

# Blind Reliance on Pre-Employment Physical Resulted in ADA Violation

July 2, 2014

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A school district not only had its motion for summary judgment denied, it had summary judgment granted against it in an Americans with Disabilities Act (ADA) case by a judge in the U.S. District Court for the Eastern District of Michigan.

Because this result is highly unusual, taking the time to review the case of *LaFata v Dearborn Heights School District* will serve to help understand how the school district's decision to withdraw a job offer went wrong and how this same mistake can be avoided.

In *LaFata*, the plaintiff applied for the position of plant engineer with the school district. At the time he applied for the job, he had been working for 10 years as a building supervisor at the Lincoln Park Community Center. In this role, the plaintiff was responsible for the complete maintenance of the municipality's community center, both inside and out, including the heating, air conditioning, plumbing, electrical, roof repairs, refrigeration of the ice rink, pool maintenance, etc. Significantly, he regularly climbed ladders and carried in excess of 40 pounds while working in his position.

After his second interview, the defendant extended an offer of employment contingent upon the drug screen, pre-employment physical and background check. During the plaintiff's physical, the doctor at Midwest Health Systems noticed that he had some difficulty climbing up on the examination table. The doctor also noted some muscle atrophy in his legs and that he was unable to walk on his heels or toes.

After further examination, the doctor concluded that the plaintiff had Charcot Marie Tooth syndrome, which causes muscle deterioration and a loss of strength over time. The doctor provided him with a note to be taken to his family doctor. The family doctor agreed with the diagnosis but indicated that the plaintiff's strength was sufficient to perform daily activities and his job, and she concluded that he was "suitable" for the job at issue.

At some point, the Midwest doctor informed the defendant that the plaintiff should only perform ground level work and be restricted from climbing ladders (because he may not be able to dorsi-flex his foot up or down while maneuvering the ladder) and lifting more than 40 pounds. The record was not clear whether the doctor felt these restrictions were necessary presently, or in the future. However, based on the information provided by Midwest, the defendant withdrew the job offer, indicating that the "doctor

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determined that you would only be able to work with some major restrictions. Considering the type of position that you are seeking, it is not possible for us to employ you with restricts that indicate you can only work at ground level and cannot lift anything over 40 pounds.”

The plaintiff filed a lawsuit claiming, among other things, that the defendant violated the ADA in withdrawing the job offer. Both the defendant and the plaintiff filed motions seeking judgment as a matter of law. During the hearing, the defendant argued, for the first time, that the plaintiff did not have a disability under the ADA. The judge rejected this argument because it was first raised at oral argument and because the defendant undoubtedly regarded him as disabled as it withdrew the job offer. Since the 2008 amendment, the ADA has included within the definition of “disabled,” being subjected to an action “because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.”

The court noted that the ADA requires “an individualized inquiry in determining whether an employee’s disability or other condition disqualifies him from a particular position.” In this case, the court determined the Midwest physician’s examination “was neither thorough nor comprehensive” and the defendant failed in its duty to “assure itself that his examination and analysis were thorough and/or reasonable.” The court found it significant that the opinion did not come from a treating physician and that the examination was cursory.

The court stated that the inquiry by the defendant should have been whether the candidate could perform the essential functions of the position with or without a reasonable accommodation and no analysis of accommodation was ever made. The defendant had an obligation to engage in an interactive process with the plaintiff to determine if there was a reasonable accommodation that would allow him to fulfill the duties of the job.

Therefore, not only did the judge deny the defendant’s motion, it granted the plaintiff’s motion for judgment and set the case for trial on damages only.

What is the take away? First, before withdrawing a job offer based on notice of restrictions from the clinic, the employer should consider the following additional steps:

1. inquire about the scope of the examination,
2. allow the applicant to provide clarification from the treating physician,
3. provide the applicant with the opportunity to demonstrate their ability, if they so choose, and
4. engage in the interactive process concerning reasonable accommodations.

Most importantly, employers should seek legal counsel from an experienced employment attorney when ADA issues arise. This is a complex law that is laden with nuances that can result in significant liability.