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INDIANA EMPLOYMENT LAW LETTER

DECEMBER, 1995

SECTION: Volume 5, Issue 12

LENGTH: 945 words

HEADLINE: Mental Illness Poses Challenges Under ADA

BYLINE: Baker & Daniels

BODY:

Marquita Palmer, a caseworker for the Circuit Court of Cook County, was discharged for threatening co-workers and for abusive and profane language. Marquita didn't challenge the fact of her inappropriate behavior but claimed that her problems were mental ones and that the court system had failed to accommodate her disability as required by the Americans with Disabilities Act (ADA). The ADA, of course, is a federal law, so the court found itself in court before Judge Reuben Castillo of the U.S. District Court for the Northern District of Illinois.

Marquita, it seems, had trouble getting along with other circuit court employees. While assigned to traffic court in mid-1992, Marquita received a written warning for "abusive personal and profane statements to a fellow employee." A few months later, she was suspended for 10 days for threatening and swearing at a different employee, Nicki Lazzaro. Shortly after that she was suspended for seven days for "inappropriate and unprofessional" language directed at her supervisor, Clara Johnson.

Upon Marquita's return, she was transferred to the criminal court building at 26th and California and assigned to a different supervisor. This didn't quite isolate Marquita from her former supervisor, Clara Johnson. Several months after the transfer, Marquita encountered Clara in the hallway at 26th and California and this led to a further blowup. As a result, Marquita took an extended leave of absence for outpatient treatment of mental illness.

Marquita's therapist sought to set up a meeting with Marquita's current supervisor, but that did not materialize. This set Marquita off on a rage of telephone calls back to traffic court in which she launched threats and abuses at both Clara and Nicki. This behavior alarmed Marquita's therapist to the point where she arranged for Marquita's involuntary commitment to Michael Reese Hospital. Her diagnosis while at the hospital was delusional (paranoid) disorder and major depression. Marquita remained in the hospital for a few more months following these outbursts. She was notified by the circuit court when her hospitalization ended that her job had ended too. The Americans with Disabilities Act challenges employers' ingenuity in many respects, but perhaps no ADA issue is more perplexing than coping with mental illness. Marquita's case asks how far must an employer go to accommodate the behavior of mentally ill employees? The answer according to Judge Castillo is that the circuit court went far enough. His opinion offers a useful case study of the dilemma.

Was Marquita Disabled? To maintain an action under the ADA, an employee must be disabled. A disability is defined as a physical or mental impairment that

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substantially limits a major life activity. Although Judge Castillo would concede that Marquita's depression is a mental impairment, he was hard-pressed to see how it limited a major life activity. Marquita, he thought, clearly was unable to work with certain individuals Clara and Nicki in particular. But this did not limit her ability to work in general. Marquita had stated, in fact, that she usually got along with people and "never had this problem before."

Was Marquita a Qualified Individual? The ADA defines a qualified individual as a disabled person who, with or without a reasonable accommodation, can perform the essential functions of the job. Judge Castillo concluded that Marquita could handle the substantive aspects of her job but, since she could not do her job in the company of at least two of her co-workers, she was incapable of performing the job she was assigned. Getting along with people was an essential function of Marquita's job, and she failed on that count. So, according to Judge Castillo, she was not a qualified individual with a disability.

Did the Court Reasonably Accommodate Marquita? When the wheels came off at traffic court, the circuit court transferred Marquita to work at 26th and California, quite a distance from traffic court as Chicagoans well know. Judge Castillo called working with Clara and Nicki a non-essential function of Marquita's job. The transfer, he thought, eliminated this non-essential function.

Marquita, though, thought that her employer had failed to provide reasonable accommodation of her illness when it did not meet with her therapist. This non-meeting prompted Marquita's final outburst, which led to her dismissal. In other words, Marquita claimed, the whole thing was the circuit court's fault. Judge Castillo seemed to sense that Marquita had become a little confused. Marquita was fired for bad behavior, not for mental illness. The circuit court had made a reasonable accommodation by moving her away from co-workers that stimulated her personal attacks. This didn't work, but even ADA, Judge Castillo ruled, does not require that the circuit court tolerate behavior that it would not have accepted from an employee who was free from mental illness.

We dwell at length on this case not because it is unique but because it isn't. Judge Castillo accepted the notion that Marquita's behavior was symptomatic of mental illness. Undoubtedly, much erratic, and even dangerous, workplace behavior can be traced to mental conditions that could pass as disabilities under the ADA. In this instance, Marquita was held to a standard of behavior that applies to all employees, disabled or not. Whether this will always be the outcome in ADA cases claiming mental illness is yet to be seen. It is a problem that will test the sanity of employers.

Palmer v. Circuit Court of Cook County, 1995 U.S. Lexis 16072 (N.D. Ill. 1995).

LANGUAGE: ENGLISH

LOAD-DATE: March 29, 1996

LEVEL 1 - 843 OF 1807 STORIES

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Chicago Tribune

October 11, 1994 Tuesday, NORTH SPORTS FINAL EDITION

SECTION: BUSINESS; Pg. 3; ZONE: N; On the law.

LENGTH: 746 words

HEADLINE: SECRETARY WINS AGE-DISCRIMINATION CASE AFTER FIRING

BYLINE: Jan Crawford Greenburg, Bill Crawford, John O'Brien.

BODY:

As a middle-age legal secretary, Christina Tompulis dreaded advancing age. Being a year older was bad enough. Worse, she said the Chicago law firm that eventually fired her in 1991 had it in for older secretaries.

Last week the 59-year-old veteran of lawyer foibles and do-it-yesterday office chores came out a winner, besting her former employer, the firm Schwartz & Freeman, in an age-discrimination case in U.S. District Court.

"I was totally relieved," she said.

After a week of testimony, a jury in the courtroom of Judge Ruben Castillo found in favor of Tompulis, awarding her \$16,400 and deciding she had been a victim of willful bias. That finding could double the damages if Castillo agrees. A hearing on the issue, with briefs due in two weeks, is expected next month.

The jury's verdict, said plaintiff lawyer Denice Gierach of Naperville, "should open the eyes of law firms. They would not treat a client the way they treated (Tompulis)."

Gierach referred to Schwartz & Freeman's contention that her client, a four-year veteran, was fired for poor job performance, even though the firm's written evaluations spoke positively of her.

Defense lawyer Gloria Portela of the firm Seyfarth Shaw Fairweather & Geraldson disagreed. "Schwartz & Freeman," she said, "believes the jury returned the wrong verdict."

Tompulis testified that a member of Schwartz & Freeman told her, "Older secretaries make too much money. The imbalance had to be balanced."

"Because of my age," Tompulis said when asked why she was fired. "My position was given to a younger secretary."

When it was time for raises, she said, she got only \$500 more a year, because "I was told I was earning too much money (\$31,300 with overtime)."

To counter Tompulis, Portela called on Julie Dana, a former Schwartz & Freeman administrator. Dana said favorable remarks in Tompulis' evaluations actually were intended to soften criticism of her.

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"Everybody liked (Tompulis, but) she did have performance problems," said Dana, who supervises 50 secretaries at Mayer Brown & Platt. "She was disorganized. I don't know how she could find things."

For the last three years Tompulis has found employment in what she describes as a productive environment at Gleason McGuire & Shreffler.

Food fight? After the dustup between Judges Ronald Himel and Richard Neville, it's not likely they will again play golf as a twosome.

That's a shame, because they play better together on the links than they box as opponents-if last week's fisticuffs in the judges' lunchroom adjoining the Criminal Courts Building are any indication.

As fellow jurists gawked, the two briefly exchanged punches after splitting a cash prize they had won at a golf tournament. The tiff, according to witnesses, appeared to center on Neville's suggestion to Himel that he repay him for fees Neville had paid to get them both into the tournament. Both are now practicing their swings-at golf balls.

- Assistant U.S. Attys. Therese Cesar and Steven Shobat have served notice they will be leaving the office Dec. 24 to open their own law firm, specializing in civil rights and criminal defense.

"We are both philosophically interested in civil-rights work," the Spanish-speaking Cesar said of herself and Shobat. "We have a tested work relationship."

The first Mexican-American woman to serve as a prosecutor in the U.S. attorney's office in Chicago, starting there eight years ago, Cesar formerly worked in Washington for the civil-rights division of the Justice Department. She began her career as a deputy prosecutor in Lake County, Ind., going to law school after raising six children.

- Assistant U.S. Atty. Matthew R. Bettenhausen, former deputy chief of the general-crimes section and acting chief of appeals, has moved up to associate chief of the criminal division, the No. 2 slot under chief Gary S. Shapiro. A former clerk for U.S. District Judge James F. Holderman, Bettenhausen has handled several high-profile cases in his seven years as a federal prosecutor. They include that of Michael Douglas, a suburban resident who drew an 11-year prison sentence after pleading guilty to a massive pyramid scheme.

- Attorney Charles A. "Pat" Boyle and co-counsel Fred A. Truglio have won a \$2 million jury award for client Carl Cusamano, a mechanical electrician for the Illinois Tollway Authority who was burned in a 1992 explosion at the Highland Toll Plaza in Downers Grove.

LANGUAGE: ENGLISH

LOAD-DATE: October 11, 1994

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Chicago Daily Law Bulletin

October 10, 1994, Monday

SECTION: Pg. 2

LENGTH: 304 words

HEADLINE: Legal secretary wins age-bias suit

BODY:

A federal jury has awarded a \$ 16,800 verdict to a former Schwartz & Freeman secretary after finding that the Chicago law firm fired her because of her age.

The jury found on Friday afternoon that the defendants, including the firm and two of its officials, discriminated against Christina P. Tompulis on the basis of age and that their conduct was willful. Tompulis was 55 when she was fired from the firm in January 1991.

The lawsuit filed on Tompulis' behalf charged that the firm and its administrator, John Cummins, along with Julie Dana, then the firm's personnel coordinator, violated the Age Discrimination in Employment Act of 1967, 29 U.S.C. sec61.

Gloria M. Portela, a Seyfarth, Shaw, Fairweather & Geraldson partner representing the defendants, argued that Tompulis was terminated because of performance deficiencies, not because of her age.

I submit to you that nothing you heard this week supports the proposition that age had anything to do with this," Portela said during closing arguments before a jury comprising five women and three men.

Portela declined comment immediately after the jury returned the verdict, following a four-day trial.

Tompulis' attorney, Denice A. Gierach of Naperville, said she asked the jury to award damages of \$ 22,000 to \$ 25,000 to her client.

U.S. District Judge Ruben Castillo gave the parties about a month to file motions and responses on the issue of willful conduct. Castillo could double the jury's award if he determines the jury's willful-conduct finding was justified, Gierach said.

Tompulis, 59, has worked as a secretary for the Chicago law firm of Gleason, McGuire & Shreffler for the past three years.

The case is Christina P. Tompulis v. Schwartz & Freeman, et al., No. 92 C 7375.

LANGUAGE: ENGLISH

LOAD-DATE: October 11, 1994

LEVEL 1 - 386 OF 1807 STORIES

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Wrongful Discharge Report

December 1996

SECTION: Pg. 5

LENGTH: 631 words

CASE: Garza v. Abbott Laboratories, No. 95 C 3560.

HEADLINE: COURT ORDERS TRIAL ON ADA CLAIMS OF EMPLOYEE UNABLE TO USE KEYBOARD

BODY:

An employee who was fired after she requested accommodation of a nerve condition that restricted her ability to operate a keyboard has been allowed to proceed on claims that her employer retaliated against her in violation of the Americans With Disabilities Act by not considering her suggestions for a split keyboard and/or another position in the company.

U.S. District Judge Ruben Castillo of the Northern District of Illinois found issues of fact with respect to whether the employee was indeed disabled, whether the requested accommodations would have imposed undue financial hardship on the employer, and whether the alleged retaliation she experienced was due to her requests for accommodation.

According to court documents, plaintiff Elizabeth Garza began her job as a customer service administrator with Abbott Laboratories in 1991. Her position required approximately 7.5 hours of keyboarding per day.

When she began to experience pain in her hand, Garza was permitted to take breaks during the work day. Her condition -- diagnosed as interosseous nerve syndrome and reflex sympathetic dystrophy -- worsened to the point where surgery was necessary.

Garza's physician finally concluded that Garza could not perform the essential functions of her present position. He then recommended to Abbott that Garza could continue work if the company supplied an ergonomic reassessment of her work area and a split keyboard, a voice-activated computer and/or a transfer to a new position within the company.

The company declined to investigate any of these suggestions, saying that (1) research on split keyboards had shown that such keyboards would not have allowed Garza to perform the essential functions of her job, i.e., typing 7.5 hours per day; (2) the \$1.4 estimated million cost of integrating voice-activated software at the company was prohibitive; and (3) there were no open positions at Abbott within Garza's restrictions. The company, did, however, steer Garza toward positions outside of Abbott. She was terminated in March 1994.

Granting in part and denying in part Abbott's motion for summary judgment, Judge Castillo rejected the company's argument that Garza was not "disabled" under the ADA. The judge said that she had presented sufficient evidence that she was substantially limited in the major life activity of working to withstand summary judgment. In addition, her education, skill, work experience and the

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limitations imposed by her condition prevented her from holding down a "broad range of jobs in various classes" both inside and outside of Abbott, he said.

The court noted that a balance must be struck between the cost of the accommodation to the employer and the benefits to both employer and employee that would result from changes in the workplace. Although the company allowed Garza time off, amended work schedules and other related accommodations, these were not effective, observed Judge Castillo.

He concluded that, while Garza failed to offer more than her own speculation as to whether the split keyboard may have allowed her to perform her job, her expert testimony on the feasibility of voice-activated software created an issue of fact as to the effectiveness and cost of implementing this accommodation and whether doing so would have imposed an undue hardship on Abbott. COMMENTARY: Here the company attempted to justify its refusal to implement the voice-activated software by arguing that it was protected from liability under the ADA because it had an "honest belief" that a requested accommodation was not reasonable, even if that accommodation in fact was reasonable. As illustrated by this case, courts apply an objective, not a subjective, good faith standard in making such determinations.

LANGUAGE: ENGLISH

LOAD-DATE: March 12, 1997

LEVEL 1 - 390 OF 1807 STORIES

Copyright 1996 Andrews Publications, Inc.
Employment Litigation Reporter

November 26, 1996

SECTION: Pg. 21384

LENGTH: 793 words

CASE: Garza v. Abbott Laboratories

HEADLINE: ND IL ORDERS TRIAL ON ADA CLAIMS OF EMPLOYEE UNABLE TO USE KEYBOARD

BODY:

An employee who was fired after she requested accommodation of a nerve condition that restricted her ability to operate a keyboard has been allowed to proceed on claims that her employer retaliated against her in violation of the Americans With Disabilities Act by not considering her suggestions for a split keyboard and/or another position in the company. Garza v. Abbott Laboratories, No. 95 C 3560 (ND IL, Sept. 13, 1996.).

✓ U.S. District Judge Ruben Castillo of the Northern District of Illinois found issues of fact with respect to whether the employee was indeed disabled, whether the requested accommodations would have imposed undue financial hardship on the employer, and whether the alleged retaliation she experienced was due to her requests for accommodation.

According to court documents, plaintiff Elizabeth Garza began her job as a customer service administrator with Abbott Laboratories in 1991. Her position required approximately 7.5 hours of keyboarding per day.

When she began to experience pain in her hand, Garza was permitted to take breaks during the work day. Her condition -- diagnosed as interosseous nerve syndrome and reflex sympathetic dystrophy -- worsened to the point where surgery was necessary. After the surgery, Abbott counted her rest periods against her for purposes of calculating the one-year time period after which Abbott would fire her.

Garza's pain continued, and her physician finally stated that she could not do keyboard work for longer than 1.5 minutes at any one time. Concluding that Garza could not perform the essential functions of her present position, the physician recommended to Abbott that Garza could continue work if the company supplied an ergonomic reassessment of her work area and a split keyboard, a voice-activated computer and/or a transfer to a new position within the company.

The company declined to investigate any of these suggestions, saying that (1) research on split keyboards had shown that such keyboards would not have allowed Garza to perform the essential functions of her job, i.e., typing 7.5 hours per day; (2) the estimated \$1.4 million cost of integrating voice-activated software at the company was prohibitive; and (3) there were no open positions at Abbott that were within Garza's restrictions. The company, did, however, steer Garza toward positions outside of Abbott. She was terminated in March 1994.

Granting in part and denying in part Abbott's motion for summary judgment, Judge Castillo rejected the company's argument that Garza was not "disabled"

under the ADA. The judge said that she had presented sufficient evidence that she was substantially limited in the major life activity of working to withstand summary judgment. In addition, her education, skill, work experience and the limitations imposed by her condition prevented her from holding down a "broad range of jobs in various classes" both inside and outside of Abbott, he said.

Turning to a consideration of what would have been a reasonable accommodation of Garza's disability, the court noted that a balance must be struck between the cost of the accommodation to the employer and the benefits to both employer and employee that would result from changes in the workplace. Although the company allowed Garza time off, amended work schedules and other related accommodations, these were not effective, observed Judge Castillo.

He concluded that, while Garza failed to offer more than her own speculation as to whether the split keyboard may have allowed her to perform her job, her expert testimony on the feasibility of voice-activated software created an issue of fact as to the effectiveness and cost of implementing this accommodation and whether doing so would have imposed an undue hardship on Abbott.

The court determined that the company failed to offer Garza any of the open positions for which she may have been qualified, and did not investigate whether she might be able to use voice-activate software in some other job at the company that would not have required the operational changes involved with her old position. Judge Castillo also found that Abbott denied Garza access to its Internal Placement System in retaliation for her requests for accommodation of her disability.

(See P. 21,421 for the opinion.)

Editor's note: Here the company attempted to justify its refusal to implement the voice-activated software by arguing that it was protected from liability under the ADA because it had an "honest belief" that a requested accommodation was not reasonable, even if that accommodation in fact was reasonable. As illustrated by this case, courts apply an objective, not a subjective good faith standard in making such determinations.

LANGUAGE: ENGLISH

LOAD-DATE: March 4, 1997