

# BNA Daily Labor Reporter

## *Sexual Harassment*

### **Failing to Investigate Harassing Texts, Touching Costs National Guard \$231,425**

*Rouleau v. McKinley*, EEOC, No. 531-2012-00204X, 2/28/13

**Key Holding:** Former National Guard technician awarded \$231,425 for emotional distress caused by co-worker's continuing harassing conduct, agency's failure to remedy situation.

**Key Takeaway:** Federal agencies are required under EEOC regulations to promptly investigate employees' allegations of harassment and discrimination; noncompliance results in default judgment against agency.

By Anne A. Marchessault

A former National Guard technician will receive \$231,425 in damages after the agency failed to address her sexual harassment complaints against a co-worker, an Equal Employment Opportunity Commission administrative judge ruled Feb. 28 (*Rouleau v. McKinley*, EEOC, No. 531-2012-00204X, 2/28/13).

Vikki Rouleau will receive one of the largest federal employment discrimination awards ever to come from the commission, according to her attorney, Josh Bowers, because of the severity of the emotional stress the harassment caused.

Bowers, in Silver Spring, Md., told BNA March 13 that Rouleau resigned from her position only after management reduced her role to clerical responsibilities and failed to reprimand or remove the co-worker for making suggestive statements and slapping her buttocks.

It was "obvious management was going to do nothing" to protect Rouleau, Bowers said.

EEOC Administrative Judge David Norken wrote in his Sept. 25, 2012, liability ruling that the "pattern of harassment and reprisal, coupled with her knowledge that the Agency took no action to protect her female colleagues ... from sexual harassment, reasonably lead Complainant to believe that nothing would change and she resigned her civilian-side National Guard Technician position on November 5, 2010."

#### **Changing of Duties Was Continued Victimization.**

Rouleau worked as a civilian technical production controller at the 113th D.C. Air National Guard from 2008 to 2010.

According to Rouleau, she was sexually harassed by co-worker Ronald Owens throughout her employment with the agency.

Owens would sit very close to Rouleau and invent reasons to touch her. When Owens slapped Rouleau on the buttocks in May 2010, she immediately told him to never touch her again and reported the incident to her supervisor.

Owens continually texted and called Rouleau's personal phone for reasons not related to work. He once followed her car on the way home from work and texted her to suggest they get drinks. Rouleau ignored the message.

On June 8, 2010, Rouleau met with the agency's EEO director to report Owens's acts of sexual harassment.

The agency then removed Rouleau from her normal production control and quality assurance duties and gave her file clerk duties normally assigned to entry level technicians.

Rouleau learned around this time that female co-workers had experienced similar sexual harassment and discrimination at the agency.

She ultimately resigned Nov. 5 of that year because she continued to have frequent contact with Owens and came to the conclusion that the agency would not take effective action to protect her.

The agency did not discipline Owens until after Rouleau resigned, nearly six months after she first complained about the harassment.

“Six months was far too long a period of time to take to take the minimal action of a reprimand,” Norken wrote Sept. 25.

Because the EEOC has ruled that a single incident of physical contact is sufficiently severe to establish a hostile work environment, Norken found that the agency subjected Rouleau to sexual harassment under Title VII of the 1964 Civil Rights Act.

“However,” he wrote, “the finding a pattern of harassment in this case does not rely on a single egregious physical contact, though such contact did occur.”

“It also relies on a long series of events where in nearly every instance, Complainant made clear that Owens's advances were unwelcome,” he said.

Norken concluded that the agency was liable for Owens's actions because it did not reprimand him until after Rouleau resigned, and it “continued to victimize” Rouleau by assigning her clerical duties.

“These were explicit signals that the Agency would do nothing effective to end the harassment, did not place Complainant in the same position she would have been in had the harassment never occurred, and lead to her resignation,” he wrote.

### **Aftereffects of Harassment Continue.**

The \$231,425 damages award reflects the extent of emotional stress Rouleau suffered because of the harassment, attorney Bowers said.

The judge noted in the damages ruling that when Rouleau's normal duties were taken away and replaced with clerical duties, she felt she was being punished for complaining. "She felt that her career was over," he wrote.

Rouleau now works in a lower graded position with the Navy.

"She makes sure her door is open and chooses not to be alone with men at work," Norken said. "She invites another woman along when she needs to meet with a man or men because she fears they will take advantage of her," he added.

The award includes \$37,260 in damages for three years of future psychiatric and psychological services and antidepressant medication, as determined to be necessary to address the severity of Rouleau's emotional stress.

The EEOC also ordered the agency to provide EEO training to its EEO director and sexual harassment training to Owens.

Once the commission rules on attorneys' fees, the agency may appeal the decision to the commission's Office of Federal Operations.

Calling the National Guard's slow and inadequate response to Rouleau's allegations of sexual harassment "outrageous," Bowers said he and all former agency employees he represents will persist "until justice is achieved."

Anthony M. Sanchez of the National Guard Bureau in Arlington, Va., represented the agency. He did not respond to a request for comment.

*By Anne A. Marchessault*