

Clark College age discrimination case can go to trial

By Staff and wire reports

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OLYMPIA — The state Supreme Court was unanimous Thursday in a ruling that said an instructor's claim that she wasn't hired for a tenure track teaching position at a community college in southwestern Washington can proceed to trial.



The high court said that Kathryn Scrivener had established enough of a case to go to trial, overruling both a Court of Appeals ruling and a lower court's summary judgment in favor of Clark College in Vancouver.

Scrivener sued Clark College for unlawful age discrimination after then-president R. Wayne Branch hired two applicants under the age of 40 for the English Department positions that she had applied for in 2006. Scrivener argued that she had met all of the qualifications for the positions and that the president's previously publicly stated intentions to hire younger faculty was among comments that indicated an underlying bias against her application. Scrivener was 55 at the time.

The college countered that 74 percent of its workforce was age 40 or over, the court wrote, and that the hired candidates were a better fit.

Washington's Law Against Discrimination prohibits employers from denying employment based on age if the person is between the ages of 40 and 70, the court wrote.

Scrivener started as an adjunct instructor at the two-year college in 1994, and was hired as a full-time, temporary English instructor in 1999. The court noted that her one-year contract was renewed every year after that.

"The college articulated ambiguous reasons for not hiring Scrivener," the court wrote. "It argued that the other candidates were clearly qualified and were the 'best fit' for the college and department. These are vague descriptions."

The high court noted that the burden of proof is on the plaintiff to prove that discrimination was a substantial factor, but said that Scrivener should be given the opportunity to make her case in court.

"Taken together, the evidence presented by Scrivener creates a genuine issue of material fact concerning whether age was a substantial motivating factor in Clark College's decision not to hire Scrivener," the court wrote. "The parties presented reasonable but competing inferences of discriminatory and nondiscriminatory intent. Therefore, a jury should weigh the evidence."

A spokesman for Clark College said he could not comment on pending litigation.

Sue-Del McCulloch, Scrivener's attorney, said the court's ruling was important because it clarified that employees didn't need to disprove all legitimate reasons that an employer might have for an adverse employment decision, only that discrimination was one of them.

"The purpose of the law against discrimination is to eliminate and prevent discrimination in the workplace," she said. "It's to be interpreted broadly."

The opinion was authored by Justice Charles Wiggins, who was joined in the ruling by Chief Justice Barbara Madsen, Justices Charles Johnson, Susan Owens, Debra Stephens, Steven Gonzalez, Sheryl Gordon McCloud, and Justices Pro Tem Marlin Appelwick and Ann Schindler.

The Associated Press and Columbian staff writer Paris Achen contributed to this story.

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