



Refusal to Hire Impaired Worker Not Disability Bias Under ADA

In a recent decision from the federal court for the Southern District of Texas, a refinery's refusal to hire an applicant who admitted to having weakness on the right side of his body did not violate the Americans With Disabilities Act (ADA). In *E.E.O.C vs. Lyondell-Citgo Refining, L. P.* (slip copy, 2008 WL 961909), defendant withdrew a conditional offer of employment to Steve Aleman based on a third party medical evaluation and determination that Aleman was not medically qualified for an Operator position due to residual right-sided weakness from a blunt force head trauma suffered by Aleman as a teenager. Due to unilateral weakness on the right side of his body, it was medically determined that he posed an increased risk of slipping and/or falling while climbing, thereby posing a danger to himself and others. Refinery Operators were required to have the ability to climb ladders for one to three hours per day. Based upon defendant's withdrawal of the conditional offer of employment, Aleman timely filed a discrimination charge with the EEOC, which sued defendant under the ADA.

The EEOC did not contend that Aleman actually suffered a substantially limiting impairment to a major life activity, but rather that defendant "regarded" Aleman as disabled or alternatively, that Aleman had a "record of" disability. Since

"climbing" is not a major life activity under the ADA, and Aleman was medically disqualified solely due to his inability to safely climb ladders, there was insufficient evidence that defendant "regarded" Aleman as substantially limited in a major life activity. This failure by the EEOC to establish its *prima facie* case resulted in summary judgment for defendant on the "regarded as disabled" claim. Concerning the EEOC's alternative theory that Aleman had a "record of" disability, the Court noted that, "At most, Aleman's medical disclosures reflect a record of impairment, which is insufficient to raise a genuine issue of material fact as to whether those impairments substantially limited his ability to engage in any particular major life activity." As such, defendant's motion for summary judgment on the EEOC's "record of" disability claim was likewise granted.



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