

## **BOARDWALK 2017-DAY 1-FACT PATTERN**

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**PAT PRINGLE V. NEW JERSEY TRANSIT AUTHORITY;**

**SUPERIOR COURT OF NEW JERSEY----MERCER COUNTY**

### **Summary:**

Pat Pringle was employed by New Jersey Transit as a full time train operator from April 2003 through February 2014. Pat has claimed that NJT has discriminated against him , because he suffers from PTSD and NJT failed to accommodate him. According to Pat, because of the PTSD, he needs to work with a doctor prescribed service dog, which he claims will permit him to work in any job for NJT. His PTSD comes about as a result of his military service for the United States while he was stationed in Iraq.

NJT claims that they never terminated him. However, Pat says that NJT did not permit him to return to work with his service dog, something that he says was necessary. As a result, NJT refused to pay him removed him from access to any employee information and therefore “constructively terminated him”, according to Pat.

NJT contends that they attempted to engage in the interactive process with Pat to determine whether they could provide him with a reasonable accommodation. They further contend that Pat did not provide them with sufficient information to establish that the dog was a legally recognized service dog. Pat indicated that he needed to have his dog with him in the cab of the train. NJT claimed that this was a hazard to the dog, Pat, and the passengers on the train. In essence they claim that while they engaged in the interactive process, they could not provide Pat with a “reasonable accommodation and thus did not discriminate against him. Pat sued NJT, NJT answered the complaint, and discovery was entered into and completed. The case could not be resolved as NJT was unwilling to pay an amount that Pat had requested and continued to defend the case claiming that they could not reasonably accommodate the plaintiff, and that they did not violate any law as what he was requesting was not reasonable.

## **ADDITIONAL FACTS AND CLAIMS**

### **Plaintiffs alleged facts and claims**

1. Pat was originally hired as a station agent, but was promoted to Train Operator after about two years.
2. Essential functions of Train Operator include maintaining communication between passengers and personnel, ensuring operating conditions on train, and taking action in an emergency situation.
3. Pat has a mental disability that limits a major life activity (meaning there is no dispute as to his mental disability).
4. Pat was diagnosed with a general anxiety disorder by a psychologist at NJT's employee assistance disorder.
5. In 2013 he went out on disability due to stress.
6. In 2013 he began to see a psychiatrist who officially diagnosed him with PTSD.
7. It was determined that this stress was caused by Pat's service in the Gulf War, but was triggered when he was accused of alleged threats to his ex-girlfriend. He was never charged with any crime.
8. The psychiatrist prescribed a service dog for Pat in late 2013.
9. In early 2014, he advised his supervisor that he was able to return to work with his dog.
10. Pat sent his service dog, Barf, to receive special training to move in front of and to the sides of Pat to prevent any perceived triggers of his PTSD (allegation is that the dog would protect him from any perceived threats from others).
11. Pat then met with his supervisor and provided the certification re: the dog and the prescription for the service animal.

12. Pat was then told by his supervisor that NJT would not permit him to return to work with his dog.
13. But he was also told by his supervisor that he could return to work in a temporary position in Lost and Found, but not with the dog.
14. Pat's psychiatrist then sent another note to NJT stating that Pat could return to work with his dog as a reasonable accommodation.
15. Pat returned to work in February of 2014 with his dog, but he was sent home by his supervisor who indicated that he could not come to work with his dog.
16. Pat then tried to meet with his supervisor but his supervisor refused to meet with him.
17. Pat then spoke to a person in NJT's Civil Rights Department. The Civil Rights Department of NJT indicated that his only two options were to return to work without his dog or continue on disability leave.
18. Pat has since become even more depressed, cannot sleep at night and has lost much weight.
19. In addition, as he has not been working, he is behind on his child support and is unable to see his child.
20. It is undisputed that during his tenure with NJT he performed well and had no disciplinary issues.

**Defendant's alleged Facts and Claims:**

1. Defendant New Jersey Transit admits that the plaintiff has a disability and that it limits a major life activity.
2. Defendant admits that the plaintiff has PTSD and that it was initially caused by the plaintiff's service in the Gulf War.

3. While defendant admits that the plaintiff indicated that he could return to work with his service animal, defendant contends that the plaintiff never provided proof or evidence of service dog training to NJT.
4. Defendant admits that the plaintiff was set to return to work on a modified assignment, but that when he came back to work he did so with his service dog.
5. Defendant admits that the plaintiff was sent home with his service animal but the defendant also contends that it had no knowledge of whether the dog was certified to be a service animal.
6. There appears to be a dispute as to what occurred thereafter. NJT says that they would have met with the plaintiff as requested but when the plaintiff tried to meet with his supervisor, the supervisor was in a meeting.
7. There is clearly a dispute as to whether the plaintiff was fired or not. Defendant claims that he was able to return to work with a reasonable accommodation but based upon the other facts, either the dog is not a certified service dog, or it is not reasonable to expect the plaintiff to do his job with a service dog present.
8. The issue does not seem to be one where the disability is questioned. The defendant is claiming that the plaintiff failed to properly avail himself of the interactive process. Plaintiff on the other hand is claiming that NJT did not provide him with a reasonable accommodation and is therefore discriminating against him.

### **Some Issues to Keep in Mind**

1. While the plaintiff clearly has PTSD and is a Gulf War Vet, he does have some other issues.
2. At some point someone from NJT indicated that he could continue to work with his dog by his side, but not in the role of a train operator. Whether this could be accomplished (there is no proof either oral or written), he felt that it was a demotion to become a station agent again even though they were going to pay him the same salary. He contends that it is reasonable and necessary for him to have the dog with him in the cab of the train or in any other position.

3. According to those who have spoken to Pat, he does not want to be a station agent again as he believes "co workers and others" will be talking behind his back about the arrest pertaining to his girlfriend.
4. Pat will claim that even if NJT permitted him to have a dog while being a station agent (but not a train operator), he feels that it will be worse for his PTSD because he will be in a much more crowded environment, and there exists the potential for his anxiety and PTSD to flare up based upon the number of people around him.
5. On the other hand, while there are no documents to prove it, Pat overheard two supervisors talking about him and the request to bring a dog into the train (where he will be a train operator). He overheard them saying essentially that while there are clearly issues re: safety of passengers and of Pat, even with the Dog, that NJT is worried about creating a precedent if they allow Pat to bring his service dog into the train.
6. There is also a potential issue as to the certification of the dog itself. There is no question that Barf is certified as a service dog. But, NJT may argue that this is not the same as a service dog for a blind person, deaf person or other physical handicap. Barf comforts Pat and allows him to perform his job without the symptoms of PTSD but is this the same, or should it be the same as a seeing eye dog, etc. But there is clear legal precedent for a person who has emotional issues to be able to have this type of "service dog". NJT may try to argue that if he is disabled without the dog, than he is disabled.
7. The attached documents with some legal definitions may help, but as you all know, usually cases are not as cut and dry as they appear at first glance. And that is probably the reason why this case has not been settled and has to be tried.
8. As you can also see, there is some conflicting testimony regarding the use of the service dog and the positions either offered or not offered to Pat.

**Main Issues:**

1. Does Pat have a disability that qualifies him to have a service dog.
2. Has he requested an accommodation from NJT.
3. Did NJT engage in an interactive process with Pat.
4. Did NJT fire him for failing to report to work without the service dog.

5. Has Pat been constructively discharged?
6. Is Barf a qualified service dog?

The attached documents will provide you with additional information, definitions, etc that will better help you in preparing for this case.

## **PHYSICAL OR MENTAL IMPAIRMENT**

A "disability" under the ADA is a physical or mental impairment that substantially limits one or more of the major life activities of such individual.

The terms disability and physical or mental impairment include (1) any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine; or (2) any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illnesses, and learning disabilities.

Major life activities are the normal activities of living which a non-disabled person can do with little or no difficulty, such as caring for oneself, performing manual tasks, walking, sleeping, seeing, hearing, speaking, breathing, learning, engaging in sexual relations, reproducing, interacting with others, and working. A limitation is substantial if the disabled person is unable to perform the activity or is significantly restricted in doing so.

Factors to consider in deciding whether a major life activity is substantially limited include: (1) the nature and severity of the impairment; (2) the duration or expected duration of the impairment; and (3) the permanent or long-term impact of the impairment.

## **QUALIFIED INDIVIDUAL**

The second element of the ADA claim that the plaintiff must prove is that the plaintiff is a qualified individual under the ADA. The term qualified individual means an individual with a disability who, with or without a reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. The individual must satisfy the requisite skill, experience, education, and other job-related requirements of the employment position.

“Holds or desires” applies in situations where employees request reassignment even if they cannot perform the essential functions of the current position.

## **ABILITY TO PERFORM ESSENTIAL FUNCTIONS**

An essential function of an employment position means the fundamental job duties of the employment position the plaintiff holds or desires. It does not include the marginal functions that may occur through the course of a job.

You must consider the employer's judgment as to what functions of a job are essential. If any employer has prepared a written description before advertising or interviewing applicants for the job, this description is evidence of the essential functions of the job.

Other factors that may bear upon whether a job function is essential include, but are not limited to:

- (1) whether the reason the position exists is to perform that function;
  - (2) whether there are a limited number of employees available among whom the performance of that job function can be distributed;
  - (3) whether the job function is highly specialized, and the person in that particular position is hired for his expertise or ability to perform the particular function;
  - (4) the amount of time spent performing the job function;
  - (5) the consequences of not requiring the individual holding the position to perform the function;
  - (6) the terms of any union collective bargaining agreement;
  - (7) the work experience of past employees who have held the position;
- and
- (8) the work experience of current employees that hold similar positions.

## **ADA REASONABLE ACCOMMODATION CLAIM**

To establish the defendant's duty to provide a reasonable accommodation, the plaintiff must prove, by a preponderance of the evidence, both of the following elements:

1. the plaintiff requested of the defendant an accommodation due to a disability  
OR  
the defendant knew, or had reason to know that: (a) the plaintiff has a disability;  
(b) the plaintiff was experiencing workplace problems because of the disability;  
and (c) the disability prevented the plaintiff from requesting a reasonable accommodation.
  
2. the defendant could have made a reasonable accommodation that would have enabled the plaintiff to perform the essential functions of the job.

Under the ADA, an accommodation by the defendant may include, but is are not limited to:

- (1) modifying or adjusting a job application process to enable a qualified applicant with a disability to be considered for the position;
  - (2) making existing facilities used by employees readily accessible to and usable by individuals with disabilities;
  - (3) job restructuring;
  - (4) part-time or modified work schedule;
  - (5) reassignment to a vacant position;
  - (6) acquisition or modifications of examinations, training materials or policies;
  - (7) provision of qualified readers and interpreters;
- OR
- (8) other similar accommodations for individuals with plaintiff's disabilities.

It is for you to determine whether the accommodation requested by the plaintiff is reasonable.

A reasonable accommodation does not include changing or eliminating any essential function of employment, shifting any of the essential functions of the subject employment to others, or creating a new position for the disabled employee.

An accommodation is generally not reasonable when it consists of a request to be reassigned to another job position that would be in violation of an employer's seniority system.

## **AFFIRMATIVE DEFENSE – DIRECT THREAT**

It is a defense to the plaintiff's ADA claim if the plaintiff posed a direct threat to the health and safety of others OR if the requirements of the job would pose a direct threat to the plaintiff.

The defendant may require, as a qualification for the position, that an individual not pose a "direct threat" to the health or safety of others and/or himself in the workplace.

A health or safety risk can only be considered if it is a significant risk of substantial harm. Assessment of the existence of a direct threat must be based on valid and objective evidence and not speculation.

The defendant claiming the direct threat defense must prove by a preponderance of the evidence that the plaintiff posed a direct threat to the health or safety of others and/or himself that could not be eliminated by a reasonable accommodation.

Factors that may be considered in determining whether an individual poses a direct threat to the health and safety of other and/or himself are:

- (1) the nature and severity of the potential harm;
- (2) the duration of the potential harm;
- (3) the imminence of the potential harm; and
- (4) the probability of the harm occurring.

If you find that each of the elements on which the plaintiff has the burden of proof has been proved, your verdict should be for the plaintiff, unless you also find that the defendant has proved this affirmative defense, in which event your verdict should be for the defendant.