

Be the Judge: Recent Cases in the ADA and ADEA

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Samson v. Federal Express Corp. (11th Cir. 3/26/14)

- Type 1 insulin-dependent Diabetic Applicant applies for the job of Senior Global Vehicle Technician
- Fed Ex conditioned offer on passing DOT medical examination
- Federal Motor Carrier Safety Regulations for commercial drivers
- Failed DOT because diabetic
- Rescinded offer

What are the issues?

- Job description required DOT testing
- Testimony demonstrated person hired test-driven three times in three years
- Never driven vehicle carrying cargo
- Rode as a passenger once
- Nine other licensed truck drivers; one technician
- Fed Ex technicians throughout FL generally test-drive an average of 3.71 hours per year



You Decide...

- Whoa or Go to the Jury?



To the Jury

○ WHY?

***Williams v. Revco* (11th Cir. 1/14/14)**

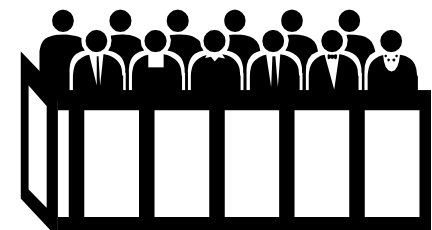
- Staff pharmacist
- No dispute – the employee was disabled
- Admitted involved standing over the course of an 8 hour shift and frequent movement which he could not do
- Wanted a full-time assistance of another intern or technician
- Doctor never submitted any paperwork outlining accommodations even though CVS asked for supporting documentation



What are the issues?

- Reasonable Accommodation
- Interactive Process

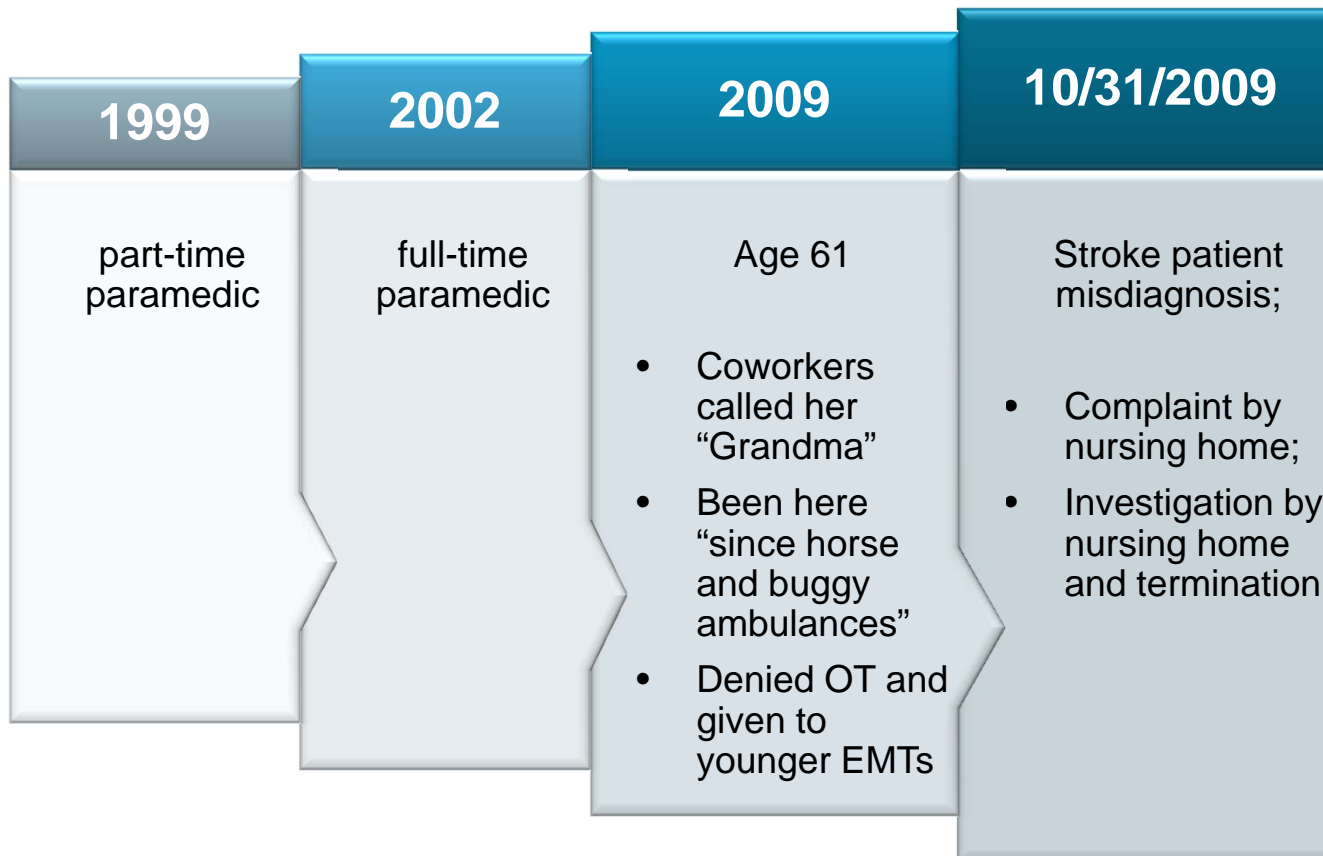
A jury of peers or should the Plaintiff fear?



Summary Judgment Granted and Affirmed

Do you agree?

Usry v. Liberty Regional Medical Center, Inc. **(11th Cir. 3/21/14)**



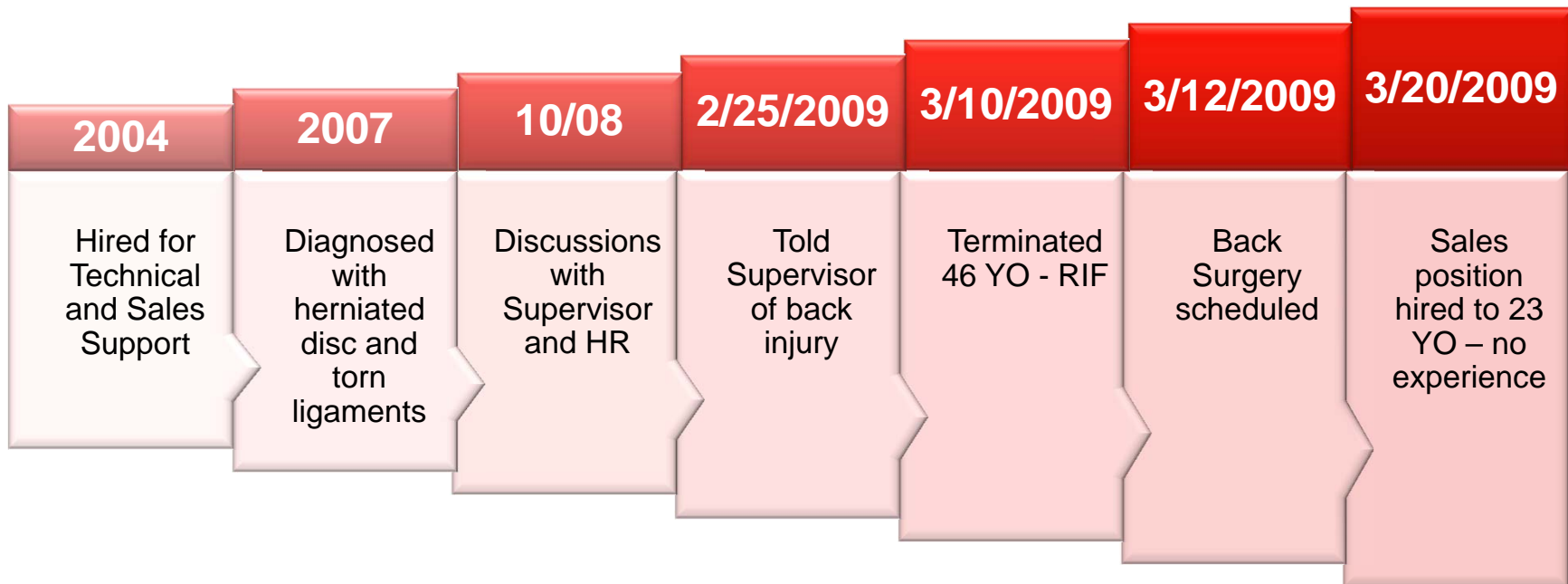
What are the issues?

- Prima facie case?
- Legitimate, non-discriminatory reason?
- Pretext?
- To Dismiss or Not to Dismiss – that is the question.

Summary Judgment Granted and Affirmed

Did they get it right?

Mazzeo v. Color Resolution International, LLC (3/31/14)



What are the issues?

- ADA
- ADEA



You Decide...

- Send it to the Jury or Send the employee home?



Decision: To the Jury

- **ADA** – Doctor’s affidavit that disc herniation problems and pain was a disability
 - Limited ability to walk bend, sleep and lift more than ten pounds.

- **ADEA** – RIF?
 - Was there a replacement?
 - Some of the employee’s duties completely eliminated;
 - Other employee performed an entirely different function;
 - Other employee took over some of the employee’s responsibilities.
 - Trained replacement?

Conner-Goodgame v. Wells Fargo (SD. Ala. 9/26/13)

- Employee's supervisor talked about sex every day at work to other people
- Supervisor told her his partner got mad because he didn't want to have sex with him because he didn't want to pay the bills
- Supervisor commented on a picture of the employee's husband that her husband was "some chocolate" and he would "bite that."
- Employee told her supervisor her mother contracted HIV from a blood transfusion and died from AIDS when she was 16 years old.
- Supervisor disclosed the information about her mother's death to co-workers. Afterwards, co-workers would not eat the food she brought to an office pot luck.
- Employee complained to supervisor about his comments and was terminated three days later for being on the phone too much.

What are the issues?

- Sexual Harassment
- Retaliation
- GINA Retaliation

◦ **What would you do?**

District Judge Granted Summary Judgment

- Sexual Harassment
 - Not directed to employee
 - Equal opportunity curser is not protected
 - Not severe and pervasive – not threatening
- Retaliation
 - Good not have in good faith believed the behavior was discriminatory against women or severe and pervasive
 - LNRR – talking on the phone
- GINA
 - Did not disclose genetic information – no increased risk of acquiring a condition in the future
 - Family member not protected

Hurley v. Kent of Naples (11th Cir. 3/20/14)

- Email with “vacation schedule” – subject to change – 11 weeks of vacation over two years
- Denied request
- Replied not a “request; it was a schedule.” “I have been advised by medical/health professionals that my need to avail myself of vacation time I have earned is no longer optional.”
- Next day, employee discussed email with supervisor. Terminated for insubordination and poor performance.
- A week after termination, employee visited doctor and filed an FMLA form. Doctor noted employee suffered from depression but could not determine the duration or frequency of incapacity.

What are the issues?

- FMLA interference and retaliation
 - What would you do?

To the jury

- Jury said:
 - Employee was entitled to FMLA benefits by the employer which were denied;
 - The request for leave was not a substantial reason for terminating the employee;
 - Employee should receive damages:
 - \$200,000.00 in actual damages
 - \$200,000.00 in liquidated damages
 - \$353,901.85 in front pay
 - \$233,109.75 in attorneys fees
 - \$21,329.36 in costs = \$1,008,340.96

Reversed on Appeal

- Rejected “potentially qualify” for leave argument for interference claim
- Must provide notice and state the qualifying reason for the need
- Serious health condition includes a chronic condition.
- Only protects leave for “any period of incapacity or treatment for such chronic condition.”
- Employee intended to plan treatments – not enough
- Leave did not qualify for FMLA = no retaliation

Bailey v. City of Daytona Beach (11th Cir. 3/20/14)

- Drug-free policy
- Required employees to inform supervisors of any prescription drugs which would “impair safety, performance or any motor functions”
- Failure to do so = termination
- Self-insured
- While out on FMLA, employee given the option to resign or face termination after City learned she was taking a narcotic.

What's the big deal?

- FMLA
 - Interference
 - Retaliation
- What would you do?

Dismissed at Summary Judgment

- Chose to terminate for reason unrelated to her FMLA leave
- Would have taken the same reason if employee had not taken FMLA leave = no interference

- LNRR = Violated the drug-free workplace policy.
- No showing of pretext

QUESTIONS?

