

Eighth Circuit Revives Deaf Lifeguard's Disability Claim

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A deaf individual who could detect noises through the use of a cochlear implant and who used American Sign Language (ASL) to communicate successfully completed two lifeguard training programs through the county. Though he had an ASL interpreter to communicate verbal instructions, the interpreter did not assist him in executing lifesaving tasks. The individual applied for and was conditionally offered a lifeguard position subject to him passing a pre-employment physical. The doctor, however, determined that because the individual was deaf, he could not be a lifeguard, unless he was constantly accommodated. The county then undertook a job task analysis to determine whether the individual could perform the job with or without accommodation, and because it was uncertain whether the individual could safely work as a lifeguard by himself, the offer of employment was revoked.

He then applied for another lifeguard opening but was not employed. The individual sued the County, alleging that he had been discriminated against on the basis of disability in violation of the Americans with Disabilities Act (ADA) and the Rehabilitation Act when it failed to hire him as a lifeguard. The district court granted the county's motion for summary judgment, and the individual appealed. The Sixth Circuit Court of Appeals reversed. Various expert witnesses offered testimony and opinions regarding the ability of a deaf lifeguard to serve safely and that the ability to hear is not necessary for one to perform the essential functions of the job. Further, the county's doctor failed to make an individualized inquiry regarding the disability because he simply opened the individual's file, and concluded "He's deaf; he can't be a lifeguard" without considering whether he could perform the essential functions of the position. The Court also noted that it was unclear whether the county representatives actually undertook an individualized inquiry into the individual's abilities in that they never spoke to him or inquired of his abilities.

The Court then considered whether the ability to hear is an essential function of a lifeguard position, an issue which has not yet been squarely addressed by the 6th Circuit or any other Circuit, for that matter. The Court found that the ability to communicate is an essential function of the position, and the evidence presented demonstrated that the individual could communicate effectively despite his deafness. Indeed, the Court noted that the world record for most lives saved is held by a deaf man, and the American Red Cross regularly certifies deaf lifeguards. The Court also concluded that the provision of an interpreter during staff meetings could be

found to be reasonable, and that the employer failed to advance any evidence to demonstrate that having an interpreter for this limited purpose would pose an undue hardship.

In terms of the interactive process, the district court did not address this argument because it found that the individual failed to demonstrate an objectively reasonable accommodation. The Court of Appeals found this determination to be erroneous and based on an incorrect premise and remanded this issue for determination.

Knowing how to properly engage in the interactive process to determine whether and/or how an individual can be accommodated is key for any employer.

For more information read [Keith v. County of Oakland](#).

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