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Federal Court Declines to Overturn $780,000 Jury Verdict in Favor of Employer's Argument that Application for SSDI Trumps the ADA

Authors: Donna M. Glover
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In *Van Rossum v. Baltimore County, Maryland*, a jury awarded a community health inspector $250,000 in compensatory damages and $530,000 in back pay after deciding that her employer, Baltimore County, violated the ADA by refusing to accommodate her and, after she exhausted FMLA leave, threatening her with discharge and pressuring her to retire if she did not return to work. In addition, the Court awarded Van Rossum $487,616.25 in reasonable attorneys' fees plus $32,472.30 in litigation costs, which brought the total award to *more than $1.3 million*.

So, what went wrong and why did the court not buy the County's argument that Van Rossum's application for social security disability insurance benefits (SSDI) established she was not a qualified individual with a disability and, therefore, was too disabled to work?

In brief, Van Rossum claimed that she was suffering from a variety of symptoms such as severe pain and "brain fog," which she attributed to mold and fungus in the building in which her office was located. The County allegedly refused Van Rossum's request to change offices even though her symptoms continued. The County also allegedly threatened to discharge Van Rossum if she did not return to the office that was causing her symptoms. Because of the pressure to return to work, Van Rossum allegedly felt forced to retire; in other words, she alleged she was constructively discharged. That, in turn, allegedly caused her to forfeit pension benefits and promotional opportunities. The jury found that the County (1) failed to provide Van Rossum with reasonable accommodation under the ADA; (2) discriminated against her because of her disability; and (3) retaliated against her because of her protected activity of seeking an accommodation.

After the jury issued its verdict in favor of Van Rossum and awarded her $780,000, the County renewed its motion for judgment as a matter of law or alternatively for a new trial. The County's argument was that Van Rossum was not a qualified individual with a disability because when Van Rossum applied for SSDI benefits, she indicated that she was too disabled to work. Relying on *Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795 (1999), the Court dismissed the County's argument. In *Cleveland*, the Supreme Court held that an ADA plaintiff cannot ignore the apparent contradiction that arises out of an earlier SSDI claim, rather she must "proffer a sufficient explanation" from which a reasonable juror could conclude that the plaintiff could have performed the essential functions of her position with or without reasonable accommodation.

The jury in *Van Rossum* found that she did offer a sufficient explanation regarding her conflicting SSDI application. Specifically, Van Rossum testified she had been able to perform her job during a period when the County had apparently accommodated her with a different office, but when that accommodation was removed, her symptoms continued. The County argued that if Van Rossum was unable to work for purposes of SSDI, then she should be barred from bringing a claim under the ADA. The Court dismissed the County's argument, stating that "[u]nder Defendant's logic, any plaintiff securing SSDI benefits would be ineligible to bring a claim under the ADA," which would contradict the holding in *Cleveland*.

On October 10, 2017, the County filed an appeal to the United State Court of Appeals for the Fourth Circuit. The basis for that appeal is not yet known.

The ADA is one of the most complicated and intricate laws with which employers must comply on an *individualized* basis. Every employee must be treated "differently" based on his or her job and medical impairment. Shortcutting the reasonable accommodation process and/or failing to accommodate absent undue hardship is a costly mistake as evidenced by the *Van Rossum* case. Finally, employers should not bank on an SSDI application or award of SSDI benefits to bar an ADA claim. As was the case in *Van Rossum*, a plaintiff will have an opportunity to present testimony or other evidence to establish that she could have performed the essential functions of her job with an accommodation – even if she was disabled for purposes of SSDI.