

FILED

APR 19 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
B:

No. 29043-3-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

HAROLD DELGADO,

Appellant

vs.

STATE OF WASHINGTON,
DEPARTMENT OF TRANSPORTATION ,

Respondent

APPELLANT HAROLD DELGADO'S REPLY BRIEF

GEORGE FEARING, WSBA # 12970
**LEAVY, SCHULTZ, DAVIS &
FEARING, P.S.**
2415 West Falls Avenue
Kennewick, WA 99336
(509) 736-1330
Attorneys for Appellant Harold Delgado

AMY CLEMMONS, WSBA #22997
**ATTORNEY GENERAL OF
WASHINGTON**
West 1116 Riverside Avenue
Spokane, WA 99201-1194
(509) 456-3123
Attorneys for Defendant State of Washington

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I. ARGUMENT

This brief is written by Harold Delgado to correct errors and misleading statements in the State of Washington's brief.

The State contends that Harold Delgado did not testify to any sexual harassment within three years of his filing suit. To the contrary, Harold Delgado testified that Mark Brewster repeatedly asked him for "blow jobs." Harold Delgado was also present during the fall 2003 management talk of using a woman as a mattress. CP 844.

The State of Washington claims that any discipline meted out to Harold Delgado cannot support a claim for retaliation, since the discipline was for legitimate reasons. Nevertheless, the legitimacy of the discipline should be weighed by the trier of fact.

Harold Delgado complained to the Department of Transportation of the bizarre and offensive behavior of Mark Brewster, including the continuing requests for "blow jobs." CP 881. One day, out of frustration, Delgado told Brewster to drop his pants and he will give Brewster a blow job. CP 880. Brewster's friends reported Delgado and Delgado was reprimanded. CP 880. Delgado considered his comment appropriate

because Brewster continually harassed Delgado with blow job comments and management took no steps to end the comments. CP 880. The jury could conclude that Harold Delgado was wrongly disciplined in response to reporting the misbehavior of management's buddy, Mark Brewster.

Harold Delgado filed a complaint against Max Yager, Tom Lenberg, and Tom Root, with the Department of Transportation Office of Equal Opportunity in August or September 2004. CP 882. Thereafter, Tom Lenberg issued Delgado a reprimand, claiming Delgado was the lead technician on a burn job and the rules had not be followed. CP 882. Nevertheless, Kurt Bald was the acting lead technician, such that the reprimand was baseless. CP 882. A jury could conclude that this discipline was not legitimate and the result of retaliation.

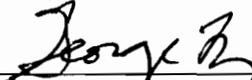
II. CONCLUSION

Issues of fact preclude the granting of summary judgment to the Department of Transportation on Harold Delgado's claim for sexual harassment and retaliation. Delgado respectfully requests that the Court of Appeals reverse the granting of summary judgment and remand the suit for trial.

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DATED this 18th day of April, 2011.

LEAVY, SCHULTZ, DAVIS & FEARING, P.S.
Attorneys for Plaintiff Harold Delgado



GEORGE FEARING #12970

CERTIFICATE OF SERVICE

I, Kristi L. Flyg, hereby certify that on the 18th of April, 2011, I caused to be served a true and correct copy of Appellant Harold Delgado's Reply Brief, by the method indicated below, and addressed to the following:

<input type="checkbox"/>	Hand-delivered	AMY CLEMMONS
<input checked="" type="checkbox"/>	First-Class Mail	ATTORNEY GENERAL OF
<input type="checkbox"/>	Overnight Mail	WASHINGTON
<input type="checkbox"/>	Facsimile	West 1116 Riverside Avenue
		Spokane, WA 99201



KRISTI FLYG
of Leavy, Schultz, Davis & Fearing, P.S.