

Employee Who Threatened To Shoot His Colleagues With A Shotgun Not A “Qualified Individual” For The Purposes Of Oregon’s Disability Statute, Says Ninth Circuit

October 12, 2015 | [Employee Health Issues, Employment Discrimination, Labor And Employment](#)

The inherent tension between employee mental illness and workplace disability discrimination laws has become a hot topic over the last few years. Yet, legal opinions addressing this issue have often led to more questions than answers. For instance, what happens if an employee’s mental illness causes him or her to violate company rules? Can the employer discipline such an employee without running afoul of the Americans with Disabilities Act (ADA)? Or, in the most extreme situation, what disciplinary actions may an employer take against an employee whose mental illness causes him or her to threaten the lives of co-workers? The Ninth Circuit recently had to grapple with this latter issue in the case *Mayo v. PCC Structural, Inc.*, 795 F.3d 941 (9th Cir. 2015). In the *Mayo* case, Timothy Mayo had worked for his employer, PCC Structural, Inc., since 1987. In 1999, Mr. Mayo was diagnosed with major depressive disorder. Despite this, Mr. Mayo, with the aid of medication and other treatment, continued to work with PCC without incident for over the next decade. Unfortunately, beginning in 2010, things changed. At that time, Mr. Mayo and several other employees began having issues with one of their supervisors. The employees claimed that the supervisor consistently bullied them and generally made work-life miserable. Things only continued to deteriorate for Mr. Mayo. In January 2011, he began making threatening comments to several of his co-workers. He told one co-worker that he “fe[lt] like coming down to [PCC] with a shotgun an[d] blowing off” the heads of his supervisor and another manager. He then told the same co-worker that she should not worry, because she would not be at work when the killing occurred. Around this same time period, Mr. Mayo told another co-worker, on more than one occasion, that he planned to “co[me] down [to PCC] on [the day shift] . . . to take out management.” He said that “all [he] would have to do to shoot [his supervisor] is show up at 1:30 in the afternoon” because “that’s when all the supervisors would have their walk-through.” Understandably concerned about these threatening statements, Mr. Mayo’s colleagues reported Mr. Mayo to PCC’s Human Resources Manager. When the human resources manager asked Mr. Mayo whether he had in fact had made the statements attributed to him, Mr. Mayo admitted that he had. When he was then asked whether he would carry out his threats, Mr. Mayo responded that “he could not guarantee he wouldn’t do that.” The human resources manager then immediately placed Mr. Mayo on leave, barred him from company property and called the police. When the police arrived at Mr. Mayo’s home later that evening, Mr. Mayo again admitted to making the threatening statements. As a result, Mr. Mayo was taken into custody, as he was deemed to be a risk to himself and to others. Toward the end of Mr. Mayo’s leave period, a treating psychologist cleared him to return work, finding that he was not a “violent person.” Despite this, in May 2011, PCC terminated Mr. Mayo’s employment. Mr. Mayo in turn filed a lawsuit against his former employer under Oregon’s disability law, claiming

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that his “disturbing statements and comments . . . were symptoms of and caused by his disability.” Thus, according to Mr. Mayo, PCC’s decision to terminate him because of his threatening comments constituted disability discrimination. The district court granted summary judgment for PCC, determining that Mr. Mayo’s statements made him unqualified for his position, and thus unable to demonstrate disability discrimination. Mr. Mayo appealed. The Ninth Circuit began its analysis by applying the familiar *McDonnell-Douglas* burden-shifting framework. Accordingly, the court first had to determine whether Mr. Mayo had made out a *prima facie* case of disability discrimination. As with the ADA, a *prima facie* case of disability discrimination under Oregon law requires a plaintiff to show that (1) he is disabled; (2) he was a qualified individual with a disability; and (3) he suffered an adverse employment action because of his disability. For the purposes of the appeal, the court assumed that Mr. Mayo had a disability and that he was terminated because of that disability. However, the issue for the court was whether Mr. Mayo was qualified for his position. Oregon’s disability statute, like the ADA, states that “an individual is qualified for a position if the individual, with or without a reasonable accommodation, can perform the essential functions of the position.” The Ninth Circuit determined that Mr. Mayo’s threats made him not qualified for his job. The court reasoned:

An essential function of almost every job is the ability to appropriately handle stress and interact with others. And while an employee can be qualified despite adverse reactions to stress, he is not qualified when that stress leads him to threaten to kill his co-workers in chilling detail and on multiple occasions (here, at least five times). This vastly disproportionate reaction demonstrates that Mayo could not perform an “essential function” of his job and was not a “qualified individual.” This is true regardless of whether Mayo’s threats stemmed from his major depressive disorder.

Because the court determined that Mayo was not a “qualified individual,” he could not demonstrate a *prima facie* case of disability discrimination. As a result, the Ninth Circuit upheld the district court’s grant of summary judgment in favor of PCC. There are at least two important points that should be taken away from the *Mayo* case: **First**, courts in all likelihood will continue to allow employers to terminate employees who threaten co-workers with serious bodily harm, even when such threats derive from the employee’s legitimate disability. As the Ninth Circuit stated, “[w]hile the ADA and Oregon disability law protect important individual rights, they do not require employers to play dice with the lives of their workforce.” **Second**, while courts will provide employers with great latitude in disciplining and terminating employees who threaten co-workers with bodily harm, they may be less willing to side with an employer who takes an adverse action against employee who violates a lesser company policy because of a mental illness or disability. As the Ninth Circuit stated in *Mayo*, “conduct resulting from a disability is considered to be part of the disability, rather than a separate basis for termination.” Taken literally, this means that an employee whose mental illness causes him or her to violate company policies may be protected by disability laws if the employee shows that he or she can perform the “essential functions” of the position with or without a reasonable accommodation. Because of this, employers should act with caution when disciplining or terminating an employee who violates company policy if there is any indication that the rule violation resulted from mental illness. Under those circumstances, a court

may find that the rule violation was part and parcel of the disability itself, and thus the adverse action taken against the employee as a result of the rule violation constituted unlawful disability discrimination.