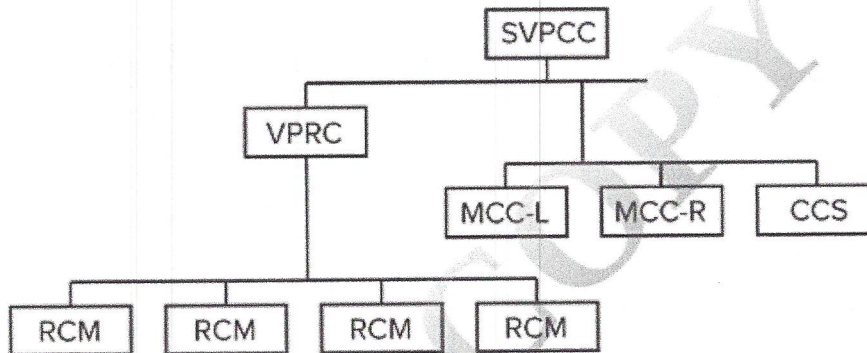


APPLICATIONS

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Age Discrimination in a Promotion?

Best Protection Insurance Company (BPIC) handles a massive volume of claims each year in the corporate claims function, as well as in its four regional claims centers. The corporate claims function is headed by the senior vice president of corporate claims (SVPCC); reporting to the SVPCC are two managers of corporate claims (MCC-Life and MCC-Residential) and a highly skilled corporate claims specialist (CCS). Each regional office is headed by a regional center manager (RCM); the RCM is responsible for both supervisors and claims specialists within the regional office. The RCMs report to the vice president of regional claims (VPRC). The organization is structured as follows:



BPIC decided to reorganize its claims function by eliminating the four regional offices (and the RCM position) and establishing numerous small field offices throughout the country. The other part of the reorganization involved creating five new CCS positions. The CCS job itself was to be redesigned and upgraded in terms of knowledge and skill requirements. These new CCS positions would be staffed through internal promotions from within the claims function.

The SVPCC asked Gus Tavus, a 52-year-old RCM, to apply for one of the new CCS positions since his job was being eliminated. The other RCMs, all of whom were over 40 years of age, were also asked to apply. Neither Gus nor the other RCMs were promoted to the CCS positions. Other candidates, some of whom were also over age 40, were also bypassed. The promotions went to five claims specialists and supervisors from within the former regional offices, all of whom were under age 40. Two of these newly promoted employees had worked for, and reported to, Gus as RCM.

Upon learning of his failure to be promoted, Gus sought to find out why. What he learned led him to believe that he had been discriminated against because of his age. He then retained legal counsel, attorney Bruce Davis. Bruce met informally with the SVPCC to try to determine what had happened in the promotion process and why his client had not been promoted. He was told that there were numerous candidates who were better qualified than Gus and that Gus lacked adequate technical and communication skills for the new job of CCS. The SVPCC refused to reconsider Gus for the job and said that all decisions were etched in stone. Gus and Bruce then filed suit in federal district court, claiming a violation of the Age Discrimination in Employment Act. They also subpoenaed numerous BPIC documents, including the personnel files of all applicants for the CCS positions.

After reviewing the documents and discussing things with Gus, Bruce learned more about the promotion process actually used by BPIC. The SVPCC and the two MCCs conducted the entire process; they received no input from the VPRC or the HR department. There was no formal, written job description for the new CCS position, nor was there a formal internal job posting as required by company policy. The SVPCC and the MCCs developed a list of employees they thought might be interested in the job, including Gus, and then met to consider the list of candidates. At that meeting, the personnel files and previous performance appraisals of the candidates were not consulted. After deciding on the five candidates who would be offered the promotion (all five accepted), the SVPCC and MCCs scanned the personnel files and appraisals of these five (only) to check for any disconfirming information. None was found. Bruce's inspection of the files revealed no written comments suggesting age bias in past performance appraisals for any of the candidates, including Gus. Also, there was no indication that Gus lacked technical and communication skills. All of Gus's previous appraisal ratings were above average, and there was no evidence of decline in the favorability of the ratings. Finally, an interview with the VPRC (Gus's boss) revealed that he had not been consulted at all during the promotion process, that he was "shocked beyond belief" that Gus had not been promoted, and that there was "no question" but that Gus was qualified in all respects for the CCS job.

1. Prepare a written report that presents a convincing disparate treatment claim that Gus had been intentionally discriminated against on the basis of his age. Do not address the claim as one of disparate impact.
2. Present a convincing rebuttal, from the viewpoint of BPIC, to this disparate treatment claim.