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MSHA didn't fire official in sex case

By R. G. Dunlop
rdunlop@courier-journal.com

The U.S. Mine Safety and Health Administration refused to fire or even transfer a supervisor in its Madisonville office who sexually harassed a subordinate, creating an “unlawful, hostile work environment” for her, according to a lawsuit and other documents filed in federal court in Louisville.

Instead, the lawsuit contends, MSHA punished Robert Gray by suspending him for two weeks without pay and then giving him another job — one he had long coveted — in the same office and with a comparable salary.

As a result, according to the lawsuit filed in U.S. District Court last week by Heather Smith, Gray's victim, he “was actually rewarded for his sexual harassment” while she was punished with continued, regular contact with him.

The U.S. Labor Department began an investigation of Gray after Smith complained about him in June 2008.

In a 22-page report issued last May, Ramon Suris Fernandez, director of the department's Civil Rights Center, concluded that Smith was a credible witness. It said Gray was guilty of harassing Smith with comments and actions that were “very sexual in nature,” creating a hostile work environment.

The report recommended no specific damages for Smith or sanctions against Gray.

Reached by telephone this week, Gray refused to discuss his conduct.

“I don't know anything that you're talking about. I have no comment on anything,” he said before hanging up.

According to Fernandez's report, however, Gray conceded to investigators that his remarks “look brutal in black and white,” and that “some of” them were inappropriate and “not Christ-like.” He also said he willingly accepted his two-week suspension without pay because he was ashamed of himself ... embarrassed and humiliated.”

MSHA district supervisor Carl E. Boone II could not be reached by telephone but said in an e-mail response to a reporter's question: “This is a legal issue and I have no comment.”

An MSHA spokeswoman in Washington also declined comment, saying the agency does not discuss pending litigation or personnel matters.

Smith's attorney, Tony Opegard of Lexington, said he had told his client not to discuss the case.

But according to Fernandez's report, Smith told investigators that she found Gray's conduct highly offensive and that it had caused her "extreme emotional distress," resulting in panic attacks, affecting her ability to sleep and making her dread going to work.

She sought counseling, and was prescribed medication for anxiety and depression that she said were caused by Gray's harassment.

Smith still works as an MSHA physical science technician, weighing and testing coal-dust samples taken underground and calibrating and maintaining laboratory equipment.

Gray, who was the district's health supervisor when the harassment occurred, was her boss. He is now the district's conference litigation representative, meeting with mine operators and miners' representatives to discuss health and safety matters.

According to Fernandez's report, Gray, who is married, acknowledged making comments to Smith that included encouraging her to wear a see-through dress to work, asking to see pictures of her in a bikini and inquiring after a grueling workday whether she gave massages.

The report, a copy of which was attached to Smith's lawsuit, said Gray also conceded to investigators that he had a nude photograph of himself on his cell phone. But he denied Smith's assertion that he had shown it to her.

According to Fernandez's report, Gray said his comments were made in jest, and that he considered Smith a friend, in part because he is adopted and she helped him locate his natural parents.

He said a pledge he made to "take care of" Smith while her husband was on military duty in Iraq was not meant in a sexual way, as she alleged, but was simply intended as a tribute to the soldier's service to his country.

The Labor Department investigation rejected Smith's claim that she suffered retaliation after complaining about Gray. In August the department offered her \$5,043 in compensatory damages, which she has refused as insufficient.

Her lawsuit seeks unspecified compensatory and punitive damages, as well as reimbursement for expenses, including attorney's fees.

"She really felt that the district, the district manager and his superiors in the agency haven't taken the matter seriously enough," Opegard said.

By giving Gray the job he wanted and refusing to transfer him, “they’re really sending a message to employees that ‘we don’t take sexual harassment seriously.’ It’s part of the good ol’ boy culture that still exists in that office.

“So we said, ‘We’ll just go to a jury and let it decide.’ Maybe it’ll take it seriously.”

Reporter R.G. Dunlop can be reached at (502) 582-4227.
