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Court Ruling is Mixed on Sex Harassment

By Stephen Henderson and Larry Fish, Inquirer Washington Bureau

[Washington, DC] – The Supreme Court gave a modest lift yesterday to employees who quit over intense sexual harassment and then sue, but also said it should be easier for employers to defend themselves against such litigation.

The 8-1 ruling means that Nancy Drew Suders, a Fulton County woman who said she quit a job with the Pennsylvania State Police after enduring a barrage of lewd comments and gestures, can take her case to a jury. But the state will be permitted to rebut Suders' allegations with evidence of its own policies against sexual harassment and Suders' failure to take advantage of them.

The mixed decision had both sides claiming victory yesterday, and looking forward to their day in court.

"We're pleased," said Suders' attorney, Don Bailey of Harrisburg. "We're back in federal District Court. We'll get a chance to present our case to a jury."

Acting Attorney General Jerry Pappert said the court acted in the state's interests.

"This is a precedent-setting decision that will ensure fairness in the workplace for both employees and employers," Pappert said. "Employers who create the proper procedures for handling inappropriate behavior will not be punished if an employee refuses to use those procedures."

The case began with Suders' five-month tenure as a dispatcher in the McConnellsburg barracks. She says her supervisors' constant torments made work unbearable for her. One would talk about bestiality every time Suders entered his office, she said. He told another of Suders' bosses, in front of Suders, that young girls should be taught how to give oral sex, she said. And she said a third supervisor constantly grabbed his genitals and shouted a comment inviting oral sex.

When Suders' supervisors accused her of stealing files from an office, she quit, saying she couldn't take it anymore.

Had Suders claimed sexual harassment and been fired, a connection between her dismissal and the allegation would have been presumed if she sued. But because she quit,

she had to prove that the harassment had created a “hostile work environment” so bad that any reasonable person would’ve resigned.

Suders’ initial suit was thrown out by a federal court that said she hadn’t proved her case. An appeals court sided with her and went further to say the police department couldn’t defend itself by pointing to its sexual-harassment policy and Suders’ failure to take advantage of it. The Pennsylvania attorney general – backed by the Bush administration and the U.S. Chamber of Commerce – appealed the case to the Supreme Court.

Justice Ruth Bader Ginsburg, writing for the court, said people such as Suders should qualify for the same rights as employees who allege sexual harassment and have been fired. But the court also reversed the appeals court’s decision about the state’s ability to defend itself.

Suders had contact with the police department’s equal-opportunity officer but never followed up to make a formal claim. The state now will be able to offer that evidence – and proof of the extensive nature of its sexual-harassment policies – as a way to say the department isn’t responsible for the harassment Suders endured.

The ruling is on legally narrow grounds, but its support for Suders’ claims could reshape the way many employers handle sexual-harassment policies and complaints.

Justice Clarence Thomas was the lone dissenter from the ruling, saying it went too far in expanding employer liability. Thomas, a former chair of the Equal Employment Opportunity Commission, said employers should be held responsible only when they were negligent in permitting harassment to occur.

Suders’ suit will take place against the backdrop of an ongoing flap over allegations of widespread sexual harassment in Pennsylvania’s state police barracks. A Philadelphia man is suing state police officials, alleging that they created a culture that allowed sexual harassment and misdeeds to flourish. His allegations sparked an inquiry into the department last year by Gov. Rendell.

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