

Employer did not Discriminate or Retaliate Against Disabled Employee who was Unable to Perform In-Person Supervision Tasks

1 min read

Sep 24, 2012

A supervisor of released adult offenders suffered from sacroiliac joint dysfunction, a condition causing pain in the joints that limited her ability to walk and forced her to work from home. After surgery, she made a full return to work, but roughly a year and a half later she fell down stairs at work and the symptoms of her condition returned. She had a second surgery and took leave under the Family and Medical Leave Act (FMLA) to recover. She was terminated after her FMLA leave expired.

The employee filed a claim against her employer alleging disability discrimination in violation of the Americans with Disabilities Act and FMLA retaliation. The discrimination claim was unsuccessful because the employee admittedly could not perform work outside of her home. Thus, she could not supervise offenders in-person, an essential function of the position considering that the task represented between 25% and 50% of the job and all employees in the position were required to do it. The only potential accommodation would be a temporary reprieve from supervising offenders in-person. In the absence of an estimated date of return to full duty, the court held that the employer did not have enough information to determine whether temporary exemption from in-person supervision was reasonable. The employer was able to defend the FMLA claim by showing that the employee was terminated for a legitimate, non-discriminatory reason. She never presented a “fitness-for-duty” certificate authorizing her return to work.

For more information read *Catherine Robert v. Board of County Commissioner of Brown County, Kansas*, No. 11-3092 (10th Cir. Aug. 29, 2012).

Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm’s national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution,

and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit www.hinshawlaw.com for more information and follow @Hinshaw on LinkedIn and X.

Topics

Leave, ADA, Tenth Circuit Court Of Appeals, FMLA, Accommodation