



LEGAL ALERT

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Employee Cleared By Doctor to Return to Work Improperly Terminated By City Without Further Proper Medical Evaluation Or Reliable Evidence of Inability to Perform Essential Functions of Job

A City was found in violation of the ADA for improperly terminating one of its public works' employees after he returned to work following a head injury suffered at home. A few weeks after the City's doctor cleared him to return to work, the City noticed several concerns with the employee's performance and shared the information with the same doctor. The City did not identify a specific "essential" function which the employee could not perform, but concluded his general job performance was inadequate. Without further medical evaluation or examination of the employee, or contact with the employee, the doctor revised his opinion and concluded that the information provided solely by the City showed that the employee could not perform the essential functions of his job. The City also concluded that it believed the employee could be a danger to others due to a driving incident. He was then terminated by the City. A federal appeals court held that the City improperly terminated the employee in violation of the ADA, noting a lack of evidence that the employee was unable to perform the essential functions of his job and that the City's "belief" that the employee could pose a danger to others did not meet the required standard to demonstrate the likelihood of significant harm under the ADA.

BIAGIO STRAGAPEDE v. CITY OF EVANSTON, Case No. 16-1344 (7th Cir. July 31, 2017)

A full copy of the decision is available at the following link:

http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2017/D07-31/C:16-1344:J:Sykes:aut:T:fnOp:N:2002780:S:0

A detailed summary of the decision is set forth herein.

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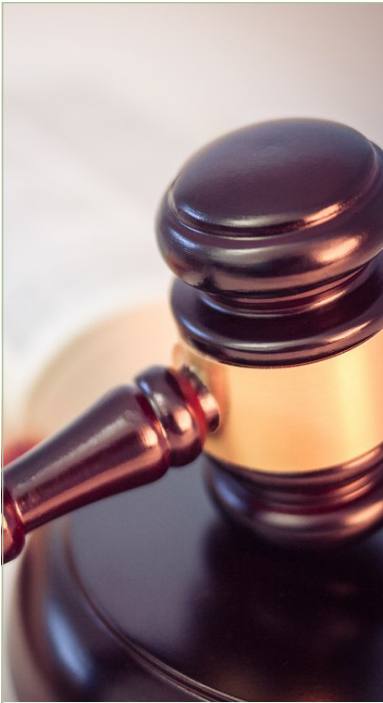
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SUMMARY OF DECISION

Facts

Biagio Stragapede (“Employee”) worked in the water services department for the City of Evanston for 14 years. He suffered a traumatic brain injury at home in 2009. The City placed him on a temporary leave of absence to allow him to rehabilitate and recover. As a condition to return to work, the City required an assessment of his condition by its occupational healthcare provider. That provider referred the Employee for a neurological assessment. The City’s doctor examined the Employee and advised the City he was ready to return to work. The doctor did suggest a trial period at work to confirm Employee could perform his basic job functions at work. The City implemented such a three-day work trial, which the Employee successfully completed, whereupon the City reinstated him to his employment.

The City made accommodations for the Employee as he returned to work. He could take “off-task” time to consult with his supervisor if he had questions and he was allowed to use a map, pen and paper, and a tape recorder as needed to perform his duties. Following his return to full duty, the Employee seemed to be able to do his job without difficulty for about 3 weeks. At that point the City began to notice concerns over the next week to week and a half. The Employee needed assistance to change a water meter and he was observed driving through a green light, at an intersection, but while looking down at his lap. The Employee also spent 2 hours at a property trying to install a water meter but could not complete the work. The Employee mistakenly mixed up Green Bay Road with Gross Point Road in order to complete the marking and location of water mains and sewer lines. He then had another problem with directions, confusing Colfax Place with Colfax Street for a water turn-on. Finally, the Employee tripped on a set of steps and suffered a foot injury.

Due to these various incidents, the City put the Employee back on administrative leave. The City contacted the doctor who had released the Employee to return to work, sharing the information about their concerns. The doctor sent a letter of response to the City, and then another letter a month later. In his first letter the doctor stated that these Employee incidents were related to his traumatic brain injury. In his subsequent letter, the doctor specifically noted that the problematic incidents involving the Employee, as described by the City, showed that the Employee was unable to perform the essential functions of his job. Based on the letters from the doctor, the City terminated the Employee. In reaching his conclusions, the doctor relied solely on the information provided by the City and did not reexamine the Employee or otherwise consider any information from any source other than the City.



REASONING OF THE COURT

When he was medically cleared to return to work by the City's physician, the Employee resumed full-time employment with the City. After just a few weeks, however, the City again placed him on administrative leave and then terminated his employment. He sued claiming a violation of the ADA due to his disability.

The City argued that the Employee was not a qualified person under the ADA because he could not perform the essential functions of his job and that further, as an exception to the ADA, the Employee was a direct threat to himself and others.

Reasoning of the Court:

Essential Functions of the Job

The Court noted that "a qualified individual" under the ADA is an employee who can perform the essential functions of their job, with or without reasonable accommodations. The ADA prohibits discrimination against such a qualified employee due to their disability. In firing the Employee the City claimed he was unable to do his job, without identifying any particular "essential function" based its claim on the doctor's recommendations, information from coworkers of the Employee and the Employee's attendance record.

The Court noted the City's doctor examined the Employee once and concluded the Employee should be able to return to work. When the Employee did return, the City asked for a "reevaluation" from the same doctor based upon their impressions of the Employee's job perfor-

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REASONING OF THE COURT — CONT'D.

mance. In offering a further opinion, based solely on information provided by the City, the doctor then concluded the problems were based on the Employee's brain injury and that he could not perform the essential functions of his job. The doctor did no further examination of the Employee.

The City also relied on one of the Employee's supervisors in deciding to fire the Employee. The Court emphasized that the testimony of that supervisor was that the Employee could not complete water meter installations and other water-services work, but that she had never actually observed the Employee at work. The Employee's direct supervisor did observe the Employee at work and he stated the Employee was able to install meters perfectly and that he also observed the Employee on multiple occasions properly locate and mark utility lines.

The City's final argument was that the Employee was frequently absent. The absences relied on included the Employee returning to the City to ask questions, an accommodation that the City agreed to provide the Employee. The Court noted that while attendance is an essential function of a job, there is no inflexible rule that no absences from work can be tolerated.

As for the City's position that the Employee was a direct threat, the ADA does not protect a disability that poses a direct threat to the health or safety of others at work. A direct threat under the ADA is a significant risk to the health or safety of others that cannot be eliminated by providing reasonable accommodation. A risk is considered significant based on its duration, the nature and severity, likelihood of actual harm and whether the harm is imminent.

The Court concluded that the City's conclusion that the Employee was a direct threat was not based on evidence that he posed an imminent risk, but rather based on the fact that the City believed he was a direct threat. The Court stated that the law is clear that an employer's belief that a significant risk exists is insufficient and that such a conclusion must be based directly on medical or other objective evidence of a threat. The City's "evidence" here was information that the Employee took his eyes off the road while driving through an intersection and that he went to the wrong locations to complete work. In response, the Employee stated that he followed safety protocols that the intersection incident only happened when he reached to grab a clipboard that had bounced off the seat and fallen. He also noted that the intersection was a green light and no pedestrians were present. The jury accepted the Employee's reasonable explanation and did not find a direct threat was demonstrated.

Based upon all of the evidence, the jury determined that City did not show that the Employee was unable to perform the essential functions of his job and concluded the evidence showed that he could.