

January 12, 2012

Americans with Disabilities Act--No Accommodation is Due Unless the Plaintiff is a “Qualified Individual with a Disability”

Trish Johnson v. Board of Trustees of the Boundary County School District No. 101, et al.
Court of Appeal, Ninth Circuit (December 8, 2011)

Title I of the Americans with Disabilities Act (“ADA”) prohibits employers from discriminating against a qualified individual with a disability “because of the disability of such individual in regard to ... the hiring, advancement, or discharge of employees.” 42 U.S.C. §12112(a)(2007). In this case, the Ninth Circuit addressed the “qualified individual with a disability” standard to evaluate an employee’s claim of disability-discrimination.

Patricia Johnson, who had a history of depression and bipolar disorder, taught special education in the Boundary County School District No. 101 in Idaho. The contract with the School District required Ms. Johnson to hold a state teaching certificate. From September 1, 2002 to September 1, 2007, Ms. Johnson maintained a valid teaching certificate; however, her certificate was set to expire at the start of the 2007-2008 school year. To renew her certificate, Ms. Johnson was required to take certain professional-development and college-level courses during the five-year period that her certificate was valid. Although she had completed a number of courses toward her certificate renewal, she was short several hours of college credit by the Summer of 2007, when she suffered a major depressive episode.

Shortly before classes resumed, Ms. Johnson was informed that she would need to petition the School District’s Board of Trustees (the “Board”) to apply for a provisional authorization to teach without a certificate during the upcoming school year. The Board voted to deny the



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request, reasoning that Ms. Johnson had five years to obtain the necessary credits. Two weeks later, the Board held a hearing to determine whether Ms. Johnson had violated the terms of her contract by allowing her teaching certificate to lapse. At the conclusion of the meeting, Ms. Johnson was terminated. She subsequently filed suit in 2009, alleging in part, disability-discrimination. The District Court entered summary judgment in the Board's favor, finding that Ms. Johnson was not a "qualified individual with a disability" within the meaning of the ADA.

The Ninth Circuit affirmed the judgment. The Equal Employment Opportunity Commission ("EEOC"), the agency with authority to implement Title I of the ADA, had promulgated a regulation defining a "qualified individual with a disability" as one "who satisfies the requisite skills, experience, education and other job-related requirements of the employment position such individual holds or desires *and* who, with or without reasonable accommodation, can perform the essential functions of such position." 29 C.F.R. §1630.2(m) (emphasis added by the Court.) The Ninth Circuit reaffirmed that this two-step inquiry is the test for whether an individual is qualified within the meaning of the ADA. (See *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 990 (9th Cir. 2007) (en banc).

Here, Ms. Johnson's lack of legal authorization to teach in Idaho rendered her unqualified pursuant to the first step of the two-step qualification inquiry. The Ninth Circuit rejected the argument that reasonable accommodation should be considered in determining whether the job prerequisites were satisfied. Namely, the Court denied Ms. Johnson's contention that the Board should have accommodated her by allowing her to continue to teach with a provisional authorization as she worked toward her certification. The EEOC regulation was not intended to require employers to provide reasonable accommodation to ensure that disabled individuals can satisfy the job *prerequisites* in addition to the essential job functions. Rather, the obligation to make reasonable accommodation is owed only to an individual with a disability who has already satisfied all the skill, experience, education, and other job-related selection criteria.

As an illustration, the Ninth Circuit discussed the example of a law firm that requires incoming lawyers to have passed the bar examination. The law firm is not required to provide an

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accommodation to ensure an individual with a visual impairment can sit for the bar; however, if the individual had passed the examination, the law firm would be required to provide a reasonable accommodation, such as a machine that magnifies print, to enable the individual to perform the essential functions of the attorney position.

In this case, Ms. Johnson never alleged that the requirement to maintain a teaching certificate was a discriminatory job prerequisite; rather, the basis of her claim was the Board's failure to accommodate her disability. The Ninth Circuit concluded that an individual who fails to satisfy the job prerequisite cannot be considered "qualified" within the meaning of the ADA unless she shows that the prerequisite is itself discriminatory in effect. Otherwise, the rule is that reasonable accommodation is only owed to an individual with disability who satisfies all the job-related selection criteria.

COMMENT

The Ninth Circuit's holding indicates that the first step in evaluating a claim of disability-discrimination is to determine whether the individual is *qualified*. If the individual cannot satisfy the job's prerequisites, and is not challenging those requirements as discriminatory, then there is no need to address the accommodation issue.

For a copy of the complete decision see:

[HTTP://WWW.CA9.USCOURTS.GOV/DATASTORE/OPINIONS/2011/12/08/10-35233.PDF](http://www.ca9.uscourts.gov/datastore/opinions/2011/12/08/10-35233.pdf)

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