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Employment Law Monthly

May 2016

EVIDENCE SUPPORTS DENIAL OF EEOC'S APPEAL ON ADA LOSS IN DISABILITY DISCRIMINATION SUIT

By Emre M. Polat

The Seventh Circuit affirmed a complete victory for AutoZone Inc. ("AutoZone") in a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC") claiming disability discrimination. The Seventh Circuit held that the jury's verdict was not against the weight of the evidence and the district court did not abuse its discretion in denying the EEOC's motion for a new trial. *EEOC v. Autozone, Inc.*, No. 15-1753 (7th Cir. Jan. 4, 2016).

BACKGROUND

AutoZone is a national retailer and distributor of automotive replacement parts and accessories. Margaret Zych ("Zych"), a former employee, began working for AutoZone in 2005 and was promoted to Parts Sales Manager in 2007. In July 2007, Zych sustained a shoulder injury while working and underwent physical therapy for approximately two years. In June 2009, Zych's doctor restricted her from lifting with her right arm any items that weighed more than 15 pounds. Unable to accommodate Zych's physical restriction, a month later, AutoZone terminated her employment.

Consequently, Zych filed a charge with the EEOC alleging that AutoZone violated the Americans with Disabilities Act ("ADA"). The EEOC then filed a lawsuit against AutoZone on Zych's behalf alleging that AutoZone failed to reasonably accommodate Zych's physical lifting restriction and discriminated against her because of her disability in violation of the ADA.

At trial, the EEOC argued that lifting was merely a marginal function of Zych's position and her essential function was

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customer service. AutoZone, however, presented evidence, including testimony from former and current employees who held the same position as Zych, to show that lifting more than 15 pounds was an essential function of Zych's position. The witnesses testified that they moved items that could weigh more than 15 pounds, such as car batteries, cases of antifreeze, motor oil, brake rotors, brake drums, and radiators. The testimony also revealed that lifting these items at the store was a regular part of the employees' job because it involved retrieving items and carrying it to customers' cars. Lifting more than 15 pounds was also necessary when servicing customers, arranging items on shelves, and assisting in unloading items from the delivery trucks. Further, the written job description for Zych's position specifically described the position required "constantly" carrying items up to 50 pounds, but "usually 10 to 20 pounds."

The jury returned a favorable verdict for AutoZone and found that the EEOC failed to prove that Zych was a qualified individual with a disability. Following the verdict, the EEOC moved for a new trial, which was denied by the district court. The EEOC then appealed to the Seventh Circuit seeking to overturn the unfavorable verdict.

DISCUSSION

Under the ADA, an employer cannot discriminate against a qualified employee with a disability. A qualified employee is someone who "with or without reasonable accommodation, can perform the essential functions of the employment position." 42 U.S.C. § 12211(8).

To establish a case of disability discrimination, an employee is first required to show that he/she is a qualified individual with a disability. An employee is qualified if evidence shows that the employee's restriction, based on the disability, would not interfere with the essential functions of the job.

In determining whether the district court abused its discretion by denying the EEOC's motion for a new trial, the Seventh Circuit analyzed the weight of the evidence that was presented to the jury. The Seventh Circuit looked at the sufficiency of the evidence to determine if the jury's verdict was supported and found that a rational jury could have concluded that heavy lifting was an essential function of Zych's position, rather than merely a marginal function. The jury verdict was supported by the testimony of other employees and the job description of Zych's position that requires employees to lift more than 15 pounds to perform the functions of the position. The Seventh Circuit held that there was sufficient evidence for a jury to conclude that she could not perform the essential functions of her job.

The EEOC attempted to argue that AutoZone's "teamwork" concept should have been considered in determining the essential functions of the job because AutoZone encouraged employees to assist each other and could have reasonably accommodated Zych by having other employees assist with lifting. The Seventh Circuit disagreed, finding that the EEOC could have argued this theory to the jury but chose not to do so; even if it had, the Seventh Circuit noted that such an accommodation would not be reasonable because it would essentially delegate the fundamental tasks to others.

TAKEAWAY FOR EMPLOYERS

The decision by the Seventh Circuit provides insight to employers on the importance of the evidence presented to support a decision to deny reasonable accommodation based on a permanent restriction. A well written job description is critical evidence of the essential functions of the job and should properly specify essential job functions. Employers should be mindful, when outlining the essential functions of a position, that such job functions are set forth precisely in the job description and are, in fact, essential to the position and not marginal tasks.

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