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Motions, Pleadings and Filings

United States District Court,

W.D. Virginia,
Harrisonburg Division.
Richard STUMBO, Plaintiff,
v.
DYNCORP TECHNOLOGY SERVICES, INC.,
Defendant.
No. 5:00CV0007.

Jan. 20, 2001.

Former police officer who was not hired for security job in war zone based on his fully correctable hypertension brought suit against prospective employer for violation of Americans with Disabilities Act (ADA). Employer moved for summary judgment. The District Court, Kiser, Senior District Judge, held that: (1) police officer's fully correctable hypertension was not disability under ADA; (2) employer did not regard officer as disabled in violation of ADA under evidence; and (3) police officer, because he was not disabled, had no need for reasonable accommodation, nor did he show that accommodation could be provided in war zone.

Motion granted.

West Headnotes

[1] Civil Rights 1218(3)
78k1218(3) Most Cited Cases
(Formerly 78k173.1)
Hypertensive former police officer, who demonstrated only that he was not hired by security firm for security job in war zone, did not suffer from disability
that would support discrimination claim under ADA, where his hypertension was fully correctable, such that he was not precluded from any of life's major activities, including working, as indicated by his employment in many other security jobs while hypertensive. Americans with Disabilities Act of 1990, § § 2 et seq., 3(2)(A), 42 U.S.C.A. § § 12101 et seq., 12102(2)(A).

[2] Civil Rights 1218(6)
78k1218(6) Most Cited Cases
(Formerly 78k173.1)
Employer did not improperly regard former police officer as disabled violation of ADA in rejecting his application for employment in security monitoring position in war-torn Bosnia based on his fully correctable hypertension, absent any evidence that employer did not regard him as fully able to work in spectrum of security jobs outside a war zone. Americans with Disabilities Act of 1990, § § 2 et seq., 3(2)(A), 42 U.S.C.A. § § 12101 et seq., 12102(2)(A).

[3] Civil Rights 1218(3)
78k1218(3) Most Cited Cases
(Formerly 78k173.1)

[3] Civil Rights 1225(3)
78k1225(3) Most Cited Cases
(Formerly 78k173.1)
Former police officer who was rejected for security job in war-torn Bosnia because of his hypertension did not demonstrate that he was disabled, and thus an otherwise qualified individual with a disability entitled to a reasonable accommodation; his fully correctable hypertension had not disqualified him from any major life activity, including other security jobs and, in any event, there would have been no possible means of accommodating his "disability" in war zone. Americans with Disabilities Act of 1990, § § 2 et seq., 3(2)(A), 42 U.S.C.A. § § 12101 et seq., 12102(2)(A).

***771** Thomas Moore Lawson, Ann Kiley Crenshaw, Deborah M. Chandler, Lawson and Silek, PLC, Winchester, VA, for plaintiff.

Michelle L. Bodley, Steven W. Ray, Ray & Isler, PC, Vienna, VA, for defendant.

MEMORANDUM OPINION

Kiser, Senior District Judge.

In 1990, Plaintiff Richard Stumbo ("Stumbo") retired from his twenty-one ***772** year employment as a police officer. A year later, Stumbo was diagnosed with high blood pressure, which has since been treated with medication without incident. Stumbo has experienced no physical limitations due to his high blood pressure. Over the past decade, he has

held an assortment of investigative and / or security positions around the world. These positions have often been quite strenuous, frequently requiring Stumbo to work between fourteen and sixteen-hour days for months at a time.

In early-1996, Defendant Dyncorp Technology Services, Inc. [FN1] ("Dyncorp") secured a contract with the U.S. Department of State to provide International Police Monitors ("IPMs") in Bosnia as part of United Nations operations in that region. The United Nations, not Dyncorp, determined both the geographic region to which an IPM would be assigned and the duties he would perform. In Bosnia, the terrain is mountainous; obtaining transportation is difficult; the availability of running water, refrigeration, and electricity are erratic; and food supplies are limited.

> FN1. The names of Defendant are rather slippery in this case. Plaintiff apparently names a fictitious entity in the Complaint and Defendant itself has changed its name in the past few years. Regardless, the correct entity is Dyncorp Technology Services, which will be referred simply as "Dyncorp" throughout this opinion.

In April 1996, Stumbo submitted a resume to Dyncorp in reference to the IPM position. On August 12, 1996, Dyncorp conditionally accepted Stumbo's application, so long as he satisfactorily complete a medical examination and return various informational forms. Within a week, Stumbo had his physician, Dr. Mark Vickers ("Vickers"), perform a physical examination. On the medical examination form, Vickers classified Stumbo as "fit for all physical and manual duties" and prescribed Stumbo six months of medication for his hypertension.

As a course of practice, Dyncorp referred Stumbo's medical records to Peter McDougall ("McDougall"), Ph.D., for review of the medical examination. Dyncorp undertook this additional screening process in response to questions from its employer regarding the physical fitness of the some of the IPMs. Although no additional examination was undertaken, Dr. McDougall concluded upon reviewing Stumbo's examination: "Overweight smoker on two hypertensive meds. Wouldn't recommend for strenuous work." After receiving this note, Dyncorp informed Stumbo on September 9, 1996 that he would not be hired as an IPM in Bosnia. In discovery, Dr. McDougall today contends that, if he were to re-examine Stumbo's application today, he would not make any comment regarding the hypertensive condition whatsoever.

Stumbo filed a Complaint with the Equal Employment Opportunity Commission in early-1997. On July 7, 1998, the EEOC issued its Determination. Plaintiff subsequently brought a suit under the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* ("ADA"), alleging three claims: that he was subjected to discrimination on the basis of disability, § 12102(2)(A); that Defendant improperly regarded him as disabled, § 12102(2)(C); and that Defendant failed to provide a reasonable accommodation for the hypertension, § 12112(b). Defendant has moved for summary judgment on all counts. In light of the recent guidance from the United States Supreme Court in *Sutton v. United Air Lines*, 527 U.S. 471, 119 S.Ct. 2139, 144 L.Ed.2d 450 (1999), and *Murphy v. United Parcel Serv.*, 527 U.S. 516, 119 S.Ct. 2133, 144 L.Ed.2d 484 (1999), I find for Defendant and grant the Motion in its entirety.

Legal Standard

Summary judgment is appropriate where no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). A genuine issue of a material fact exists "if the evidence is such that ***773** a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248, 106 S.Ct. 2505. In making this determination, "the court is required to view the facts and draw reasonable inferences in a light most favorable to the nonmoving party." *Shaw v. Stroud*, 13 F.3d 791, 798 (4th Cir.1994) (citations omitted), *cert. denied*, 513 U.S. 813, 115 S.Ct. 67, 130 L.Ed.2d 24 (1994); *Felty v. Graves-Humphreys Co.*, 818 F.2d 1126, 1129 (4th Cir.1987). Nevertheless, where the record taken as a whole cannot lead a rational trier of fact to find for the nonmoving party, then no genuine issue exists for trial and summary judgment is appropriate. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

Discussion

Each of Plaintiff's three claims is flawed. Turning to the first, the claim of disability under § 12102(2)(A), Plaintiff has the burden of proving that he possesses "a physical or mental impairment that substantially limits one or more of the major life activities of such individual." § 12102(2)(A). Plaintiff's failure to make any such showing is fatal to his first claim.

[1] In making this determination, I note that the facts and legal analysis of this matter are quite analogous to those in *Sutton*, 527 U.S. 471, 119 S.Ct. 2139, 144 L.Ed.2d 450, and virtually identical to those in *Murphy*, 527 U.S. 516, 119 S.Ct. 2133, 144 L.Ed.2d 484. In *Murphy*, a hypertensive mechanic was dismissed from his job because of his high blood pressure. It is important to note that the hypertension of the Plaintiff in *Murphy*, just as that of the Plaintiff in this matter, was correctable via medication. In both *Murphy* and *Sutton*, the Court took into account the effect of "taking measures to correct for, or mitigate, a physical or mental impairment ... when judging whether that person is 'substantially limited' in a major life activity and thus 'disabled' under the Act." *Id.* The Court in *Murphy* thus affirmed summary judgment because the correctably hypertensive Plaintiff was unable to prove as a matter of law that he "is substantially limited in one or more major life activities and thus disabled under the ADA." *Murphy*, 527 U.S. at 521, 119 S.Ct. 2133; *cf. Sutton*, 527 U.S. at 482, 119 S.Ct. 2139 (dealing with correctable myopia).

The clear indication from these cases is that Plaintiff Stumbo's claim under § 12102(2)(A) is unsustainable as a matter of law. In this case, Stumbo's hypertension is fully correctable; he is not precluded from any of life's major activities, not even working. Plaintiff adduces no evidence that he cannot participate in the major lifetime activity of working: he only demonstrates that he was not hired to be an IPM by Defendant. Indeed, he has had many different jobs related to security and protection while he has had the hypertensive condition. As such, I find that Plaintiff does not possess a disability as contemplated under § 12102(2)(A).

[2] Turning to Plaintiff's second claim, that Defendant "regarded him as disable" in contravention of § 12102(2)(C), I find this issue also to be largely resolved by the opinions in *Murphy* and *Sutton*. To be regarded as substantially limited in the major life activity of working, Plaintiff must demonstrate that he is disabled and unable to perform a *class* of jobs. "The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working." 29 C.F.R. § 1630.2(j)(3)(i); *Murphy*, 527 U.S. at 523, 119 S.Ct. 2133. There is no evidence that Defendant did not regard Plaintiff as able to work in any such class of jobs--Dyncorp merely found Plaintiff unable to work as an IPM in the war-torn region of Bosnia. [FN2] Indeed, in oral argument, ***774** counsel for Dyncorp expressed to the Court the firm's confidence that Plaintiff would make a fine police monitor, policeman, security guard, and so forth in any region but Bosnia. Stumbo's employment history corroborates this finding, as he continued to participate in the field of security monitoring and police work for several years after his diagnosis with hypertension. As such, Plaintiff fails to demonstrate as a matter of law that Defendant regarded him as having a disability that limited him in any life activity. Accordingly, the claim under § 12102(2)(C) necessarily fails.

> FN2. Plaintiff contends that the proper class of jobs in his case is that of IPM. Much as the Supreme Court did in *Murphy* and *Sutton*, I reject this exceedingly narrow classification. The *Sutton* Court found global airline pilot not to constitute the proper class of job, but rather to be in the same classification as regional airline pilot and pilot instructor. *Sutton*, 527 U.S. at 493, 119 S.Ct. 2139. Similarly, the *Murphy* Court found mechanic to be in the same job classification as gas-engine repairer and gas-welding equipment mechanic, among others. *Murphy*, 527 U.S. at 524-25, 119 S.Ct. 2133. Following that precedent, I find many other jobs, such as security monitoring and investigatory work, also to utilize Plaintiff's specialized skills.

[3] Lastly, Plaintiff's accommodation claim fails because he cannot demonstrate that he is "an otherwise qualified individual with a disability" under the ADA. Moreover, I cannot conceive of any reasonable manner by which Defendant could have accommodated the working conditions of Bosnia to the medical needs of the Plaintiff. *Myers v. Hose*, 50 F.3d 278, 280-82 (discussing the need for practicality in adapting work environments). In other words, Stumbo has not demonstrated any disability triggering the ADA's requirement of accommodation; nor has he shown any possible means of accommodation. As such, the failure to accommodate claim necessarily fails. *See Shiflett v. GE Fanuc Automation Corp.*, 960 F.Supp. 1022 (W.D.Va.1997). [FN3]

> FN3. I also note that the record indicates that Plaintiff also was apparently neglectful in requesting accommodation. *See* 29 C.F.R. § 1630.9; *Tangires v. The Johns Hopkins Hosp.*, 79 F.Supp.2d 587, 597 (D.Md.2000).

Conclusion

Plaintiff's case fails legally in all regards. The initial problem is the lack of any disability under the ADA, as his condition is correctable via medication. Moreover, Plaintiff puts forth no evidence that Defendant regarded him as substantially limited from a life activity. Lastly, Plaintiff shows no need, nor reasonable means, for accommodation by Defendant. As such, I grant Defendant's Motion for Summary Judgment as to all of Plaintiff's claims.

130 F.Supp.2d 771, 11 A.D. Cases 807, 20 NDLR P 99

Motions, Pleadings and Filings **(Back to top)**

- 5:00CV00007 (Docket) (Jan. 20, 2000)

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Briefs and Other Related Documents

This case was not selected for publication in the Federal Reporter.

UNPUBLISHED

Please use FIND to look at the applicable circuit court rule before citing this opinion. Fourth Circuit Rule 36(c). (FIND CTA4 Rule 36(c).)

United States Court of Appeals,
Fourth Circuit.
Richard M. STUMBO, Plaintiff-Appellant,
v.
DYNCORP PROCUREMENT SYSTEMS, INCORPORATED, formerly known as DynCorp Aerospace Operations, Incorporated; Dyncorp Aerospace Operations, Incorporated; Dyncorp Aerospace Operations (U.K.), Limited, Defendants-Appellees.
No. 01-1196.

Submitted Aug. 10, 2001.
Decided Sept. 5, 2001.

In action under the Americans with Disabilities Act (ADA), the United States District Court for the Western District of Virginia, Jackson L. Kiser, Senior District Judge, granted summary judgment to the employer, and employee appealed. The Court of Appeals held that employee's demonstration that employer considered him unfit for one particular job was insufficient to show that employer regarded him as disabled.

Affirmed.

West Headnotes

Civil Rights ⇦1218(6)
78k1218(6) Most Cited Cases
(Formerly 78k173.1)
Employee's demonstration that employer considered him unfit for one particular job was insufficient to show that employer regarded him as disabled, as required to recover under the ADA. Americans with Disabilities Act of 1990, § 2 et seq, 42 U.S.C.A. § 12101 et seq.

***203** Appeal from the United States District Court for the Western District of Virginia, at Harrisonburg. Jackson L. Kiser, Senior District Judge. (CA-00-7-5).

Thomas Moore Lawson, Ann K. Crenshaw, Lawson & Silek, P.L.C., Winchester, VA, for appellant. Michelle L. Bodley, Steven W. Ray, Edward Lee Isler, Ray & Isler, P.C., Vienna, VA, for appellees.

Before WILKINS and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

OPINION

PER CURIAM.

Richard M. Stumbo appeals the district court's order granting the Defendants' motion for summary judgment on Stumbo's Americans with Disabilities Act (ADA) claim. *See* 42 U.S.C.A. § § 12101-12213 (West 1995 & Supp.2000). We affirm.

The only question on appeal is whether Stumbo forecast sufficient evidence that Defendants regarded him as disabled to survive a motion for summary judgment. Applying the Supreme Court's decisions in *Sutton v. United Airlines*, 527 U.S. 471, 119 S.Ct. 2139, 144 L.Ed.2d 450 (1999), and *Murphy v. United Parcel Serv., Inc.*, 527 U.S. 516, 119 S.Ct. 2133, 144 L.Ed.2d 484 (1999), we conclude that he did not. Stumbo has demonstrated only that Defendants considered him unfit for one particular job. *See Sutton*, 527 U.S. at 492, 119 S.Ct. 2139 (stating that to make out an ADA claim, a person must be regarded as "precluded from a broad range of jobs"); *Murphy*, 527 U.S. at 523, 119 S.Ct. 2133 (holding that "to be regarded as substantially limited in the major life activity of working, one must be regarded as precluded from more than a particular job").

Accordingly, we affirm the grant of summary judgment in the Defendants' favor. We dispense with oral argument because the facts and legal contentions are adequately represented in the materials before the court and argument would not aid the decisional process.

AFFIRMED.

17 Fed.Appx. 202, 12 A.D. Cases 1632

Briefs and Other Related Documents (Back to top)

• 2001 WL 34383506 (Appellate Brief) Reply Brief of Appellant (Jun. 20, 2001)Original Image of this Document (PDF)

• 2001 WL 34383508 (Appellate Brief) Brief of Appellees (Jun. 04, 2001)Original Image of this Document (PDF)

• 2001 WL 34383507 (Appellate Brief) Brief of Appellant (May. 02, 2001)Original Image of this Document (PDF)

• 01-1196 (Docket) (Feb. 14, 2001)

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