

## Family Leave

### Telecom Worker Put Leave Dispute on Hold for Too Long

A telecom worker waited too long to challenge his discharge under the Family and Medical Leave Act, a federal district court ruled.

Judge Thomas E. Johnson of the U.S. District Court for the Southern District of West Virginia April 10 dismissed Kerry Fugate's lawsuit against Frontier West Virginia Inc. even though Fugate filed the lawsuit less than two years after his firing. Federal courts across the country have disagreed about the operation of the FMLA's time limits, but Johnson held the act's statute of limitations began to run when Frontier denied one of Fugate's leave requests more than a year before he was fired.

The ruling doesn't resolve the disagreement among federal courts, but it illustrates the practical importance of the legal issue to employers and employees. An employee who has been denied medical or family leave under the FMLA has to be alert to the possibility that the act's limitations period will begin running from the date of that denial—before the employer takes a major personnel action like a discharge. If that's the case, the employee may face a much shorter deadline for the filing of a lawsuit after a termination than the language of the FMLA would suggest.

**Discharge Followed Absences** According to the decision, Fugate began to experience health problems in 2008. He requested and received leave under the FMLA at least once, and made a request that was denied in December 2013 or January 2014, but he also had several unexcused absences that resulted in disciplinary action by Frontier. The company maintained a "step" program that assigned penalties based on accumulated absences.

Frontier fired Fugate in January 2015, claiming he had an excessive number of unexcused absences. Fu-

gate alleged in his lawsuit that the firing resulted from the company's wrongly denying his FMLA leave request and it therefore interfered with his exercise of FMLA rights.

Under the FMLA, a lawsuit must be filed within two years of an unlawful action; the period is extended to three years where the violation is willful.

However, the U.S. Courts of Appeals for the Seventh and Eighth circuits have held that the limitations period runs from the latest date on which the employer denied a worker's leave request and classified an absence as unexcused. In Fugate's case, the district court said, the lawsuit was filed more than three years after the company last denied an FMLA request, so it was untimely.

Johnson said the Fourth Circuit, which covers West Virginia, hasn't interpreted the FMLA time limit, but he found the Seventh Circuit's ruling in *Barrett v. Illinois Department of Corrections* persuasive. In *Barrett*, the Seventh Circuit said it wouldn't be viable to let an employee delay the filing of a lawsuit until the point where denial of a leave request eventually contributed to a firing. That, the appeals court said, "would hold the limitations period in abeyance indefinitely and revive a stale denial-of-leave claim years later."

Attorneys involved in the lawsuit didn't immediately respond to requests for comment on the decision.

Hoyt E. Glazer in Huntington, W.Va. represented Fugate. Jackson Kelly in Charleston, W.Va., represented Frontier.

The case is *Fugate v. Frontier W. Va., Inc.*, 2018 BL 126399, S.D. W.Va., Civil Action No. 2:17-cv-00559, 4/10/18.

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