Jeffrey R. Gordon v. Acosta Sales and Marketing, Inc.

Fifth Circuit Court of Appeals
No. 15-50060
August 14, 2015

Keywords: ADA – general, employment, interactive process, reasonable accommodation, retaliation

Summary

Plaintiff, Jeffery R. Gordon sued his employer, Acosta Sales and Marketing, Inc. under Title I of the ADA for alleged discrimination including failure to provide a reasonable accommodation, hostile work environment, retaliation, and constructive discharge. The district court found in favor of Acosta, finding that the Gordon did not have enough evidence to bring these claims before a jury. Gordon appealed that decision to the Fifth Circuit, who still found that there was not enough evidence for Gordon's claims to proceed. While there are several claims of discrimination alleged by Mr. Gordon, this brief focuses on the reasonable accommodation claim to illustrate the break down that occurred in interactive process between the employer and employee in this case. Here the Fifth Circuit found that Gordon was responsible for the break down in the interactive process, and therefore Acosta had not discriminated against Gordon by failing to provide a reasonable accommodation.

Facts of the Case

Acosta is a sales and marketing company that helps consumer product companies with stock management and promotions. Mr. Gordon was hired in September 2012 as a part-time retail coverage merchandiser ("RCM"). Mr. Gordon has edema which causes swelling of the extremities. He treats his edema with a diuretic medication which causes frequent urination. In October 2012, Mr. Gordon informed his supervisor of his condition and that he would be seeking alternate employment within the company. He was turned down for both promotions.

On January 8, 2013 Mr. Gordon requested to reduce his hours from 30 to 24. He did not mention his disability in this request. His request was denied, and Mr. Gordon and his supervisor had a confrontation where his supervisor yelled at him, using an expletive. Mr. Gordon's disability was not mentioned at any point. Mr. Gordon reported the incident to HR who disciplined the supervisor. Mr. Gordon repeatedly asked for a transfer to another supervisor but never asked for a reasonable accommodation related to his disability.

However, on February 5, 2013 for the first time, Mr. Gordon requested a transfer based on the frequent urination that was a side effect of the medication used to treat his disability. Acosta

requested a doctor's note which Mr. Gordon provided. His doctor stated that he needed a position that put him in close proximity to the bathroom, but did not indicate that the transfer was necessary as an accommodation for his condition.

Acosta responded to the request on March 27, 2013 stating that his accommodation was already available in his current position because he currently had unlimited and free access to bathrooms at all times. They further assured Gordon that he would not be penalized in any way for taking frequent breaks. Mr. Gordon was not satisfied with this response and resigned hours later.

Issue of the Case

1. What is required of both employees and employers during the "interactive process"?

Arguments & Analysis

To win a reasonable accommodation claim under the ADA, the Plaintiff must prove that they, as the employee, engaged in an interactive process with the employer. Here, Mr. Gordon failed to meet his requirements during the interactive process.

1. Interactive Process

The Fifth Circuit found that they did not need to address whether Acosta provided a reasonable accommodation because Gordon's withdrawal from the interactive process by resigning and not responding to their email indicating he would not be penalized for taking frequent bathroom breaks, meant that he withdrew from the interactive process. The beginning of the interactive process needs to start with the employee. The employee should inform the employer they have a disability and request a reasonable accommodation for that disability. The burden then shifts to the employer. At this point the employer must now initiate the interactive process. In this case, Acosta requested medical verification of Mr. Gordon's disability. After receiving that medical verification, they responded by saying that Mr. Gordon would not be penalized in any way for taking frequent bathroom breaks at his current position. After that, in the third and final stage both parties share the responsibility of engaging in the interactive process. Mr. Gordon resigned without responding to Acosta, and ended the interactive process. He did not meet his responsibility to interact with Acosta. Given these facts, the Fifth Circuit found that no reasonable jury could find that Gordon was not responsible for the breakdown in the interactive process.

Ruling

Mr. Gordon was not able to prove that Acosta failed to provide reasonable accommodations under the ADA. The ADA requires that employers and employees both engage in an interactive process when determining what a reasonable accommodation should be. In this case Mr. Gordon left the company just hours after the employer offered a reasonable accommodation. The court ruled he ended the interactive process.

Policy & Practice

In requesting an accommodation based on an employee's disability, the employee must engage in an interactive process with the employer. If the employee resigns midway through this process without offering alternative accommodations or communicating why a suggested accommodation proposed by an employer was not acceptable, then the employee will ultimately be held responsible for ending the interactive process by the court. In this scenario, the employee will likely not be successful in bringing a claim against their employer for failing to provide a reasonable accommodation.

Link

- Opinion by the Fifth Court: Gordon v. Acosta Sales and Marketing, Inc.
  law.justia.com/cases/federal/appellate-courts/ca5/15-50060/15-50060-2015-08-14.html

Disclaimer

These materials do not constitute legal advice and should not be relied upon in any individual case. Please consult an attorney licensed in your state for legal advice and/or representation. These materials were prepared by the legal research staff of the Burton Blatt Institute (BBI) at Syracuse University in partnership with the Southeast ADA Center to highlight legal and policy developments relevant to civil rights protections and the impact of court decisions in the Southeast Region under the Americans with Disabilities Act (ADA). These materials are based on federal disability rights laws and court decisions in effect at the time of publication. Federal and state disability rights law can change at any time. In addition, state and local laws and regulations may provide different or additional protections. Materials are intended solely as informal guidance, and are neither a determination of your legal rights nor responsibilities under the ADA or other federal, state, and local laws, nor binding on any agency with enforcement responsibility under the ADA. The accuracy of any information contained herein is not warranted. Any links to external websites are provided as a courtesy and are not intended to nor do they constitute an endorsement of the linked materials.