

Seventh Circuit Confirms that Employees may not Demand a Specific Accommodation for Disabilities

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In September of 2010, Khoury Enterprises, a firm operating Dairy Queen franchises in Indianapolis, hired Joshua Bunn, who is legally blind. Hourly employees at Khoury's stores typically were required to rotate between various stations, including preparing food, working the cash register and maintaining the dining area. Bunn, however, was unable to perform certain duties because he could not read the ingredient labels or monitors displaying orders. Accordingly, the store's manager scheduled Bunn exclusively in the "Expo" department, where he was responsible for delivering food to dine-in customers and keeping the store and dining area clean. During the winter months, the store was forced to close on several occasions due to holidays and inclement weather, which resulted in Bunn working fewer hours. Eventually, he resigned, believing he could work more hours elsewhere.

Shortly after his resignation, Bunn filed a charge of disability discrimination with the Equal Employment Opportunity Commission and subsequently filed suit in the U.S. District Court for the Southern District of Indiana, alleging violations of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12112. The district court granted summary judgment in Khoury's favor on Bunn's failure-to-accommodate and disparate treatment claims. On appeal, the Seventh Circuit Court of Appeals affirmed, finding that Khoury reasonably accommodated Bunn's disability by working with him to determine which job functions he could perform after learning he could not rotate stations like a regular employee. Khoury's willingness to change the way things were customarily done was "exactly the kind of accommodation envisioned by the regulations applicable to the ADA." The court also emphasized there is no separate cause of action for a failure to engage in the interactive process, and Bunn's dissatisfaction with the way in which Khoury decided on his accommodation or its failure to provide the exact accommodation he preferred was irrelevant. With respect to his disparate treatment claim, the court held that Bunn could not establish a *prima facie* case of discrimination because he was not meeting Khoury's legitimate expectations when he was placed on a disciplinary suspension for shoving a trashcan at his night manager. In addition, he failed to identify a similarly situated, non-disabled employee who was treated more favorably.

This decision offers guidance to employers deciding how to accommodate an employee's specific disability and confirms that an employer may not have to provide a specifically requested accommodation if the employer offers an accommodation which is reasonable and effective.

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