

MEMORANDUM

March 10, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: MILLICENT L. ROLON
Principal Deputy County Counsel
General Litigation Division

RE: **Gregory Miller v. County of Los Angeles, et al.**
Los Angeles Superior Court Case No. BC 310343

DATE OF
INCIDENT: March 6, 2001

AUTHORITY
REQUESTED: \$24,000

COUNTY
DEPARTMENT: Probation Department

CLAIMS BOARD ACTION:



Approve



Disapprove



Recommend to Board of
Supervisors for Approval



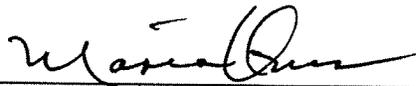
ROCKY A. ARMFIELD

, Chief Administrative Office



JOHN F. KRATTLI

, County Counsel



MARIA M. OMS

, Auditor-Controller

on March 21, 2005

SUMMARY

This is a recommendation to settle for \$24,000, a lawsuit brought by Los Angeles County Probation Department employee, Gregory Miller, who alleges that he was subjected to physical disability discrimination and retaliation in violation of the Fair Employment and Housing Act ("FEHA").

LEGAL PRINCIPLES

It is a violation of FEHA for an employer to discriminate against an employee based upon a disability or to fail to provide a reasonable accommodation for an employee with a known disability unless the accommodation would cause the employer undue hardship.

It is unlawful to retaliate against an employee who has complained about FEHA violations or who has filed a workers' compensation claim.

When an employee prevails in a lawsuit brought under the FEHA, the employee is entitled to an award of attorney fees.

SUMMARY OF FACTS

Gregory Miller is a Deputy Probation Officer II, and has been employed by the Los Angeles County Probation Department since 1985. In 2000, Mr. Miller began working as a Deputy Probation Officer II/Residential Treatment at Camp Mendenhall in Lake Hughes. On November 1, 2000, the Probation Department received permanent work restrictions for Mr. Miller for a 1994 back injury. These work restrictions were not forwarded to Camp Mendenhall until March 1, 2001. Thereafter the Probation Department determined that the permanent work restrictions were not compatible with Mr. Miller's job assignment at Camp Mendenhall. On March 6, 2001, Mr. Miller was placed on administrative leave due to his permanent work restrictions. He remained on leave until September 7, 2002.

Mr. Miller alleges that from March 6, 2001 to September 7, 2002, he was subjected to disability discrimination and denied reasonable accommodation in his position at Camp Mendenhall. He alleges that he was able to perform the essential duties of his position, but was not offered reasonable accommodation for his disability. Mr. Miller further alleges that after he complained to his supervisor about the preferential treatment in job assignments received by his colleagues, he was placed on administrative leave.

Mr. Miller was paid 100 percent of his salary from March 2001 to March 2002. In February of 2002, he filed a Complaint with the Department of Fair Employment and Housing. In April of 2002, Mr. Miller declined a light duty position offered by the Department. From March 2002 through September 2002, Mr. Miller utilized his vacation and sick time and was paid a salary which was approximately 50 to 65 percent of his DPO II salary. Following the receipt of reduced work restrictions in August of 2002, which the Department could accommodate, Mr. Miller was returned to work and assigned to Camp Glen Rockey as the Special Housing Unit Coordinator in September of 2002.

The Department maintains that there was a legitimate business reason for not returning Mr. Miller to work as the Department did not have an available position to accommodate his disability. Mr. Miller alleges that the Department was in possession of the medical restrictions for four months, made no effort to accommodate these restrictions and only placed him on administrative leave following his internal complaints.

DAMAGES

Should the matter proceed to trial, we believe the potential damages could be as follows:

Lost Wages	\$ 40,000
Emotional Distress	\$200,000
Attorney fees	<u>\$150,000</u>
Total	<u>\$390,000</u>

The settlement calls for the County to pay \$24,000 to Gregory Miller for all claims, damages, costs, and attorney fees.

STATUS OF CASE

The trial court proceedings in this case have been suspended pending consideration of this proposed settlement recommendation.

The expenses incurred by the County are \$76,950 in attorney fees and \$2,654 in costs.

EVALUATION

This is a case of potential liability. Although we believe the evidence will show that the Probation Department did not retaliate against

Mr. Miller for filing complaints about the Department, a jury could conclude that the Department did not timely and appropriately consider his work restrictions and alternative job assignments and that his medical restrictions were not properly evaluated. If Gregory Miller were to prevail at trial, he would be entitled to an award of attorney fees. If the evidence presented by Gregory Miller is believed at trial, the jury verdict could exceed the proposed recommended settlement amount. Therefore, it is believed that the best interest of the County of Los Angeles would be served by settling this case for \$24,000. The Probation Department concurs in this settlement recommendation.

APPROVED:



GARY N. MILLER
Assistant County Counsel
General Litigation Division

GNM:MLR:eaw