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ADA: Teacher Who Cannot Fulfill Full-Time Duties Is Not "Qualified Individual" Merely Because School Provides Temporary Part-Time Position

***Rabb v. School Board of Orange County*, No. 14-11287 (11th Cir. Oct. 23, 2014).**

The Eleventh Circuit has held that, under the Americans with Disabilities Act (ADA), the fact that a Florida school created a part-time position for a full-time teacher who was recovering from a stroke did not require the school to keep such position available indefinitely. Furthermore, the school's provision of the temporary solution did not create the necessary legal basis for the teacher to claim she was "qualified individual" for ADA purposes and would be able, with reasonable accommodation, to continue to perform the essential functions of her job.

Cynthia Rabb worked as a full-time teacher at Winegard Elementary School in Orange County, Florida. Her job required that she "communicate effectively both orally and in writing, to manage a classroom and supervise the students, to work 196 days a year, seven and a half hours a day, in the classroom, and to stay after school to prepare lesson plans, grade homework, and conduct parent conferences." In 2008, she suffered a stroke. Winegard's principal created a part-time tutoring position for Rabb that met doctor's orders and enabled her to stay at the school. She was in that role for two years, but at the start of a third year a new principal came to the school and, reevaluating the budget, determined he was unable to continue funding Rabb's part-time role. The new principal offered her a full-time position and offered to transfer her to a different school where part-time positions could be available. She rejected the latter option on doctor's orders and was unable to accept the former with the long-term repercussions of her stroke because she suffers aphasia and reduced physical stamina.

Rabb alleged the School Board failed to reasonably accommodate her disability and filed an employment discrimination suit under the Americans with Disabilities Act (ADA). The District Court held in favor of the School Board on a motion for summary judgment because it

determined, though Rabb was disabled, she did not provide evidence that she was a "qualified individual" under the ADA. Rabb appealed.

HELD: The Eleventh Circuit affirmed, holding that Rabb failed to prove that her proposed accommodation was reasonable and therefore failed to establish a prima facie case under the ADA.

DISCUSSION: The ADA prohibits discrimination against qualified individuals based on a disability. It requires a plaintiff seeking relief to prove a prima facie case by showing "(1) she is disabled; (2) she is a qualified individual; and (3) she was subjected to unlawful discrimination because of her disability." In this matter, the parties agreed Rabb is disabled under the Act, but contested whether she was a qualified individual and whether she was subjected to unlawful discrimination. The Court only addressed the first issue since its resolution resolved the case.

Qualified individuals are those "who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." Accommodations by employers can include a wide variety of modifications or adjustments to work, but the Act does not mandate that the employer accommodate the employee in the manner specifically desired by the employee, nor to transform a position into another, nor to create a part-time position when none existed previously. Importantly, a previous accommodation – such as allowing part-time work – does not make that accommodation reasonable indefinitely, as such a rule would essentially punish employers that "bend over backwards" for employees, forcing them to "conced[e] the reasonableness of so far-reaching an accommodation."

In this case, the stroke Rabb suffered prevented her from teaching a full class of kids and from teaching for a full day. Rather, according to her doctor, she could now only work twenty hours a week and only with small groups of children in lessons limited to one hour. Given her condition, Rabb argued it was a reasonable accommodation to allow her to work part-time – especially given that she had already done so. The Circuit Court affirmed the District Court's rejection of this argument since the record showed 1) the position was specially created for Rabb, 2) was never considered a permanent position at the school, and 3) was eliminated for budgetary reasons. The court noted that even when the school had to eliminate Rabb's part-time role, it offered alternatives for her, which she was unable to accept. Rabb identified only one alternative – part-time work at the Winegard school. The Eleventh Circuit found that such a position did not exist and the School Board was not required to create it. Though the school had provided such a role in the past, it was not required to do so in the future.

http://media.ca11.uscourts.gov/opinions/unpub/files/201411287.pdf (last accessed Nov. 20, 2014)