

Transferring Employee to Different Geographical Location for Better Access to Medical Care Found to Be Reasonable Accommodation

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Recently, the United States Court of Appeals for the Tenth Circuit held that an employee's request for a transfer to a different geographical location in order to have better access to medical treatment was not unreasonable.

The employee, who sustained irreversible brain damage after falling at work which resulted in her losing the left half of her field of vision, requested a hardship transfer to have better access to her ongoing medical treatment. The employer declined to accommodate this request, prompting the employee to file suit alleging that the employer discriminated against her in violation of the Rehabilitation Act by failing to accommodate her and by subjecting her to a hostile work environment. The employer, in turn, filed a motion for summary judgment arguing that employee's impairment did not substantially limit her so as to qualify as a disability under the Rehabilitation Act. The District Court granted summary judgment in favor of the employer concluding that the employee was not substantially limited by her impairment. The employee appealed the District Court's granting of summary judgment.

The Tenth Circuit Court of Appeals reversed. It concluded that summary judgment for the employer was inappropriate as the employee provided ample evidence attesting to the manner in which her loss of vision limited her ability to see as compared to the average person. The Court also concluded that the evidence was sufficient to send to the jury the question of whether the employee was "substantially limited" in her ability to see as compared to the average person. With respect to the employer's argument that the Rehabilitation Act does not contemplate transfer accommodations for employees who require medical treatment despite being able to perform the essential functions of their jobs, the Court rejected the suggestion that transfer accommodations are generally "not mandatory" as this Court had previously held that "a reasonable accommodation may include reassignment to a vacant position if the employee is qualified for the job and it does not impose an undue burden on the employer." The Court concluded that a transfer accommodation for medical care or treatment is not per se unreasonable, even if an employee is able to perform the essential functions of the job without it. However, the

Court pointed out that an employer may avoid obligations under the Act by showing that a requested accommodation is an undue burden. In this case, however, the employer failed to argue that the transfer of employee would have imposed such a burden.

For more information read *Sanchez v. Vilsack*, No. 11-2118 (10th Cir. September 19, 2012).

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