Retroactive Leniency Not a Reasonable Accommodation Under the ADA

BY ANTHONY J. DRAGGA • OCTOBER 20, 2017

On October 11, 2017, the 10th Circuit of the U.S. Court of Appeals affirmed the District Court's ruling that retroactive leniency for past misconduct does not constitute a reasonable accommodation under the Americans with Disabilities Act (ADA). In this case, *Profita v. Regents of the University of Colorado*, the Plaintiff was a former student of the University of Colorado Medical School and suffered from untreated Major Depressive Disorder, an unspecified anxiety disorder, and complications of chronic insomnia, sleep apnea and hypothyroidism.

Plaintiff was dismissed from the University of Colorado medical program after he failed to complete his clinical rotations and sought readmission with full credit for prior coursework following treatment for his conditions. The College denied him readmission and told him to reapply as a new student, prompting Plaintiff to seek readmission with full credit as a reasonable accommodation under Title II of the ADA. The College denied Plaintiff's accommodation request, after which point the Plaintiff filed suit. The District Court found that under the ADA, the Defendant was not required to apply accommodations retroactively.

The 10th Circuit panel affirmed the trial court's allowance of the College's Motion to Dismiss. In their decision, the panel extended its holding from a recent employment discrimination case, *Dewitt v. Southwestern Bell Telephone Company*, in which it held that an employer is not required to reasonably accommodate an employee's disability by overlooking his previous misconduct, even if that misconduct resulted from his disability.

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