

A Lesson From the Sixth Circuit's New ADA Decision.

This week the Sixth Circuit issued an opinion in *Jakubowski v. The Christ Hosp., Inc.* affirming a district court's decision to grant summary judgment in favor of the employer. The plaintiff, Dr. Martin Jakubowski, was diagnosed with Asperger's syndrome, a condition that severely impeded his ability to communicate with patients and co-workers. This resulted in poor job performance and created concerns about patient safety. The fact that Jakubowski was disabled for ADA purposes was not disputed. After his diagnosis, the hospital terminated Jakubowski's employment. In his lawsuit, he claimed that he was terminated because of his Asperger's and that he had been denied a reasonable accommodation.

Before the termination, the hospital met with Dr. Jakubowski to discuss various accommodations. The Court noted that:

The accommodations that Jakubowski proposed were for "knowledge and understanding" of the hospital physicians and staff. He argued that he would be capable of communicating with them effectively if they knew of his condition and its symptoms and triggers. However, he did not address how this accommodation would improve his communication and interaction with patients, which are parts of the essential function of a family practice resident.

The Hospital advised Jakubowski that it lacked sufficient resources to comply with his requested accommodations. Instead, Jakubowski was offered help in finding a pathology residency because it would involve less patient contact, accommodating one of primary Jakubowski's weaknesses. Another resident with similar issues had previously been offered a remediation program but this was not discussed and never requested by Jakubowski.

In analyzing the case, the Sixth Circuit noted that if a disabled employee requires an accommodation, the employee is saddled with the burden of proposing an accommodation and proving that it is reasonable. Also, the plaintiff has the burden of proving that he will be capable of performing the essential functions of the job with the proposed accommodation. While the employee has the burden of proposing an initial accommodation and the employer has the burden of showing how the accommodation would cause an undue hardship, the employer is not required to propose a counter accommodation in order to participate in the interactive process in good faith. If an employer takes that step and offers a reasonable counter accommodation, the employee cannot demand a different accommodation. The Hospital met with Jakubowski, considered his proposed accommodations, informed him why they were unreasonable, offered assistance in finding a new pathology residency, and never hindered the process along the way. As a result, the Court concluded that the Hospital participated in the interactive process in good faith and fulfilled its duty under the ADA.

This decision is welcome news for employers in the Sixth Circuit. While the ADAAA has expanded the scope of the ADA's coverage, employees continue to bear the burden of proposing reasonable accommodations. Moreover, employees are not entitled to their preferred accommodation or the most reasonable accommodation. Employers can propose a reasonable

accommodation that best suits them and the employee cannot simply reject it. The Hospital did everything right in this case and it provides a roadmap for employers to navigate their ADA obligations. It is no longer worthwhile to dispute whether the employee has an ADA covered disability. The focus for employers must now be on managing the interactive process and determining how best to accommodate employees who are disabled.