination by producing evidence that the plaintiff was rejected, or another person was preferred, for a legitimate, nondiscriminatory reason.

### **Slade v. Butler, 732 S.E.2d 543, 544 (2012)**

Satundra Slade was terminated from her position as a bus driver for the Atlanta Public School System (“APS”). Slade applied for unemployment benefits. APS challenged her application arguing that Slade was fired for violating APS policies and was, therefore, disqualified from receiving benefits under OCGA § 34–8–194(2)(A). In order to disqualify a claimant, the employer must show deliberate, conscious fault on the part of the former employee. The claims examiner with the Georgia Department of Labor (“GDL”) decided in favor of APS.

After a hearing, a GDL hearing officer found that Slade violated APS rules and the claims examiner's denial of benefits was affirmed. GDL's Board of Review and the Superior Court of Fulton County affirmed the decision to deny benefits. Slade's application for discretionary appeal to the Court of Appeals was granted. Slade contends that she did not knowingly disregard APS policies because the policies at issue were either ambiguous or were applied retroactively to her.

Specifically, Slade was terminated for her involvement in two minor automobile accidents, one in 2009 and one in 2010. Following Slade's second accident, APS amended its policy on vehicle accidents. The policy in effect when Slade's two accidents occurred was ambiguous and arguably allowed for two at-fault accidents within a three year period. The amended policy provided that an employee may be terminated for more than one at-fault accident. Slade was terminated for violating the at-fault accident policy. The Court determined that Slade reasonably believed that she was not in violation of the at-fault accident policy at the time her accidents occurred, thus she could not have deliberately violated the APS policy. The Court determined that Slade was entitled to unemployment compensation.

**Significance:** An employer must show, by a preponderance of the evidence, deliberate and conscious fault of the claimant in order to disqualify the claimant from receiving unemployment benefits.

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