

# Zippittelli v. j.c. penney company, inc.

[Business](#), [Employment](#)



The plaintiff, who is 63 years old, brought this employment discrimination suit against her employer, J. C. Penney, after the company failed to promote her to the position of shift operations manager at the company's Moosic, Pennsylvania Customer Service Center. She alleged violations of the Age Discrimination in Employment Act Title VII of the Civil Rights Act of 1964. She brought these claims against both the company and the PHRA claims against her supervisor at the Moosic center, James Johnson. She was the first associate hired at the new Customer Service Center in Moosic.

James Johnson became personnel manager at the facility in March 1990. Johnson was promoted to manager of the call center in March 1999. After Johnson came to the facility, plaintiff frequently sought promotion to a management position. In 1990, she sought promotion to seasonal shift leader, also known as general lead clerk and was denied both positions. Plaintiff contends that after she complained in 1993 or 1994 to a supervisor about her lack of opportunity for promotion, Johnson told two of her co-workers that plaintiff would " never be promoted while he was there. This template is formatted according to APA Style guidelines, with one inch top, bottom, left, and right margins; Times New Roman font in 12 point; double-spaced; aligned flush left; and paragraphs indented 5-7 spaces.

The page number appears one inch from the right edge on the first line of each page, excluding the Figures page. The promotion decision about which plaintiff complains came in 2004. In the summer of that year, plaintiff applied for the shift operations manager job after Johnson informed her it had become available. (Twomey, 2010, pg. 27) At the time, she was working as a general lead clerk in the Call Service Center. (Twomey, 2010, pg. 527) She

was one of four women all of whom had the same job title at the time who applied for that job. (Twomey, 2010, pg. 527) The candidates submitted resumes, and underwent telephone interviews with a recruiter from J. C. Penney's corporate office in Dallas, Texas.

These telephone interviews had not previously been part of the promotion process at the company. Johnson then interviewed the candidates, determining that three of the candidates, including the plaintiff, were qualified for the position. Plaintiff concluded during the interview that she would get the position, believing that Johnson had already decided which candidate to hire. Johnson then ranked the three candidates, making plaintiff his third choice. Patti Cruikshank was Johnson's first choice, and after he consulted with his supervisor, J. C. Penney hired Cruikshank as shift operations manager. (Twomey, 2010, pg. 527)

The Plaintiff blamed her age for her lack of success in seeking the promotion and told her supervisor, Anita Applegate Benko, of this suspicion. (Twomey, 2010, pg. 27) This supervisor asked her how old she was. When Benko found out she was 63, she said she would " probably not" get the position. Plaintiff made no formal complaint of age discrimination immediately after hearing this comment. She did file a complaint of age discrimination with the Equal Employment Opportunity Commission in 2004, however. She received a right to sue letter from the EEOC in 2005. (Twomey, 2010, pg. 528) After plaintiff filed her lawsuit, she participated in a deposition. In that deposition, plaintiff contended that defendants did not promote her in 2004 because of her age.

She admitted, however, that she did not think she had been denied the promotion because of her sex. 1. If a conversation that an employee had with her supervisor about applying for a promotion results in a question about age and a response by the supervisor when she found out that the applicant was 63 that the applicant would “ probably not” get the position, coupled with the fact that the applicants had better performance evaluations than the younger woman who was awarded the position, would not a reasonable layperson in the position of the applicant think that she had been discriminated against because of age? The Plaintiff made no formal complaint of age discrimination immediately after hearing this comment, (Twomey, 2010, pg 527) The Plaintiff contends that she has direct evidence of the discrimination in the comment made by Anita Benko that she would “ probably get a job after plaintiff revealed to Benko her age ( Twomey, 2010, pg 528).

The discrimination was blatant in this case. The Age Discrimination in Employment Act prohibits discrimination against an individual over age of 40 with respect to “ compensation terms, conditions, or privileges of employment, because of an individuals age. Twomey, 2010, pg 528) 2. Was the fact that the plaintiff had better performance evaluations than the younger worker promoted to the job evidence of discriminatory intent because of age? • The fact that Anita said that the plaintiff will probably get job with the fact that the plaintiff had performance evaluation than the younger woman awarded the promotion led the plaintiff to expend emotional and financial recourses pursuing this ADEA claim in federal court.

Twomey, 2010, pg. 525) However, when analyzed by the court under a “ direct evidence of discrimination “ theory and under the McDonnell Douglas model, she had no case. (Twomey, 2010, pg. 525) 3. Was Benko’s remark that the plaintiff would “ probably not get the job” when the plaintiff revealed her age sufficient evidence for a jury to find that the defendant’s stated reasons served as a pretext to hide a discriminatory practice? The fact that the discriminatory practices started in the when Johnson became a manager. To prove age discrimination, an employee must show that the employer's intent was to discriminate on the basis of age.

This intent can also be proved if the employer has treated other persons in the same age range unfairly. Good question. Few employers admit that they discriminate against applicants or employees. Experience shows, however, that employers still leave plenty of fingerprints.

#### References

<http://www.fklaborlaw.com/faqs/employment-law-discrimination-eeoc.html>