



DELAWARE

EMPLOYMENT LAW LETTER

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REASONABLE ACCOMMODATIONS

Don't stop believing

by Lauren E. Moak

A brief opinion issued by Delaware's federal district court gives employers a glimmer of hope in cases filed under the Americans with Disabilities Act (ADA). The court indicated that it is still willing to entertain arguments that an employee isn't "disabled" within the meaning of the ADA despite tough new regulations implementing the ADA Amendments Act (ADAAA).

The agony and the ecstasy

Michelle Thomas sued her employer, the Social Security Administration (SSA), alleging disability discrimination, among other claims. Thomas lives in Dover but commutes to Philadelphia for work. She allegedly suffers from paroxysmal positional vertigo and chronic lower back pain, which make it difficult for her to make the commute. As a result, she requested an accommodation under the ADA. Specifically, she sought a transfer to the SSA's Dover office. In all, she was denied five transfers for reasons that aren't disclosed in her complaint.

When Thomas was unable to relocate to a Delaware office, she filed suit, alleging that she was denied a reasonable accommodation. The SSA sought to dismiss the complaint on the basis that she isn't "disabled" within the meaning of the ADA and therefore not entitled to a reasonable accommodation.

Under the ADA, an individual is disabled if she has a physical or mental impairment that substantially limits one or more major life activities. Thomas alleged that she was limited in the major life activity of driving. Relying on case law developed before the ADAAA was passed, the court concluded that driving isn't a major life activity. For that reason, Thomas

isn't disabled within the meaning of the ADA.

Disability under the ADAAA

The ADAAA was passed in 2008. The Equal Employment Opportunity Commission (EEOC) published regulations to implement the ADAAA in March 2011. The regulations direct enforcement bodies to construe the term "disability" broadly and give minimal consideration to whether an individual meets the definition. Instead, the focus should be on determining whether discrimination has occurred.

The language of the regulations led many commentators to fear that it would be virtually impossible to have a case dismissed because an employee wasn't "disabled" within the meaning of the ADA. However, the court's decision in this case indicates that when an employee makes weak claims that don't support a finding of disability, it may still be possible to dismiss the lawsuit at the preliminary stages. *Thomas v. Astrue*.

Bottom line

Claims filed under the ADA continue to be of concern to employers, but there is hope. While legitimate claims of disability are difficult to rebut, it is still possible to have weak claims dismissed in the early stages of litigation.

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