

# 7th Circuit Affirms Employer Victory: Discharge Proper for Employee Who Could Not Perform Essential Job Function

## Labor & Employment Law Update

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The ADA Amendments Act of 2008 (ADAAA) brought broad speculation that a large percentage of employees would qualify as “disabled” as defined under the amended ADA and employers would have to focus attention on engaging in the interactive process to identify a reasonable accommodation. While it is true that the ADAAA has increased the importance of engaging in the interactive process to review possible accommodations, it is still equally important to consider whether the employee is a “*qualified* individual with a disability” under the ADAAA. The 7<sup>th</sup> Circuit’s recently upheld dismissal of a disability claim because the employee could not perform the essential functions of the job and, thus, was not a “qualified individual with a disability.”

The employee started work at an automotive retailer in 2005 and was promoted to Parts Sales Manager (PSM) in 2007. Following her promotion, the employee suffered a work-related injury and in 2009, was permanently restricted from lifting with her right arm anything that weighed over 15 pounds. Her employer terminated her when they were unable to reasonably accommodate her lifting restriction, asserting that lifting was essential to the job.

The EEOC filed suit against the employer alleging it failed to accommodate the employee’s lifting restrictions. As part of its claim, the EEOC was required to prove that they employee was a qualified individual with a disability. Under the ADAAA, this means the EEOC had to prove she could perform the essential functions of the job with or without reasonable accommodation.

The employer was able to submit substantial evidence to show that lifting objects over 15 pounds was a regular and essential part of the PSM job. Importantly, the employer was able to prove it did not have a practice of reassigning the lifting requirement of the job. If there is evidence that the employee reassigns a task to other employees, the court views this as a strong showing that the task is marginal (and not essential) to the job. The 7<sup>th</sup> Circuit pointed to numerous cases finding that it is not a reasonable accommodation to require another employee

to do the lifting. As a result, the employee was not a qualified individual with a disability under the ADAAA.

The employer prevailed because it had substantial evidence to show lifting was an essential job function and there was no way to reasonably accommodate the employee's restrictions. The ADAAA certainly places more emphasis on the employer's obligation to review reasonable accommodations and engage in the interactive process. However, the 7<sup>th</sup> Circuit's ruling is a reminder for employers to work with counsel to simultaneously analyze whether the employee is a "qualified individual with a disability." This threshold issue remains an important component of limiting legal exposure to disability-related employment claims.

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