
Older Tenth Circuit Case Provides a Blueprint for Handling ADA

Diane Mason sued Avaya Communications, Inc. for allegedly violating the ADA in failing to accommodate her medically established post-traumatic stress disorder (PTSD). Mason had been a witness to the murder of several coworkers in a workplace massacre in 1986 in another job. Two years later, she was hired by Avaya as a service coordinator and she performed satisfactorily for two years. In 2000, at Avaya, another coworker pulled a knife during a verbal confrontation. Mason learned of it through her coworkers, but did not witness the event herself. She also learned of his alleged threats to “go postal,” a cache of weapons, and his “hit list”. Mason continued to work that week.

When the knife-yielding worker was returned to work after a week’s suspension, Mason called in sick because she was physically and emotionally unable to work with that worker present. She was placed on short term disability, and Mason requested an ADA accommodation for her PTSD. Some of the possible accommodations included relocation for Mason, work at another facility in the same city, or working out of her home. Avaya determined that some of these options were unavailable and the last, working from home, was not a “reasonable accommodation” given her essential duties and the availability of work, and Mason was discharged instead.

In this case, Mason showed she had a legitimate disability. The next step was for her to show that she was able to perform the essential functions of her job, under one or more of the potential accommodations. However, the ADA requires consideration of what the employer considers to be the essential functions of a job. The court said would not “second-guess” an employer’s judgment if and when its description is (1) job-related;

(2) uniformly enforced, and (3) consistent with business necessity. “In short, the essential function “inquiry is not intended to second guess the employer or to require the employer to lower company standards,” said the court, citing *Tate v. Farmland Indus., Inc.* 268 F.3d. 989, 993 (10th Cir. 2001).

Since other circuits had recognized that physical attendance in the workplace can be an essential function of a job, the Tenth Circuit decided that Avaya’s determination that physical attendance at the administration center was an essential function of the position. The job required supervision by others and engaging in teamwork, all other service coordinators worked their entire shift at the center, Avaya had never allowed a service coordinator to work anywhere other than at a service center, and Avaya could not adequately train or supervise a service coordinator without that attendance. Mason disagreed with the company’s assessment of the requested accommodation.

In determining the issues of fact, the Mason court followed a prior holding in *Wells v. Shalala*, 228 F.3d.1137, 1144 (10th Cir. 2000): “an employee’s self-serving affidavit describing the essential functions of his position was, standing alone, insufficient to raise a genuine issue of material fact in light of the employer’s overwhelming evidence to the contrary.” The Mason court found the absence of a mention of physical attendance, teamwork, and supervision from the job description to be “entirely unremarkable”. See ca10.washburnlaw.edu/cases/2004/01/03-6035.htm

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Note, though, that the Tenth Circuit went on to state that *had there been additional, conflicting evidence on the issue of whether or not attendance, teamwork or supervision were “essential functions” then the employer would not have prevailed on a Motion for Summary Judgment.* This case provides instruction for the care with which an ADA investigation and analysis must be conducted and documented.

The following issues must be considered in light of evidence, and the evidence documented, before a decision to terminate is made for a successful defense if an ADA claim is made.

1. The question of disability must be considered by medical evidence and documented; and
2. The question of essential job functions must be considered and documented; and
3. The available accommodations must be considered and documented; and
4. The evidence for and against the conclusion as to whether a condition or function of a job is essential and cannot be accommodated must be supported by evidence that performance of each essential function is job-related, uniformly enforced, and consistent with business necessity.

What This Means For Counties

It is crucial that employers follow the steps outlined in the ADA process methodically, especially given the restoration of a broad definition of disability under the 2009 Americans with Disabilities Act as amended. Counties should always consult with their county attorney regarding specific questions they might have as they manage potential disability accommodation situations.

For more information, contact your CTSI Loss Prevention Representative at 303-861-0507.