
**Federal Court Report**

**Failure-to-Accommodate Claim Dismissed for Lack of Identifiable Accommodation**

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The U.S. Postal Service (USPS) did not fail to accommodate an employee experiencing major depression and anxiety disorder when it did not transfer the employee to a position reserved for other employees impacted by postal facility consolidations. Nonetheless, the U.S. District Court in the Eastern District of Wisconsin allowed the claimant's retaliation claim to go to trial based on an "array of circumstantial evidence" primarily composed of derogatory e-mails between the employee's superiors. This "avalanche of e-mails" could lead a jury to conclude the supervisors engaged in unlawful discrimination of the employee's mental health condition.

The employee worked for USPS from July 1988 until his disability retirement in May 2013. In January 2016, the employee brought four claims against the USPS: failure to accommodate, retaliation, constructive discharge and improper disclosure. The first three claims arose under the Rehabilitation Act of 1973, which prohibits discrimination based on a disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment and in the employment practices of general contractors. The last claim was brought pursuant to the Privacy Act of 1974 and dismissed on summary judgment for failure to claim special damages.

The employee was diagnosed with major depression and anxiety disorder in 2001, but it wasn't until his symptoms worsened in 2010 that he took two separate Family and Medical Leave Act (FMLA) leaves from his workplace in Madison, Wis. The employee asked his USPS supervisors for a less stressful position. In October 2011, the worker accepted a voluntarily demotion to the role of supervisor of customer service at the Franklin, Wis., post office, which was an 80-mile daily commute to and from home. While the job was less stressful, the commute worsened the employee's depression.

Without providing any new medical documentation or a doctor's note indicating a need to work closer to home, in January 2012 the employee asked to be transferred back to one of several non-posted supervisor positions in the Madison post office as "a way to accommodate his depression." However, the vacant positions were being held open for other USPS employees impacted by a facility closure. Because the employee was not part of the office consolidation, his request for transfer was denied.

The employee applied for three more Madison-based positions over the next few months—all denied—and then filed an equal employment opportunity (EEO) complaint alleging failure to accommodate and retaliation in June 2012. It was not until two weeks after he filed the EEO complaint that the employee finally presented his doctor's work restrictions and formally requested accommodations, all of which the USPS granted. The requested accommodations did not include a request to be transferred to a closer workplace. The employee applied for two additional positions after the EEO complaint was resolved, until finally filing for disability retirement in May 2013.

In order to win at trial on a failure-to-accommodate claim, the employee must show:

* The worker was a qualified individual with a disability.
* The employer was aware of the disability.
* The employer failed to reasonably accommodate the disability.

Depression can constitute a disability so long as it substantially limits one or more major life activities, such as working. Here, USPS knew about the employee's depression and therefore had a duty to engage with the employee in an interactive process to determine the appropriate accommodation under the circumstances. The judge pointed out that USPS failed in its obligation to engage in a good-faith, interactive process starting January 2012 when the employee asked for a transfer back to Madison as an accommodation for his depression.

Under 7th Circuit law, a breakdown of the interactive process is not, by itself, enough to establish liability. "Such breakdowns must be evaluated under a no-harm-no-foul principle," according to the court. Here, USPS was saved because the employee has not identified any actual accommodations that were denied him. With respect to his request for the January 2012 job transfer back to Madison, there were no true vacancies. The positions the employee asked for to accommodate his depression were unposted because they were reserved for a different group of employees.

Nonetheless, discovery during litigation unearthed a mountain of internal e-mails that could be interpreted as evidence that USPS retaliated against the employee for his protected activity—taking FMLA leave and filing an EEO claim—and discriminated against him due to his mental health issues. In these e-mails, multiple supervisors discuss the employee's mental health struggles in a derogatory manner, often referring to him as "crazy," "nuts" and "a head case." Several supervisors impermissibly shared the confidential details of the employee's EEO complaint, as well as his private medical information. The employee's file noted that his discipline and performance issues were attributable to mental illness.

The court notes that "stray remarks" by non-decision-makers cannot satisfy a burden of proof in a retaliation case, but in this instance the sheer volume and offensive nature of his superiors' remarks could easily lead a fact-finder to conclude that USPS' actions were motivated by the employee's disability and exercise of his protected rights.

*Schneider v. U.S. Postal Serv.*, No. 16-CV-0013 (E.D. Wis. Jan. 28, 2022).

**Takeaway:** Employers must engage in a good-faith, interactive process to identify and implement reasonable accommodations once an employee notifies the employer of a disability, triggering the employer's duty. Further, employees, particularly supervisors, should be reminded that e-mails are never private and that derogatory comments made about co-workers can be used by a plaintiff against the employer. Even if the employer can show legitimate, nondiscriminatory, nonretaliatory rationales for adverse employment decisions, if a jury sees enough circumstantial evidence to the contrary, it could find all the employer's rationales to be mere pretext.

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