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## EMPLOYMENT DISCRIMINATION CASE REQUIRES JUSTIFICATION FOR JOB QUALIFICATIONS

A rejected job applicant who fails to meet posted job qualifications can still bring an employment discrimination case *if* the person who gets the position fails to meet the same criteria, says the Third Circuit Court of Appeals in *Scheidemantle v. Slippery Rock University*. Under this decision, evidence that an applicant was at least as qualified as the person actually hired, regardless of more stringent job qualifications set forth in the employer's job posting can establish an initial case of discrimination under federal law.

In *Scheidemantle*, a female job applicant did not meet the "years of experience" requirements of two job postings. Unable to find anyone who met these requirements, the employer hired two males who also did not possess this experience. The rejected female applicant sued, claiming that the employer discriminated against her. Relying on case law requiring a discrimination claimant to establish that she possessed the requisite job qualifications, the lower court dismissed the applicant's case solely based on her failure to meet the years of experience requirements. The appellate court reversed, ruling that because the employer lowered the "objective qualifications" for the job when it hired the male applicants, it was these lesser skill sets that established the job qualifications – not the posted requirements. Because factual issues existed regarding whether the

applicant met or exceeded those standards compared to the male applicants, the appellate court found that the case was improperly dismissed.

The import of this decision by the Third Circuit Court of Appeals (which governs New Jersey, Pennsylvania, Delaware, and the Virgin Islands) is that employers may not lower the requirements in favor of one applicant without doing so for all, and later use the higher stated requirements as a legal bar against a claim of discrimination.

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