STATE OF MICHIGAN

IN THE SUPREME COURT

Supreme Court No: 121361

Court of Appeals No: 223829

Macomb Circuit Court No: 95-3319 CK

SHARDA GARG,

Plaintiff-Appellee,

vs.

MACOMB COUNTY COMMUNITY MENTAL HEALTH SERVICES, a governmental agency of MACOMB COUNTY,

Defendant-Appellant

_____/

121361 reply

RESPONSE TO SUPPLEMENTAL AUTHORITY
SUBMITTED BY DEFENDANT-APPELLANT

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RESPONSE TO SUPPLEMENTAL AUTHORITY SUBMITTED BY DEFENDANT-APPELLANT

Plaintiff-Appellee Sharda Garg submits this response to Defendant-Appellant's submission of supplemental authority filed in support of its Application for Leave to Appeal. The case submitted, West v General Motors Corp, ____ Mich ____ (Docket No 121003, filed July 22, 2003), does ***not*** support Defendant-Appellant's position.

In West, supra, this Court held plaintiff's Whistleblower Protection Act claim was properly dismissed on defendant's motion for summary disposition for failure to state a genuine issue of material fact as to causation. Plaintiff-Appellant herein has no disagreement with this Court's articulation of the elements of a prima facie case of retaliation, nor with the proposition that a plaintiff must demonstrate a causal link between the protected activity and the adverse employment action. However, the evidence in the case at bar presents a totally different quantum of proof than the factual showing in West. While the West plaintiff could not demonstrate any relationship, other than a temporal one, between his protected activity and his discharge, Mrs. Garg proved at trial that the continuous denials of her attempts to obtain promotions were influenced by her protected activities (opposing sexual harassment by Donald Habkirk, her supervisor's supervisor, and filing a grievance claiming discrimination on the basis of national origin and color).

In West, plaintiff's discharge occurred 7 months after he called the police to report an assault by a co-worker. However, only 3 months before discharge plaintiff misrepresented the number of hours he had worked, a repeat offense for which he had previously been disciplined, triggering an investigation that culminated in his discharge. By contrast, Mrs. Garg had an exemplary work record and was never disciplined, but her performance rating was downgraded days before her first promotional opportunity following her opposition to sexual harassment.

Moreover, the evidence revealed that defendant made promotional decisions subjectively, with job qualifications being waived for some applicants but enforced for plaintiff. Mrs. Garg demonstrated this manipulation resulted in other employees being promoted instead of her.

When the West plaintiff told his two supervisors that he had called the police, one reacted nonchalantly while the other's reaction could not be discerned. In the instant action, after Mrs. Garg opposed Habkirk's sexual harassment by slugging him, his attitude toward her changed immediately to one of clear displeasure, and he became quite cold toward her.

Plaintiff's supervisors in West were not involved in the decision to discharge him, and the persons investigating his false time records were unaware that he had called the police. In Mrs. Garg's case, Habkirk remained her superior through the time of trial. He received copies of her applications for promotional positions, participated in at least some of Mrs. Garg's interviews for promotions, and, as Director of the agency, gave final approval to all promotional decisions. Moreover, he lied in his testimony about his involvement in promotional decisions as to Mrs. Garg.

The proofs adduced at trial demonstrate additional distinctions between West and the case at bar. Because the evidence clearly linked Mrs. Garg's protected activities to defendant's continuous rejection of her promotional efforts, Plaintiff-Appellant urges this Court to reject the pending Application for Leave.

RESPECTFULLY SUBMITTED,

Dated: September 3, 2003

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