

Agencies Drag Feet in Providing Reasonable Accommodations for Fed Employees

Federal agencies are notorious for dragging their feet. Unfortunately, many disabled federal employees are all too familiar with agencies' reluctance, especially when it comes to providing them with reasonable accommodations that would help them do their jobs.

One physically disabled, long-time U.S. Postal Service worker recently received a favorable decision against her former employer in a lawsuit in which she charged the agency with years of feet dragging in regard to providing her with reasonable accommodations.

In *Brown v. Potter*

, the 9th

U.S. Circuit Court of Appeals reversed a district court's ruling to dismiss Carol Brown's lawsuit in which she charged the agency with unlawfully discriminating against her because of her disability, failing to provide her with required accommodations, and retaliating

against her for filing Equal Employment Opportunity (EEO)

complaints. The 9th Circuit also remanded the case and reassigned it to a different judge.

Brown's case is not precedential, but it raises many of the disability discrimination

issues federal employees commonly raise. According to Equal Employment Opportunity Commission

statistics

, federal employees in the 2010 fiscal year filed 1,174 disability discrimination

complaints (277 mental, 897 physical) in response to disciplinary actions

, such as demotion, reprimand, suspension, and removal.

Brown suffers from a condition in which she constantly experiences pain and is limited in her ability to perform various physical activities, such as standing and sitting for long periods and walking. Nevertheless, for 19 years, she managed to work at the Marina del Ray Processing Station with accommodations. Brown's problems began shortly after she started working at the Bellflower Post Office, where she worked as a window clerk, a position that required hours of standing and active use of her hands, legs and back.

Brown claimed her supervisors at Bellflower ignored her requests for accommodations ordered by her doctor, such as work restrictions and a specialized chair. In 2007, she was reassigned to a distant facility and later returned to Bellflower only to work in isolation and with fewer responsibilities. She was removed from active duty in 2009.

The Postal Service argued it underwent four years of negotiations on how it could accommodate Brown and it ultimately decided she could not perform her position's essential functions. The 9th

Circuit, however, found that there were genuine questions of fact regarding the reasonableness of the Postal Service's interactive process with Brown, and the possibility that she could have performed the job's essential functions had she been reasonably accommodated. Noting how the Postal Service stopped looking for reasonable accommodations and instead removed Brown, the court said there was a "general issue for trial as to whether it thereby discriminated against her." The court also found that there was an issue for trial as to whether the agency's actions qualified as retaliation for her six EEO complaints or lawsuits against the agency.

What federal employees need to know:

While the Americans with Disabilities Act of 1990 protects private sector employees from disability discrimination

, the Rehabilitation Act of 1973 provides such protections for federal employees.

Under the Rehabilitation Act, employers cannot merely dismiss disabled employees or candidates because they cannot perform the essential functions of a job without accommodations.

Instead, agencies are obligated to engage in an interactive process to determine whether there are any reasonable accommodations which would allow employees or candidates to perform a job's essential functions.

Reasonable accommodations can vary from reassignments to a vacant position to work environment and schedule modifications based on the nature of the disability, the position, and the organization.

There are two general types of disability discrimination claims: (1) disparate treatment based on disability (i.e., the treatment of disabled individuals in a way different from non-disabled individuals); and, (2) failure to provide required reasonable accommodations. For either claim, a federal employee must allege that: (1) He or she is a qualified individual with a disability under the Act, which means he or she meets the statutory definition of a disability and can perform the essential functions of his or her position with or without accommodations;

(2) He or she was subjected to an adverse employment action and/or denied accommodations; and

(3) The circumstances surrounding the action indicate discrimination occurred.

When this burden is met by an employee, the agency must provide a legitimate nondiscriminatory reason for the action. It is then up to the employee, and his or her attorney, to prove that the agency's explanation is not true and that discriminatory factors actually drove its actions.

Employers do not have to provide a reasonable accommodation to a worker if it would impose an undue burden.

Federal employees who believe they have been subjected to disability discrimination should immediately contact a federal employment lawyer.