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June 14, 2022

### **Sixth Circuit Reinstates Failure-to-Accommodate Claim Because Employer Prematurely Halted the Interactive Process**

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A recent opinion by the Sixth Circuit Court of Appeals (“Sixth Circuit” or “Court”), *King v. Steward Trumbull Memorial Hospital* (4/7/2022), addressed whether an employer failed to accommodate its employee’s potentially untimely request for unpaid leave.

Jeanne King (“King”) was a long-time registered nurse at Steward Trumbull Memorial Hospital (“Hospital”) when she began reporting absences related to asthmatic flare-ups.

In April 2017 and May 2017, King followed the Hospital’s attendance notification requirements when informing the Hospital of her inability to work because of her asthma. On May 19, 2017, approximately three weeks after her last shift worked, King called the Hospital’s third-party administrator (“TPA”) to inquire about an unpaid leave of absence. King explained that her request for leave was delayed because she anticipated that her asthma would improve and permit her to return to work more quickly.

The TPA determined that King was ineligible for leave under the Family and Medical Leave Act (“FMLA”), but the TPA failed to notify King of her eligibility for non-FMLA medical leave provided under the Hospital’s collective bargaining agreement, which may last up to one year in duration. The TPA also received inaccurate information about King’s hours worked in the preceding 12 months, delaying its processing of King’s potential leave. King repeatedly told her supervisor and the Hospital’s Human Resources Department that she was attempting to apply for leave. Nonetheless, on June 2, 2017, the Hospital terminated King’s employment for “failure to apply timely for a leave of absence.”

Despite her termination, King again contacted the TPA on June 5, 2017, and, on June 6, 2017, her physician submitted a completed medical certification, recommending a leave of absence between April 28 and June 1, 2017, and releasing King to return to work on June 2, 2017. The TPA retroactively approved King’s non-FMLA medical leave between May 14 and June 1, 2017, but the TPA denied King’s leave between April 28 and May 13, 2017, citing its five-day look-back period, because King waited until May 19, 2017 to seek leave.

King sued the Hospital, alleging failure to reasonably accommodate her disability under Ohio state law, which is analyzed in the same manner as a claim under the federal Americans with Disabilities Act (“ADA”). The district court granted the Hospital’s motion for summary judgment, which the Sixth Circuit reversed on appeal.

To succeed in her claim, King first must establish a prima facie case for failure to accommodate: “[King] must show that (1) she was disabled . . . (2) she was otherwise qualified for her position, with or without reasonable accommodation; (3) [the Hospital] knew or had reason to know about her disability; (4) she requested an accommodation; and (5) [the Hospital] failed to provide the necessary accommodation.”

All parties agreed that King was disabled.

The Sixth Circuit concluded that King was qualified, despite her absences, because the “plain language of the ADA” requires the possibility of leave as a reasonable accommodation as leave may enable an employee “to return to work” thereafter. In determining the reasonableness of a particular leave request, the following factors are considered: “(1) the amount of leave sought; (2) whether the requested leave generally complies with the employer’s leave policies; and (3) the nature of the employee’s prognosis, treatment, and likelihood of recovery.” The Hospital’s own medical leave policy permitted up to one year of leave and delayed reporting of an unforeseeable need for leave, so, the Court held, King’s retroactive request for five weeks must be reasonable.

The Court also found that: the Hospital had reason to know about King’s asthma based upon her repeated disclosures; King requested a reasonable accommodation when she told the TPA, her supervisor, and the Human Resources Department that she needed leave; and “the Hospital prematurely halted the interactive process by terminating King while her leave request was still outstanding.” The Hospital was then unable to show that the retroactive approval of five weeks of leave would constitute an undue hardship.

Consequently, the Court agreed with King that her failure-to-accommodate claim should not have been dismissed by the district court.

All employers must abide by their obligation to provide reasonable accommodations, including unpaid leaves of absence, to qualified individuals with disabilities, and to fully engage such individuals in the interactive process when they know or should know about the accommodation request.

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