

ADA Does Not Require Preference for Disabled in Filling Job Vacancy

By: Jonathan R. Mook

To fulfill your obligations under the Americans with Disabilities Act (“ADA”), you need to attempt to accommodate a disabled employee in performing the essential functions of his or her current position. If that is not feasible, the ADA says that you then must consider transferring the disabled worker to a vacant job he or she can perform. But what if there is a more qualified applicant for that vacant position? Do you need to give a preference to the disabled worker in filling the job opening? Recently, the federal district court in Richmond said “no” in a lawsuit brought against the Sheriff of the City of Richmond. The court held that an employer still may fill the job vacancy by following its policy to hire the best qualified candidate.

The Facts

In 2003, Emily Hall began working as a deputy sheriff for the City of Richmond. Nine years later, she was diagnosed with heart disease, and her doctors implanted an internal cardiac defibrillator and pacemaker to treat her condition and prevent heart failure. Hall’s heart disease prevented her from continuing to perform her duties as a deputy sheriff, and she requested, as an accommodation for her disability, that she be reassigned to a payroll technician job that had become vacant.

Hall possessed the minimum qualifications necessary for the position, which she could have performed notwithstanding her heart problem. However, she was the least qualified of the applicants according to their comparative qualifications under the City’s internal evaluation system. Because the City maintains an official policy of hiring the “most qualified” candidate

for open positions, Hall was not chosen to fill the vacant payroll technician job. With no other vacant positions available, Hall was terminated.

Hall's Discrimination Claim

Hall filed a charge of disability discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC") claiming that she had been discriminated against in violation of the ADA. The EEOC found cause to believe that the City had failed to accommodate Hall's disability by not transferring her to the payroll job, because there was no dispute she was qualified for the vacant payroll position, even if not the most qualified.

When the matter could not be settled informally, the United States Department of Justice sued Richmond Sheriff, C.T. Woody, Jr., on Hall's behalf. In response to the lawsuit, Woody contended that reasonable accommodation under the ADA does not require an employer to violate an otherwise non-discriminatory, "most qualified" hiring policy by transferring a disabled employee to a vacant position for which that employee is only minimally qualified.

The Court Decision

Senior U.S. District Court Judge Robert E. Payne agreed with Woody's reading of the ADA and dismissed the lawsuit against him. In doing so, Judge Payne emphasized that in enacting the ADA, Congress did not intend the Act to operate as an affirmative action statute. Instead, "Congress passed the ADA to eliminate barriers to *equal* opportunity facing disabled Americans, not to grant disabled employees a competitive edge."

Accordingly, Judge Payne held that any preferences necessary in the form of reasonable accommodations are only those required to "level the playing field for disabled employees, nothing more." As the court explained, "the ADA does not require minimally qualified disabled employees to be granted special preferences in hiring over non-disabled applicants." In fulfilling

its obligation to consider reassignment to a vacant position as a reasonable accommodation, an employer need only consider a disabled worker on an equal basis with all other applicants.

United States v. Woody, 2016 U.S. Dist. LEXIS 162231 (E.D. Va. Nov. 22, 2016).

Bottom Line

The extent of an employer's obligation to transfer a disabled employee to a vacant position as a reasonable accommodation has been one of the more unsettled areas of ADA law. Prior to Judge Payne's decision in *Woody*, no federal court in Virginia had directly addressed the issue. The *Woody* decision, therefore, is a ground breaking one, which provides important guidance to employers as to the extent of their ADA obligations.

Significantly, the decision reaffirms the basic principle of the ADA to ensure that persons with disabilities receive equality of opportunity and assistance, in the form of reasonable accommodations, to perform their job duties. The ADA is not a "preference" statute, however, requiring you to prefer disabled individuals over those who do not have disabilities when filling a job vacancy.

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