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Indiana Federal Court Gives Frostbitten ADA Plaintiff The Cold Shoulder

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Mark Wallin
Partner



David B. Ritter
Partner
Logistics and
Transportation
Co-Chair

The U.S. District Court for the Southern District of Indiana recently granted summary judgment on behalf of a logistics employer in a case alleging discrimination under the Americans with Disabilities Act (ADA). The court found that because the plaintiff employee could not work in the freezer area of his employer's warehouse, as was required for his job, he failed to establish that he was a "qualified individual" with a disability.

In [Pryor v. Americold Logistics, LLC](#), the defendant employer operates a cold-storage warehouse that "provides temperature-controlled food warehousing and distribution services," with "five cooler rooms, two freezer rooms, a loading dock, a designated battery-changing room, and a small office." The plaintiff was a Lift Truck Operator (LTO) who filled orders by picking items from the various rooms of the warehouse and wrapping them on a skid for pickup by another employee. He had previously "suffered severe frostbite on his left hand after he spent three-quarters of a shift in the freezer with defective gloves," and due to his prior frostbite "exposure to the freezer's extreme cold caused pain and risked further injury."

After treatment (and intervening stints of alternate duty), the plaintiff employee "reached maximum medical improvement" and was put on "a permanent restriction of exposure to the freezer for no more than thirty

minutes *per workday*.” The plaintiff’s LTO role, however, required nearly constant exposure to subzero temperatures. When the plaintiff did not return from leave, he was terminated.

The plaintiff alleged that his employer “discriminated against him by failing to provide a reasonable accommodation for his disability and by terminating his employment.” The employer argued that the plaintiff was not a “qualified individual” under the ADA because “he could not perform the essential duties of an LTO with or without a reasonable accommodation.” The district court held that the plaintiff had not “presented sufficient evidence that he was able to perform the essential functions of his job with a reasonable accommodation,” and thus granted summary judgement in favor of the employer.

The court explained the employer’s judgment as to which job functions are essential is entitled to consideration. And with regard to the essential functions of the LTO role, the court found that the LTO role required “substantial exposure to freezer temperatures” each workday. The court explained that, because the plaintiff admittedly could not work in the freezer for more than thirty minutes per day, “he could not perform the essential functions of his LTO order selector position without reasonable accommodation.” He was thus a “‘qualified individual’ under the ADA only if he could perform the essential functions with reasonable accommodation.”

As for the question of what a reasonable accommodation might entail, the plaintiff argued that he could have been reassigned to a non-freezer position, a temporary “cooler-only” position, or a position in the loading dock or office. However, the court stated, “it is the plaintiff’s burden to show that a vacant position exists for which he was qualified.” The court explained that the ADA does not require an employer to “create a new position or transfer another employee to create a vacancy,” or to “transfer a disabled employee to a temporary position on a permanent basis.”

Ultimately, with regard “cooler-only” positions, the court held that the plaintiff failed to identify any vacancies, and noted that pursuant to a union contract, those positions had to be filled according to seniority. With regard to the vacant loading dock or office positions, the plaintiff failed to demonstrate that he was qualified. Thus, the court held that the plaintiff failed “to create a genuine issue of material fact whether reassignment was a reasonable accommodation,” and summary judgement in favor of the employer was appropriate.

The key takeaways from the *Pryor* decision for employers facing ADA claims are that employees must still be able to perform the essential functions of their job, and that courts should consider the employer’s determination of which job functions are essential. Moreover, the *Pryor* decision reaffirms that the ADA does not require employers to create positions or vacancies as part of the interactive process.